

Ethics and Action of Law Enforcement Agency in Bangladesh: A Study on RAB

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Abstract

The terror, terrorists, and terrorism are more common phenomenon and flaming issues in the world, today and Bangladesh is not excluded from that. By taking the example of torture and extra-judicial killing by RAB in Bangladesh, one could understand/examine the ethical and legal position of use of torture and extra-judicial killing that are taking place every day around the world in the name of war against terrorism or to maintain world peace or even to protect citizens. Against this background the study analyses briefly the legal status and in greater detail the ethical status of the torture that have been purportedly committed by the RAB in Bangladesh since 2004. The first section of this research discusses the background of RAB, the various instances and nature of torture and extra-judicial killings purportedly committed by RAB and then shows how such acts are gross violation of both International and Domestic Law. The second part of this paper looks into the instances of torture by the squad in relation to whether it satisfies the well-established ethical standards and also argues that in most instances torture is unethical.

Keywords: Ethics, Action, Torture, RAB

Introduction

The Rapid Action Battalion, commonly known as “RAB”, is Bangladesh’s elite anti-crime and anti-terrorism force. Since its creation in March 2004 this special unit has been implicated in the unlawful killings of at least 1000s people in custody, and the alleged torture of hundreds more. Many of the deaths for which RAB is responsible resulted from summary executions. Others came after extreme physical abuse. The government defended the killings by saying the victims—people it called “wanted criminals” or “top terrors”—died when they resisted arrest or when they were caught in the crossfire during an armed clash between RAB and a criminal group (“crossfire” killings). But witnesses, family members, and journalists

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frequently reported that the victims died in RAB custody, either in the station or outside where an extrajudicial execution took place.

Please note that, the Government and the RAB officials argues in order to justify torture and killing that

- a. torturing alleged criminals or suspected terrorist is necessary for national security of the country and also to maintain law and order situation; and
- b. Killing is permissible in self-defense, especially when they kills alleged criminal or suspected terrorist.

However, to some, the RAB is thought to be blessing for the musses in maintaining peace and security of Bangladesh. It is sometimes clapped by mass people as it was largely able to suppress terrorism, militancy from the country. It has been able to arrest several high-profile terrorists.

However, torture has always been considered as the most sadistic *modus operandi* which violates the basic norm of human society. Torture jeopardizes the future prospect of the society and impugns the very existence of our life.¹Therefore, the use of torture is not justified under any circumstances, anywhere in the world. Torture vastly uses to cause severe bodily pain or mental suffering to someone, in order to gain some information, in a way of confession or obtain important information. Amnesty International defines torture, '*torture is the systematic and deliberate infliction of acute pain in any form by one person on another, in order to accomplish the purpose of the former against the will of the latter*'.²

It's a burning discussion across the world that whether the use of torture in extreme circumstances is ethically right or wrong. However, there has been wide concern on this issue of using torture in extreme circumstances or to prevent act of terrorism. However, a total ban on torture is predetermined by international laws and conventions as well. Nevertheless, a debate is going on whether torture should be ban absolutely without any exception or it is permissible under limited and extreme circumstances especially in the context of the war on terror. There are many who advocated for absolute ban on torture against the rival who insists that torture is limited permissible in the war on terror. The advocates against torture argues that the UN

¹ Istanbul Protocol, '*Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*', (Submitted to: United Nations High Commissioner for Human Rights, 9 August, 1999).

² Amnesty International, *Torture in the Eighties*, USA Edition, Amnesty International Publication, 1973 (<http://www.amnesty.org/en/library/asset/ACT40/001/1984/en/66491fc3-a18f-4ed5-8bd5-074d0a8a9130/act400011984eng.pdf>)

Convention against Torture does not permit torture “under any circumstances”, on the other hand the advocates who believes the use of torture is sometimes necessary brought example of “ticking bomb” scenario to backed their arguments.

While the advocates against use of torture argues that torture doesn't really work in real life scenario to stop terror and articulates that the practice of torture is nothing but an immoral act on defenceless prisoners, the challengers submits that torturing few is allowed to save thousands life. Therefore, for the powerful arguments over the use of torture (for or against) is still centre of the ethical academic discussion.

The aim of this article is to present the disputes concerning use of torture within the framework of ethical theories in the context of extreme circumstances focusing on the actions of RAB in Bangladesh. There are three parts in this article. The first part of this article would deal with the ethical theories for (Utilitarian and consequential) and against (deontological) the use of torture to argue that in no circumstances the use of torture is ethically permissible. The second part would discuss whether the use of torture works in the real life scenario and the third part would identify the strongest argument for use of torture in special circumstances and would defend the argument for use of torture by carefully examining the ticking bomb' scenario.

The term ‘extra-judicial killing’ in its original meaning refers to homicides that are committed outside the legal system with no prior judgment of a court³. In Bangladesh, the RAB was created on 26th March 2004 in order to combat terrorism and bring down the crime rate. RAB is a composite force comprising of a large deployment from the army and also contains representatives of Police, Navy and Air Force. There are no freshers who are appointed straight away into the RAB, all RAB members belong to any one of the aforementioned agencies to which they return after serving in RAB for a certain period of time. RAB's superior administrative body is the Ministry of Home Affairs. RAB is normally headed by a police officer not below the rank of deputy inspector general of police or its equivalent position in the military. This force is generally regarded as the elite among all the law enforcement agencies in Bangladesh, including the Police, and has received acclaim for their success in the ‘war against terrorism’ and has targeted listed ‘criminals’ and, more importantly, alleged members of banned Islamist outfits and leftist groups.

³ *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. Fla. 2009)

RAB has increasingly been criticized for extra judicial killings and torture of individuals in custody. The history of Bangladesh has also witnessed a similar organisation to RAB which was known as the Jatiya Rokkhi Bahini (JRB). The JRB was formed in February 1972 and earned a reputation of carrying out extra judicial executions of more than 30,000 leftist opponents.⁴ However, JRB was formed immediately after the independence of Bangladesh and the situation then was far more different compared to the current situation, where the torture and killing operations are taking place under the democratic government.

Deaths in the hands of RAB have commonly taken place by way of so-called cross-fire as stated above. However, deaths have also taken place when suspects have been taken into RAB custody. A few of these can be attributed to being political killings. Deaths by 'cross-fire' have also taken place where the Bangladesh Police have been involved. According to Odhikar, 169 people were killed in 'cross-fire' in the year 2004, thereafter from January 2005 to May 2005, 168 people were killed in 'cross-fire'.⁵ In aggregate from 2001 up to 2013 June the total number of 'cross-fire/gunfight/encounter' killings have crossed 1000⁶.

Background of RAB

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⁴ http://www.thedailystar.net/law/2005/06/04/index.htm?&lang=en_us&output=json&sessionid=2d1e59a321b4fc71b2d32fd6485ea8da visited on 11.07.2013

⁵ http://www.thedailystar.net/law/2005/06/04/index.htm?&lang=en_us&output=json&sessionid=2d1e59a321b4fc71b2d32fd6485ea8da visited on 11.07.2013

⁶ http://odhikar.org/wp-content/uploads/2013/07/Statistics_Cross-fire_Gunfight_2001-2013.pdf visited on 11.07.2013

⁷ *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. Fla. 2009)

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Dilemma of RAB

RAB justify the extra-judicial killings and torture by providing various explanations. A few of the common explanations include, the torturing of alleged criminals or suspected terrorist is necessary for national security purposes, or that the torture of suspected criminals are necessary for maintaining law and order situation; another popular explanation that is commonly put forward by RAB is that of ‘self-defence’ or ‘cross-fire’ when the victim is killed.

The Government from time to time has assured people that such ‘cross-fire’ killings will be brought to an end expeditiously. Nevertheless, neither the ‘cross-fire killings have stopped, nor have any RAB officials ever been prosecuted for such acts of ‘cross-fire’ thereby violating the fundamental

⁸ http://www.thedailystar.net/law/2005/06/04/index.htm?&lang=en_us&output=json&sessionid=2d1e59a321b4fc71b2d32fd6485ea8da visited on 11.07.2013

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¹⁰ http://odhikar.org/wp-content/uploads/2013/07/Statistics_Cross-fire_Gunfight_2001-2013.pdf visited on 11.07.2013

right of right to life. The term 'cross-fire' is used as a term to indirectly refer to the fact that the 'criminal'/'terrorist' has been taken care of.

The people in Bangladesh are divided in their ethical stand points in relation to torture and cross fire of RAB. While many see it as purely unethical, unacceptable and an act amounting to murder in cold blood, others see such acts as legitimate and justified use of force for the greater good of the society.

The dilemma

When human rights of the masses collide with human rights of terrorists, which rights take precedence over the other? It may sound legitimate and obvious that the human rights of mass people override the rights of the wrong doers.

A murder can never be legitimised, even if the person concerned is a terrorist or a listed criminal. For some among the public in general this may seem to be the quick fix that we all yearn for, however such quick fixes may have far reaching consequences in the long term and the integrity and the confidence that the public have on the criminal justice system of the State as a whole. A number of factors may be responsible for the vicious cycle of criminal activities that have gripped Bangladesh in the recent past. Among these factors are : a good number of criminals and terrorists allegedly work under the protection of certain politicians for their mala fide gain in relation to carrying out various activities. Criminalization of 'politics is a major factor of the deterioration of law and order situation'¹¹. This relationship between politics and crime is a matter of great concern and it needs to be addressed with immediate effect in order to restore the stability of law and order situation. Some believe that by way of 'cross-fire' RAB may be successful to some extent to reduce crime at the grassroots level, however, the question remains; is it worth having a trigger happy force as a solution where the life of innocent souls may be at stake?

It is worth at this point to set out the relevant fundamental rights enshrined in the Constitution of Bangladesh, in particular the provisions which set out expressly an individual's right to protection of law, right to life, and the prohibition of inhuman and degrading treatment. Article 31 deals with Right to Protection of Law, which reads as follows: "*To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and*

¹¹ http://www.thedailystar.net/law/2005/07/05/index.htm?&lang=en_us&output=json&sessionid=3d6937c20d5c1634e1483fe2c1054da4 visited on 14.072013

in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.” Article 32 deals with Protection of Right to Life and Personal Liberty, which reads as follows: “No person shall be deprived of life or personal liberty saves in accordance with law”. Article 35(5) deals with prohibition of torture, cruel, inhuman or degrading treatment, which reads as follows: “No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment”

Nature of torture and extra-judicial killing by RAB

RAB consists of twelve battalions, out of which five battalions operate in Dhaka-capital of Bangladesh¹². By many RAB is revered as an elite crime fighting force curbing out militancy, terrorism, and crimes in general. RAB’s official website acknowledges and highlights this achievement by depicting itself as battling the ‘war against terrorism’¹³.

The then opposition party – the Bangladesh Awami League (now in power) criticised the formation of the RAB, by commenting that instead of creating a new crime fighting force, it was important to strengthen the other law enforcement agencies, like the Police, in order to improve the law and order situation. They went on to say that creating such a force would be effectively using the military in disguise of a civil force to control the law and order situation.¹⁴

This concern subsequently turned out to be true to a large extent as more often than not, and as if in preformatted press statements, RAB would state after a killing, that the ‘criminal’ died in a cross-fire fire shoot-out between the RAB and the ‘criminal’s’ cohorts, when RAB was carrying out an operation to arrest them, in the process the accomplices or cohorts opened fire at the RAB evading arrest, RAB in turn opened fire in self-defence as a result of which the slain ‘criminal’ died in a ‘cross-fire’. Furthermore, this has also been corroborated by Human Rights Watch and other rights based organisations; in their finding, it was revealed that many individuals also died when in RAB custody, with injury marks on their body suggesting that they were tortured first. Few of those who have survived such torture also admitted to such acts by the RAB.¹⁵

¹² Rapid Action Battalion, <http://www.rab.gov.bd/index.php#> visited on 08.07.2013

¹³ <http://www.rab.gov.bd/index.php> visited on 01.07.2013

¹⁴ Human Rights Watch, Judge, Jury, Executioner: Torture and Extrajudicial Killings by Bangladesh’s Elite Security Force, December 2006, <http://www.hrw.org/en/reports/2006/12/13/judge-jury-and-executioner> visited on 08.07.2013

¹⁵ <http://www.hrw.org/sites/default/files/reports/bangladesh0511webwcover.pdf> visited on 01.07.2013

RAB's catch and kill tendency reached such a scale that those picked up by RAB usually prepare themselves for death. A victim of such near death experience gave testimony to Human Rights Watch in August 2010, saying that he heard his captors discuss his killing in a 'cross-fire'. "I performed my last rituals and was prepared," he said. "I know that people die like this every day in Bangladesh." The patronage that RAB received from the previous government also is being done so by the present government, despite its commitment to end extra-judicial killings and torture during its regime, this is evident from the government's failure to prosecute a single RAB officer for such torture or killings since the inception of RAB in 2004¹⁶. Till date not even a single successful investigation has taken place against any of the RAB officials for thousands of killings carried out by RAB in the name of 'cross-fire'.

Recently, it appears that RAB has resorted to an even more dangerous tactic of extra-judicial killings, in the form of 'forced disappearances'. Whereby, RAB is trying to implicate that they had no role in the forced disappearance, and what is more alarming that such disappearances have outnumbered that number of cross-fire killings in recent times¹⁷. A member of Ain O Salish Kendra ('ASK'), which is a national human rights NGO working for upholding human rights in Bangladesh, claims that RAB recently have resorted to pick up people, often in plainclothes, and then there is no trace of the victim or any word from RAB. There are also instances where the bodies of victims have been found in a different district from the one from which he was picked up.

It appears that RAB's so called quick fix methods have also caught up with the conventional law enforcement agencies like the police, with several hundred killings being reported of victims who were under police custody or other law enforcing agencies in Bangladesh.¹⁸

The judiciary briefly displayed its pro-activeness in taking the RAB officials involved to book, however, that too was short lived. The Hon'ble High Court Division, Supreme Court of Bangladesh, issued a *suo moto*¹⁹ rule on 17th November 2009 with a show cause to the Government and the RAB in relation to the extra-judicial killing of the Khalashi Brothers (2 victims of

¹⁶ <http://www.hrw.org/sites/default/files/reports/bangladesh0511webwcover.pdf> visited on 02.08.2013

¹⁷ http://odhikar.org/?page_id=3042 visited on 03.08.2013

¹⁸ US Department of State, 2010 Country Reports on Human Rights Practices, Bangladesh, <http://paei.state.gov/documents/organization/160056.pdf> visited on 01.08.2013

¹⁹ "on its own motion"- where a judge acts without request by anyone/any party to the action before the court.

cross-fire by RAB). Unfortunately, before the matter could be heard by the Court, the Judicial Bench which issued the show cause notice on the Government and RAB, the Bench was reconstituted and the matter is still pending hearing at an appropriate Bench.²⁰

In one recent case, an individual named Rasal Bhutto was picked up RAB in plain clothes, when he was minding a friend's shop. An army officer, being Bhutto's relative requested his colleagues in RAB not to torture him or make him a victim of cross fire, upon which, RAB officers promised Bhutto's relative that such an act would not happen. However, on March 10, Bhutto's dead body was brought by RAB to the locality for journalist to record that he was killed in (yet another) cross-fire.²¹

RAB, the Law and the Judiciary²²

Criminals in a democratic society are to be arrested and tried in the concerned Court of law and if found guilty upon a fair hearing is to be punished in any criminal justice system. For the sake of argument even a person in custody is responsible for a criminal wrong, the due process of the law ought to be respected and his trial is to take place accordingly and not by way of 'cross-fire'. Even a rise in crime in the society has no legal justification for 'cross-fire' killings by a death squad.

Bangladesh is a democratic state where the Constitution protects and ensures fundamental rights for every individual of the country. Extra-judicial killings in the name of "cross-fire", "gunfights" or "encounters" constitute blatant violation of fundamental rights that are enshrined in Articles 27, 31, 32 and 35 of the Constitution.²³

According to Article 27 of the Constitution, all citizens are equal before law and are entitled to equal protection of law; that is they are entitled to be treated in accordance with the law of the land administered by the ordinary courts of law. However, by such acts of arbitrary and illegal killing, the victims are deprived of the opportunities of ever facing justice. It is a fundamental principle of law that every person is innocent before the law until proven guilty. Hence, until it is proved in Court with all the safeguards provided by our criminal justice system, that a person is guilty, he or she

²⁰ <http://www.blast.org.bd/component/content/article/55-cj/235-4152of2009> visited on 01.08.2013

²¹ <http://www.hrw.org/news/2011/05/10/bangladesh-broken-promises-government-halt-rab-killings> visited on 01.08.2013

²² Khan, Arafat Hosen, "Stop Extra Judicial Killings: Respect and Establish an Effective Judiciary" The Daily Star, 15 May, 2010.

²³ *id*

should not be branded a “criminal” and under no circumstances should he be subject to the process of extra-judicial execution practiced by our law enforcers, in particular the RAB.²⁴

As mentioned earlier the Constitution also provides in Article 31 that: *“To enjoy the protection of law, and to be treated in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”* In reality however, the authorities can and do get away with murder and function as if they are above the law and even the supreme law, the Constitution. The systematic protection of members of the law enforcement agencies by the State has meant that not a single case of extra-judicial killing has yet been investigated by any competent authority and therefore no prosecutions or punishments of the alleged perpetrators have taken place.²⁵

According to Article 32 of the Constitution of Bangladesh, “Everyone has the right to life, liberty and security of person.” During 2004 to 2013, there have been more than 1000 extra-judicial killings where the RAB has been involved as has been recorded by national NGOs²⁶ However, in not a single one of these cases is there any information available about the specific legal proceedings undertaken. According to the data compiled by Ain O Salis Kendra’s documentation unit, in 2008 175 extra-judicial killings took place, compared to 180 in 2007. An important point to be noted is that the numbers of killings without arrest in 2007 were 81 and in 2008 it was 127. The new statistic suggests that in 2009 there have been 229 killings by the law enforcing agencies of the state. What is implicit in Articles 31 and 32 is the right to access to justice, and it cannot be said that this right has been dealt with in accordance with the law unless a person has a reasonable opportunity to approach the court in vindication of their right or grievance. Even a fugitive is entitled to a legal defence when the death penalty is involved.²⁷

Since 2004, extra judicial killings by law enforcing agencies, custodial deaths and torture, and lack of any public reports of investigation and prosecution of those responsible demonstrate the vulnerability of the right to life of Bangladeshi citizens. In the vast majority of instances, the state failed

²⁴ *Supra at 32.*

²⁵ *Supra at 32.*

²⁶ http://odhikar.org/wp-content/uploads/2013/07/Statistics_EJK_2001-2013.pdf visited on 21.07.2013.

²⁷ *Supra at 32.*

to publish any information regarding actions taken to investigate, prosecute or punish those responsible for such incidents.²⁸

Bangladesh has ratified all the core human rights treaties (ICCPR,²⁹ ICESCR,³⁰ CERD,³¹ CEDAW,³² CAT³³ and CRC³⁴) and is subject to the Universal Declaration of Human Rights (UDHR). However, the Government, RAB and law enforcing agencies have breached their obligations under all these provisions of international law. Extra-Judicial Killings in the name of “cross-fire”, “gunfights” or “encounters” constitute flagrant violations of basic human rights enshrined UDHR where Article 5 of the UDHR ensured right to life for all.³⁵

Furthermore, the 1979 UN Declaration on the Code of Conduct of Law Enforcement Officials³⁶ sets a high degree of responsibility on the Law Enforcers in relation to their use of fire arms. The Commentary of the 1979 Declaration provides that firearms are “an extreme measure”, which could be interpreted in a way that would mean that firearms could only be used if the other side puts up an armed resistance. Article 2 of the Declaration states: “In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.” Article 5 of the Declaration states, *inter alia*, “No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment”. Article 6 provides: “Law enforcement officials shall ensure the full protection of the health of persons in their custody and in particular, shall take immediate action to secure medical attention whenever required.”³⁷

The aforementioned provision of the 1979 Declaration make it clear that use of firearms should be one of last resort. In fact the Preamble does not contemplate extra-judicial killing or gun fight at all since according to the UN the primary duty of law enforcement agencies is to protect the fundamental rights of human beings and not to violate it. In other words

²⁸ *Supra at 32*

²⁹ International Covenant on Civil and Political Rights.

³⁰ International Covenant on Economic, Social and Cultural Rights.

³¹ Committee on the Elimination of Racial Discrimination.

³² Committee on the Elimination of Discrimination against Women.

³³ Committee against Torture.

³⁴ The Convention on the Rights of the Child.

³⁵ *Supra at 32*.

³⁶ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx> visited on 21.07.2013.

³⁷ *Supra at 32*.

‘cross-fire’ killings go against the spirit and intention of the 1979 Declaration.³⁸

Moreover, according to Article 2 and 6 of the ICCPR (International Covenant of Civil and Political Rights), the Bangladeshi authorities have the obligation to ensure the right to life of the country’s people and must provide prompt and effective remedies in cases where any violations take place. Bangladesh also has the obligation to introduce legislation that is in conformity with the ICCPR, but continues to fail in this regard.³⁹

The concept of democracy needs to be clearly understood before we can appreciate the role of judiciary in its sustenance. Democracy is a system of government under which the people exercise the governing power either directly or through representatives periodically elected by them. In modern times, the main features of democracy are free and fair elections, judicial independence, free press, majority rule and protection of minority rights. The activities of political parties are critical for effective democratic governance. The principle of rule of law is the basic substance of democracy and it includes supremacy of constitution, equality before the law and civil liberties.⁴⁰

For effective administration of justice in a democracy; courts have a definite and decisive role to play. A state which declares itself a legal state has to accept the role of the judiciary to maintain check and balance on the execution of power by the legislative and executive branches. To control the latter, the judiciary is responsible for deliberating on the legality of any administrative action, and to control the former, to consider the constitutionality of any legislation passed by parliament. The judiciary in modern legal states thus plays a very important role. Apart from ensuring legality, it is obliged to protect against the infringement on the rights and liberties of people by abuse of power by the state and to uphold democracy.⁴¹

At the end of this chapter, the researcher tried to bring out the nature of the problem i.e. torture and killing by the state’s law enforcing agency (RAB) within the legal frameworks under democratically elected government in Bangladesh. In this chapter the researcher looked at the state’s obligation and responsibility (i) to maintain peace in the society as well as defend terrorism and (ii) to protect the citizen of Bangladesh from torture and killing by RAB or any state authority (legally). It has also been reviewed the existing national and international law regarding torture and killing to

³⁸ *Supra at 32.*

³⁹ *Supra at 32.*

⁴⁰ *Supra at 32.*

⁴¹ *Supra at 32.*

examine whether the act of RAB is legally permissible under the nation and international existing legal framework.

In the next chapter of this research paper we will look into the disputes concerning use of torture within the framework of ethical theories in the context of RAB in Bangladesh.

Theoretical Framework of Ethics on permissibility of Torture

There are different underlying ethical theories to which a person subscribes to the question on use of torture. Some argues that the use of torture is ethically permissible in limited extreme circumstances or to fight against terrorism and the opponents completely disagree with this view and say that the use of torture is not ethically permissible in any circumstances- a total ban on torture; depending on which ethical theory a person applies to articulate his/her arguments. This part of the essay will focus on two main theories, i.e. deontology and consequentialism to understand whether torture should be completely prohibited or allowed in limited circumstances i.e. the “tricking bomb” case.

Kantian theory developed by Immanuel Kant, in which he articulates that reason is the ultimate authority for morality and without any exception in any circumstances human dignity cannot be brittle. In accordance with his theory, a moral act always has to be done for the right reasons.⁴² Therefore, deontological theory would consider use of torture is an immoral act and thus torture would be unacceptable in any circumstances, either to save many lives or in a ticking bomb scenario.

In contrast, John Stuart Mill introduced by consequentialism, where he articulated ‘everyone should act in such a way to bring the largest possibly balance of good over evil for everyone involved’.⁴³ In consequentialism, consequences are the basis in which the rightness or wrongness of actions determined. In view of this ethical theory torture is justified if the consequence is morally right. Therefore, the use of torture to one person or a few would be morally or ethically right when as a consequence of that torture would bring goodness to many or save many lives as outlined in the ticking bomb case. In consequential theory the action is defined by its intention and thus a good will or intention, such as “we are saving lives” would be a good basis of permitting torture in extreme circumstances.

⁴² Lovell, Alan and Fisher, Colin, *‘Business Ethics and Values’*, London, 2002 at page 314.

⁴³ Almond, Brenda, *‘Exploring Ethics: a travellers tale’*, MPG Books, 1998 at page 197.

In accordance with the consequentialist theory, the “ticking bomb” scenario provides a prime example where use of torture is permissible or ethically right against one or a small handful of terrorist suspects to save lives of thousands of people. On the other hand, the deontologists would strongly refuse to use of torture on any person regardless of whether the person is a suspected terrorist or how many lives might be spared as they believe that the use of torture would be an immoral means.

Nevertheless, in view of above, it is clear that for whom who argued in favour of use of torture, intentions can make a big difference to determine the moral value of the use of torture.

To illustrate the above theoretical framework on torture we can take an example from Bangladesh, where the Rapid Action Battalion, commonly known as “RAB”, an elite anticrime and anti-terrorism force. It has been created in March 2004 as a special unit to fight against terrorism in the country. However, since the creation of RAB, it has been associated with unlawful killings of 1000s people as well as alleged torture of hundreds more. Most of the killing by RAB has been done by the summary executions and a lot came after extreme physical abuse. The RAB officials and the government defended this illegal act of systematic killings and torture by saying that the victims were either most wanted criminals or top terrors. Most of incidents have been publicized in a way by the authority that the victims died either resisting themselves from arrest or they were victims of crossfire during an armed clash between RAB and the alleged criminal group. While RAB uses torture on the alleged criminals they claimed that the torture has been used on the alleged criminal to obtain information about illegal weapons from them. On the other hand a very strong disagreement with the view Government on this issue from the family members of the RAB victims, intellectuals, human rights organizations, activists and journalists against the torture and killing done by the RAB in the name of maintaining peace and security of Bangladesh.

In consequentialist theories of ethics, intention of torture or killing by RAB in Bangladesh is important, as intention (maintaining peace and security of Bangladesh) is what the government hope to achieve by the action of RAB. Therefore, ideology can play a prime role to legitimise the use of torture. When the act of the torture is held to be morally right then torture can be deemed to be justified. However, on the other side, there is strong deontological arguement where immoral acts like use of torture by RAB in Bangladesh are considered as unacceptable in any circumstances.

Thus, there are ethical theories that state torture can never be justified and on the other hand other states that it can be different, varying in

circumstances i.e. “ticking bomb” case. If we examine the real situation of Bangladesh, we will observe there is no significant improvement towards the law and order situation by use of torture by the RAB. Therefore, use of torture as a method of fighting terrorism or as a tool for maintaining peace in a country had been proven wrong. Similarly, appeal to far-fetched “ticking bomb” cases does nothing to justify the use of torture in the real world, which I will argue in the next section of this essay.

Hypothetical Situation vs. Real-Life Dilemma: Appeal to far-fetched “ticking bomb” cases- Far from Reality

There are mainly 2 views on use of torture are (i) a total ban on torture and (ii) use of torture is permitted in limited circumstance i.e. the war on terror. A total ban means that in no circumstances torture can be ethically justified, on the other from different moral perspectives many believes that torture can be morally permitted under certain circumstances i.e. ticking bomb case and this example by far the most persuasive argument from the advocates who believe torture sometimes ethically permissible in limited circumstances. However, I will argue against that view by presenting that the “ticking bomb” cases does nothing to justify the use of torture in the real world.

The case of ‘ticking bomb’ is an example of moral problem by which our moral primacies can be questioned. In the ticking bomb scenario it has been shown that an area has been discovered with planted bombs (not known the exact location of the bombs) to destroy the city and shortly those bombs would be exploded. It has also been mentioned in the scenario that there is not enough time to evacuate the city and thus thousands of innocent life are in danger. However, there is a possibility to save all those innocent people of that city if the city authority finds the location of the bombs quickly and disarm them. In the meantime, the city authority had arrested a suspect, who knows the location of the bombs. However, that arrested suspect during interrogation done by the city authority refuses to provide any information what so ever about the said bomb.

Now the given ticking bomb scenario brought us to the very important question is whether the city authority has any moral or ethical right to use torture as a means to obtain the information about the location of the said bombs by the arrested suspect to save thousands of innocent life in the city? The ticking bomb scenario gives us only two evil options. One can either do no harm to the suspect and that will have awful consequences or alternatively one can use torture on the suspect to save the lives of others.

If we carefully examine the scenario then we will observe that the ticking bomb scenario articulated in a way where it is very difficult to present any

defence to a total ban on use of torture. This is an extreme example in which the consequentialist arguments for use of torture can become devastating⁴⁴ and in order to justify the use of torture the scenario can always be made more extreme.⁴⁵

However, many philosopher has been challenged the ticking bomb example by going through the example step by step. It's been argued that the ticking bomb case build on many implicit assumptions. For example, it's been assumed that (i) the 'ticking bomb' exists; (ii) the suspect has the required information about the location of the bombs; (iii) use of torture is the only resort to obtain the required information; (iv) accurate information will be obtained only through the use of torture on the suspect' and lastly, (v) getting the information about the location of bombs is the only possible solution to avoid the disaster. The ticking bomb dilemma has been set on these five assumptions. In order to justify torture all these five assumption has to be satisfied correct and only then use of torture can be justified by the ticking bomb case, but if any of the assumption is not satisfied then the use of torture is no more justified. However, in real life situation it would be next to impossible to satisfy all five assumption are correct.⁴⁶

Now in order to present that the ticking bomb scenario is far from reality, we will examine all five assumptions respectively;

i. The 'ticking bomb' exists

The knowledge of the existence of the 'ticking bomb' is the main condition of this scenario and except that the situation cannot arise. However, the question is how strong the available evidence is to prove the existence of the ticking bomb? If we do not have sufficient evidence of the existence of the bomb then it would not be justified to use torture on the suspect to obtain information of the location of the bomb. Thus, this assumption has to be full proofed before taking any steps further to use torture on the suspect. If the suspect tortured on the basis of some weak evidence regarding the existence of the bomb then the use of torture would not get anywhere.

ii. The suspect has the required information about the location of the bombs

The second assumption is very important. If the authority is not 100% sure that the suspect have all the necessary information about the location of the bomb; the arguments for use of torture become very

⁴⁴ http://soc.kuleuven.be/io/ethics/paper/Paper%20WS5_pdf/James%20Pfiffner.pdf

⁴⁵ Shue, H. 'Torture', Philosophy and Public Affairs Vol.7 No.2, 1978 at pages 141-142.

⁴⁶ Ibid at 5.

week. It is also run a huge risk of victimizing innocent person if the authority holds less certain knowledge whether the suspect has required information or not and moreover, if this assumption is not correct then the purpose become infructuous.

iii. Use of torture is the only resort to obtain the required information

Thirdly, the authority has to reasonably believe that the torture would be the only option to get the information from the suspect and no other alternative interrogation method i.e. plea bargaining, trickery, surveillance, disorientation will absolutely not work to obtain the required information from the suspect. To assume that use of torture is the last resort, it is prudent to go through all other kinds of interrogation method and if there is a possible way to find out the required information then torture would not be justified. However, the ticking bomb case has been designed in a way where there is no room to explore other option of interrogation and thus the ticking bomb scenario become unreal.⁴⁷

iv. Accurate information will be obtained only through the use of torture on the suspect

The usefulness of torture is questioned in this forth assumption. It is very difficult to proof that only torture can obtain accurate information from the suspect. Rather it can be argue that because of torture the suspect may give complete wrong information. Torture might force to provide information but there is no guarantee that the given information will be correct.⁴⁸ Because of torture a dedicated suspect might provide the required information and innocent suspect has no chance to give any information. There are so many examples of innocents being subject to torture in Guantánamo. Therefore, it can be easily argued that there is no guarantee of obtaining useful information from suspect by the use of torture.

v. Getting the information about the location of bombs is the only possible solution to avoid the disaster

According to the ticking bomb scenario it is presumed that if the information can obtain from the suspect then it would be possible to save a lot of innocent life. However, a time factor has been ignored in this situation. If there is not enough time remaining to disarm the bombs

⁴⁷ http://www.fpif.org/articles/torture_degrades_us_all

⁴⁸ Rodley, N.S. *The Treatment of Prisoners Under International Law* (2nd edition), Oxford University Press, 2000 at page 8.

then the innocent lives cannot be saved and torturing the suspect make no difference.

If we carefully examined the above factor then we will realize that the example of ticking bomb case is not as powerful as it seems. It became a very weak argument when uncertainty is added in to the scenario and therefor the moral strength of the decision to use of torture is become very shaky. For the sake of argument on the justification of use of torture, the ticking bomb example is very attracting but in reality there would be no such situation like that and therefore, this ticking bomb cases does nothing to justify the use of torture in the real world.

Conclusion

As indicated at the beginning of this research paper that the terror, terrorists, and terrorism are more common phenomenon and flaming issues in the world, today and Bangladesh is not excluded from that. By taking the example of torture and extra-judicial killing by RAB in Bangladesh, one could understand/examine the ethical and legal position of use of torture and extra-judicial killing that are taking place everyday around the world in the name of war against terrorism or to maintain world peace or even to protect citizens.

In relation to torture, as discussed both national and international law prohibit the use of torture on suspects. Deontologists too have a rather straightforward no tolerance approach when it comes to torture. However, in relation to the consequentialist view on torture, some scholars argue using the ticking bomb scenario to justify its use for the greater good. However, the ticking bomb scenario has its own flaws. Nevertheless, one would argue in this day and age with technological advancement and highly organised terrorist groups, torture may be applied very sparingly and only as last resort if it indeed could save a lot of lives and thereby torture is outweighed by the number of lives saved. Otherwise, one would argue that the use of torture as a tool of first instance for the purposes of interrogation by the RAB is not called for.

Use of torture is an ethical as well as legal issue as it violates basic human rights and morally wrong. After the incident of 9/11, to fight terrorism, many thinks that use of torture is justified in an extreme circumstances. Specially, since the death of Osama bin Laden (as it claims by the US officials that the information about bin Laden was disclosed due to use of torture), it's been argued frequently by the advocate in favour of torture that harsh interrogation methods i.e. torture works to obtain information to save lives. However, use of torture to get information about

Osama bin Laden and subsequently the death of Osama bin Laden do not prove that torture is permissible or torture works to obtain information to fight against terrorism. First of all the evidence is not clear that only because of the use of torture the information about Osama bin Laden was revealed and secondly different method could have apply to get the same information.

Therefore, from the above discussion, it would strongly argue that the use of torture is unjustifiable, even in any extreme cases and appeal to far-fetched “ticking bomb” cases does nothing to justify the use of torture in the real world.

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