

## **Prohibition of Torture: Laws and Practice in Bangladesh**

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### ***Abstract***

*Inhuman torture is a common issue in our country. It is happening not only in Bangladesh but also each and every corner of the world. To prevent such a curse from society, country and world lots of national and international laws, guidelines and precedents continuously come from judicial decisions of different nations. Bangladesh judiciary is not exception here. In light of this issue, the paper has analyzed, for the purpose of focusing judicial developments, examining relevant laws and its implementation, national and international legal framework along with the reference of judicial precedent upon prohibition of inhuman torture including arrest, detention, remand and extra-judicial killing by law enforcement agency. In this regard, the Supreme Court of Bangladesh laid down a set of guidelines in *blast vs. bd* [55 dlr (2003) hcd, p. 380], *saifuzzaman vs. state* [56 dlr (2004) hcd, pp. 342-43] and *bd vs blast* [8 scob (ad) 2016, p. 1] with regard to exercise of power of arrest and remand consecutively under section 54, 161 and 167 of the CrPc along with section 3 of the SPA and 316 of PRB where these sections provide the Police and LEA excess power which is mostly abused by them. This paper has critically analyzed these sections as well as article 35(5) of our Constitution which directly stands against the torture and degrading punishment. The paper has also emphasized upon the judicial precedents concerning prohibition of torture whether they are being implemented properly. In conducting this research, analytical methodology is applied and data have been collected from primary and secondary sources which found that in 2017 about 155 people died for extra-judicial killing. Among 155 people 13 died for torture; 139 for crossfire; 2 for beaten and 1 for shot that are the reflection of violation of human rights even fundamental rights also and such violation is not being under control rather it is increasing rapidly day by day where in 2018, from January to May, the death of person for extra-judicial killing stands to 222. And these are occurring because of authorization of black law, poor monitoring system of*

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*NHRC, less accountability and transparency of police officer as well as law enforcement agency.*

**Keywords:** Right to Prohibition of Torture, Arrest, Remand, Extra-Judicial Killing and Judicial Development upon Torture.

## **Introduction**

Inhuman treatment and torture is a common issue in our country. It is happening not only in Bangladesh but also each and every corner of the world. Sometimes it remains clam and sometimes it grows rapidly at a high level of tolerance. At present day it turns into a social curse for the civilized. To prevent such a curse from society, country and world various qualitative and quantitative national and international laws are formed. In spite of having national and international humanitarian law (IHL) the inhuman treatment and torture is happening day by day because of its no proper implementation in the world wide. The main reason of not implementation of the laws against inhuman treatment and torture is political influence. Most of the facts pertaining to the torture are done due to acquiring political gratification. So, political hand plays a very vital role to cause ill-treatment, inhuman treatment and torture. Whereas the supreme law of Bangladesh says “No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment”.<sup>1</sup> Besides these, amongst the international humanitarian laws Bangladesh rectified the following conventions to protect torture and inhuman treatment. The paper studies on lots of literature based on various books, journal article and newspapers. Amongst them it emphasizes upon the famous writer’s books namely Islam (2012), Chowdhury (2010), Rahman (2011), Halim (2012), Huda (1997), Khan (2010), Munin (1975) of our country. In needed, this paper have collected data form various online based websites Weissbrodt (2011), Rahman (2017).

## **Methodology of the Research**

This research paper contains the doctrinal and qualitative research. Doctrinal research includes the library based research. This is a critical study on case law, journal report, article and existing research pertaining to the issue of prohibition of torture and inhuman treatment, report as primary source. This thesis analyzes text books, journals and information from internet as secondary sources in order to completion of my dissertation paper. Data has been accumulated for this study from both primary as well as secondary sources to finds out the gap or drawback of the laws which is made for the protection of human rights especially for the protection of people from inhuman treatment and torture. Besides

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<sup>1</sup> The Constitution of the People’s Republic of Bangladesh, Article 35 (5).

these theses finds out the gap of information pertaining to the topic studying on various famous writers' books.

### Objectives of the Research

- a. To focus the judicial developments upon the arrest, remand and detention.
- b. To examine the existing laws, precedents regarding their implementation.
- c. To find out causes of non-implementation of judicial precedents.

### Research Questions

- a. What are the judicial developments upon arrest, detention and remand?
- b. Whether the laws pertaining arrest, detention and remand are effective?
- c. What are the causes of occurring torture in arrest, detention and remand?

### Scope of the Research

The dissertation paper emphasizes the laws and judicial precedence pertaining to torture and inhuman treatment. There have lots of national and international humanitarian laws to reduce ill-treatment and torture from society. In national law, article 32, 33, 35 (5), 31, 27, 26 and 7 of the Constitution of the People's Republic of Bangladesh; Sections 15 (1), (2) and (3) of the Prohibition to Torture and Death in Custody, 2013; Section 29 of The Police Act of 1861 protect the right to protection from torture. Besides these, art. 7 of ICCPR; art.5 and 7 of UDHR; art. 5 (2) of ACHR; art. 3 of ECHR; art.1-3 & 13-16 of CAT Convention; art.32 Geneva Convention; art. 37 (a) of CRC also ensure the right to protection from torture. These all legal instruments are recognized by the government of Bangladesh so it is duty of state to protect the right. In addition, 19 reliable judicial guidelines were delivered by the Appellate Division of the Supreme Court of Bangladesh in a case *Bangladesh v. BLAST*<sup>2</sup> where court recommended constructing a remand room made by full glass so that lawyers or the relatives of detenu can observe the activities of remand officer. Besides theses, in *BLAST v. BD*<sup>3</sup>, *Saifuzzaman v. State*<sup>4</sup> honorable court also recommended reliable guidelines in arrest, detention and remand so that no violation of right to life and other related therein is occurred.

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<sup>2</sup> 8 SCOB (2016) AD. p. 1

<sup>3</sup> 55 DLR (2003) HCD, P. 380

<sup>4</sup> 56 DLR (2004) HCD, pp. 342-43

## Theoretical Framework

### *Principles of Arrest*

A leading case namely *BLAST vs. BD*<sup>5</sup> clears the term “*reasonable suspicion*”. Generally the law enforcement agencies abuse the terms and following this terms they are used to cause any different types of brutal torture and inhuman treatment through arrest, detention and remand in police custody. Now, the police officers must write the reason of arrest and mustn’t arrest any offender until he meet with his family member on the matter of arrest and must have facility to choose advocate. In case of *Mrs. ArunaSen Vs Government of Bangladesh*<sup>6</sup> it is held that the ground on which order of detention is made must be communicated to the detenu to enable him to a make represented at the earlier opportunity. There are complaints of indiscriminate arrest of innocent persons who are subjected to third degree methods with a view to extracting confessions. This is termed by the Supreme Court of India as “*State terrorism*”.<sup>7</sup> Reasonable Suspicion and Credible information must relate to definite averments considered by the police officer himself before arresting a person under this provision. What is a *reasonable suspicion* must depend upon the circumstances of each particular case, but it should be at least founded on some definite fact tending to throw suspicion on the person arrested and not on a mere vague surmise.<sup>8</sup> The word “*concerned*” used in the section is a vague word which gives unhindered power to a police officer to arrest any person stating that the person arrested by him is concerned in a cognizable offence. In this regard some reliable guidelines for arrest are mandated in *BLAST v. Bangladesh*<sup>9</sup>, *Saifuzzaman v. State and Bangladesh v. BLAS* those is as under-

1. A police officer shall not arrest anyone under section 54 in order to detain under section 5 of the Special Power Act, 1974.<sup>10</sup>
2. At the time of arrest, a police officer shall disclose his/her identify and show ID card on demand to the person arrested.<sup>11</sup>
3. The concerned officer shall record the reason of arrest and other particulars in a separate registrar.<sup>12</sup>

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<sup>5</sup> 55 DLR 380 (HCD 2003)

<sup>6</sup> 27 DLR 122 (HCD 1975)

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Supra Note 2

<sup>10</sup> Ibid; 8 SCOB 1 (AD 2016)

<sup>11</sup> Ibid

<sup>12</sup> Supra Note 7

4. The concerned officer shall mark injury and if arrested person is injured shall take him/ her to hospital or government doctor.<sup>13</sup>
5. The concerned police officer shall record the reasons of arrest within three hours of bringing him/her to the police station.
6. The police officer shall within *one hour* inform over the phone or through messenger to the relatives of person arrested if he is not arrested from residence or place of business.<sup>14</sup>
7. The person arrested must be allowed to choose a lawyer for defense or to meet nearest relation.<sup>15</sup>
8. The police officer shall prepare a memorandum of arrest after arrest and shall take signature of arrestee with date and time of arrest in the memorandum.<sup>16</sup>
9. The police officer shall inform on about arrest to the relative of arrestee or suggested friends within 6 hours after notifying the time and place of arrest and the place of custody but in 2016 appellate division extended the time limitation of notifying from 6 hours to 12 hours.<sup>17</sup>
10. The police officer shall record of the ground of arrest and the name of informee along with address and shall also record the name of relatives to whom information is given about the arrest.<sup>18</sup>

### **Shields against Arbitrary Arrest**

In order to protect arbitrary arrest national and international laws frame several rules and legislations. In national laws, article 33 of our constitution mandates that no person who is arrested shall be detained in custody without being informed of the grounds for such arrest and shall give right to consult with a lawyer in order to defend himself.<sup>19</sup> In addition, within 24 hours of such arrest the police officer shall present the arrestee before magistrate.<sup>20</sup> In this context, article 35(5) prohibits not to cause any kinds of torture or cruel, inhuman, or degrading punishment or treatment. Besides these, article 32, 31, 27, 26 and 7 of the Constitution

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<sup>13</sup> Ibid

<sup>14</sup> Ibid; 8 SCOB 1 (AD 2016).

<sup>15</sup> Ibid.

<sup>16</sup> Saifuzzaman vs State 56 DLR 342-43 (HCD 2004); Bangladesh v. BLAST, 8 SCOB 1 (AD 2016)

<sup>17</sup> 8 SCOB 1 (AD 2016)

<sup>18</sup> Ibid.

<sup>19</sup> Constitution of the People's Republic of Bangladesh, Article 33 (1).

<sup>20</sup> Ibid, Article 33 (2).

of the People's Republic of Bangladesh;<sup>21</sup> sections 15 (1) (2) and (3) of the Prohibition of Torture and Death in Custody, 2013;<sup>22</sup> Section 29<sup>[23]</sup> of the Police Act of 1861 also protect person or accused or detenu from being tortured before and after arrest by the LEA. In International Laws, ICCPR<sup>24</sup>, UDHR<sup>25</sup>, ACHR<sup>26</sup>, ECHR<sup>27</sup>, CAT Convention<sup>28</sup>, Geneva Convention<sup>29</sup>, CRC<sup>30</sup> ensure the right to protection from torture and any kinds of inhuman treatment.

### ***Principles of Right to Fair Remand***

In ***BLAST vs Bangladesh***<sup>31</sup> it is held that the very system of taking of an accused on remand for the purpose of interrogation and extortion of information by application of force is totally against the spirit and explicit provision of the constitution. In case ***BLAST vs Bangladesh*** the High

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<sup>21</sup> Article 32 ensures right to life and personal liberty; article 31 ensures right to enjoy the protection of law where the article prohibits not to take any action which is detrimental to the life, liberty, body, reputation or property of any person except in accordance with law; article 27 denotes that all citizens are equal before law and are entitled to equal protection of law; article 26 states that state shall not make any law inconsistent with the provisions of part III (article 27-44) of our constitution where the section 54 (i) and Special Power Act, 1974 violates the fundamental rights giving excess power to arrest without warrant and these section are mostly abused by the LEA which cause torture and inhuman treatment, pre-trial detention, extra-judicial killing etc; and article 7 ensures the supremacy of constitution above any other law.

<sup>22</sup> The section says that "If any person tortures another person and if that person dies due to the torture then the torturer shall be considered as having committed a crime under Section 13 (1) and shall be punished with rigorous imprisonment for life or shall be liable for a fine of not less than one lac (100,000) Taka or both and shall pay additional two lac (200,000) Taka to the victim/aggrieved person/persons."

<sup>23</sup> Every police officer who shall offer anyunwarrantable personal violence to any person in his custody shall be liable to a penalty not exceeding three month" pay or to imprisonment, with or without hard labour, for a period not exceeding three months or to both.

<sup>24</sup> International Convention on Civil and Political Rights of 1966, Article 7.

<sup>25</sup> Universal Declaration of Human Right of 1948, Article 5.

<sup>26</sup> American Convention of Human Rights of 1969, Article 5 (2).

<sup>27</sup> European Convention of Human Rights of 1950, Article 3.

<sup>28</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, Article 1-3 & 13-16.

<sup>29</sup> Geneva Convention of 1949, Article 32.

<sup>30</sup> Convention of the Right of the Child of 1989, Article 37 (a) of

<sup>31</sup> 55 DLR 363 (HCD 2003)

court Division gave direction regarding detention and remand as well as magistrate's duty, those are as under;

1. If the police officer seek permission for detention of person arrested under section 61 of the CrPc for the purpose of completing investigation, the police officer must forward reasons in a forwarding letter under Section 167 (1) of the CrPC as to why the investigation could not be completed within (24) twenty four hours and why s/he considers the accusation and information to be well founded.
2. In this regard with the forward letter the police officer shall present before the magistrate a memorandum of arrest, a copy of information and complain as well as a copy of dairy for making the order of the Magistrate under section 167 of the Code.<sup>32</sup>
3. On the basis of forwarding letter, if the Magistrate satisfies him/herself that the accusation and information brought against arrestee are sufficient for detaining the person in custody, the Magistrate shall pass an order of detention and if not, release him/her forthwith.
4. If a person is released, the Magistrate shall adequate action under 190(1) (c) of the CrPc against the Officer concerned under Section 220 of the Penal Code.
5. If Magistrate orders detention of person, the Officer shall interrogate the accused in a room with glass wall or grille on one side within sight of lawyer.
6. The Magistrate shall records reasons of granting interrogation. In this regard he shall follow the recommendations laid down in the judgment.
7. If any death of person arrested under Section 54 is occurred in police custody during investigation or interrogation then as soon as possible the concerned officer or the jailor must inform the nearest Magistrate about the death of any person.
8. In this respect the Magistrate shall inquire into the death of any person in police custody or jail as per the recommendations.
9. After the expiry of the period of remand and police officer in no case shall send the arrestee to the judicial custody without producing him before the Magistrate.<sup>33</sup>
10. If police officer fails to complete investigation within 15 days of the detention of the accused under section 167 (2), the Magistrate, if satisfies him/herself, can can send such accused person on

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<sup>32</sup> Saifuzzamanvs State (HCD 2004)

<sup>33</sup> Ibid.

remand under section 344 of the Code for a term not exceeding 15 days at a time.<sup>34</sup>

11. If arrested person dies in his custody on remand, the Magistrate shall direct for the examination of the victim by a medical board to find out whether such death is occurred for burial torture or he shall direct exhumation of the dead body for fresh medical examination by a medical board, and if the report of the board reveals that the death refers to homicidal in nature then he shall take cognizance of the offence made by LEA under section 15 of Hefajate Mrittu (Nibaran) Ain, 2013 against such officer and the officer in charge of the respective police station or commanding officer of such officer in whose custody the death of the accused person took place.<sup>35</sup> In a case *Masud vs Md Kashed Miah*<sup>36</sup> it is held that if any death is caused by negligence or breach of statutory duty than the right to get appropriate compensation can be considered.<sup>37</sup>
12. If it is found that a person has been subjected to ‘Nirjatan’ or died in custody within the meaning of section 2 of the Nirjatan and Hefajate Mrittu (Nibaran) Ain, 2013, shall send to doctor or hospital for ascertaining the injury or the cause of death and if the medical evidence reveals that the person detained has been tortured or died due to torture, the Magistrate shall take cognizance of the offence suo-moto under section 190(1)(c) of the Code without awaiting the filing of a case under sections 4 and 5 and proceed in accordance with law.<sup>38</sup>

### Principles of Detention

In case of *Mrs. Aruna Sen Vs Government of Bangladesh*<sup>39</sup> it is held that the **ground** on which order of detention is made must be communicated to the detenu to enable him to be made represented at the earlier opportunity. As a result the detenu can be able to take defense on his behalf appointing advocate against the allegation brought against the detenu. In a case *Saifuzzaman vs State*<sup>40</sup> the honourable court provides some direction in all cases of remand and detention, those are as under-

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<sup>34</sup> Ibid.

<sup>35</sup> Bangladesh v. BLAST (AD 2016)

<sup>36</sup> 65 DLR 523 (HCD 2013)

<sup>37</sup> Supra Note 32

<sup>38</sup> Ibid.

<sup>39</sup> 27 DLR 122 (HCD 1975)

<sup>40</sup> 56 DLR 342-43 (HCD 2004)



1. The Magistrate shall not make an order of detention of a person in the judicial custody if the police forwarding report disclose that the arrest has been made for the purpose of putting the arrestee in the preventive detention.<sup>41</sup>
2. The Magistrate shall not make order for further detention if the accused person is not produced before him along with the copy of information, diary, complaint as per section 167 (2) of CrPc.<sup>42</sup> In this respect Magistrate shall release him in accordance with section 169 of the Code on taking a bond from him.<sup>43</sup>
3. If a law enforcing officer seeks an arrested person to be shown arrested in a particular case, who is already in custody, such Magistrate or Judge or Tribunal shall not allow such prayer unless the accused/arrestee is produced before him with a copy of the entries in the diary relating to such case and if that the prayer for shown arrested is not well founded and baseless, he shall reject the prayer.<sup>44</sup>
4. If the Magistrate has reason to believe that any member of law enforcing agency or any officer who has legal authority to commit a person in confinement has acted contrary to law the Magistrate shall proceed against such officer under section 220 of the Penal Code.<sup>45</sup>

### ***Doctrine of Presumption of Innocence***

In Latin term it is called as “*Ei incumbit probatio quid dicit, non qui negat*” which means “*Innocent Until Proven Guilty*”<sup>46</sup> The accused shall be presumed as innocent until his guilty is proved. According to article 11 of UDHR<sup>47</sup> "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. Article 48 of CFREU<sup>48</sup> affirms the right to the presumption of innocence where it says everyone who has been charged shall be presumed innocent until

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<sup>41</sup> Saifuzzaman v. State (HCD 2004);

<sup>42</sup> Ibid.

<sup>43</sup> Supra Note 38

<sup>44</sup> Ibid.

<sup>45</sup> BD v. BLAST (AD 2016)

<sup>46</sup> Coffin v. United States, 156 U.S. 432 (1895); Woolmington v DPP [1935] UKHL 1 (23 May 1935); Kenneth Pennington, Innocent Until Proven Guilty: The Origins of a Legal Maxim, 63 JURIST: STUD. CHURCH L. & MINISTRY 109 (2003).

<sup>47</sup> Universal Declaration of Human Rights of 1948.

<sup>48</sup> Charter of Fundamental Rights of the European Union of 2000.

proved guilty according to law.<sup>49</sup> So, these provisions impliedly reflect not to cause any kinds of torture in pre-trial stage and not to detain any person until his guilty is proved.

### ***Principle of Double Jeopardy***

In a case *Tariquev Bangladesh*<sup>50</sup> it is held that no person can be convicted or sentenced without following completing investigation inquiry in respect of an offence. In another case namely *Gias UddinAl Mamun v State*<sup>51</sup> it is held that if a person is punished for his crimes he cannot be again punished for the same crime. In *Mansur v Ministry of Home Affairs*<sup>52</sup> it is held that no person shall be detain more than 6 month without the approval of the advisory board. In *Kalandiar Kabir v Bangladesh*<sup>53</sup> it is held under the Jail Code a state prisoner shall be treated like a civil prisoner. This doesn't sufficiently cover the status of a detenu. The Government should frame rules regarding the detenu and shall keep in mind that he still retains some right under articles 27 and 30 of the Constitution in spite of his detention. In this case the courts recommend to the government to frame qualitative laws regarding detenu because Jail Code is not sufficiently cover the status of a detenu. In case of *HM Ershedvs the State*<sup>54</sup> it was held that no person shall be prosecute and punished for the same offence more than once. In this case *Shaikh Md Harunor RahsidVs secretary Ministry of Jute Government of the peoples of Bangladesh*<sup>55</sup> and other It was held that under Article 35 (2) of Bangladesh constitution no person shall be punished for the same offence more than once.

### **1.6 Case Studies<sup>56</sup>**

i. On 03 January 2016, at around 9:30 pm, in Kingshuk Residential area at Mirpur, 2-3 policemen accompanied by 2 police informers came to a tea-stall owned by Babul Matbar and demanded bribe. Babul refused to give the amount. As a result the policemen and their associates started vandalizing the shop and kicked a burning stove that fell on Babul. He

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<sup>49</sup> Charter of Fundamental Rights of the European Union of 2000, Article, 48 (i).

<sup>50</sup> 63 DLR 18 (AD 2011)

<sup>51</sup> 65 DLR 375 (HCD 2013)

<sup>52</sup> 42 DLR 272 (1990)

<sup>53</sup> 54 DLR 258 (2002)

<sup>54</sup> 45 DLR 533 (1993)

<sup>55</sup> 33 DLR 230 (HCD 1981).

<sup>56</sup> Ain O Shalish Kendra.(2018). "Annual Report 2016". Retrieved from [http://www.askbd.org/ask/wp-content/uploads/2018/04/Annual\\_Report\\_2016\\_optimized.pdf](http://www.askbd.org/ask/wp-content/uploads/2018/04/Annual_Report_2016_optimized.pdf)

immediately caught fire. Later on after passing 1 day on 04, January 2016 Babul died in the burn unit of Dhaka Medical College Hospital.

ii. On 09 January 2016, Golam Rabbi, a high official of Bangladesh Bank, was stopped by police on his way home at around 11 pm. They made allegation of carrying yaba (mad drugs) against him and forced him into their van. Later on, they demanded Tk. 10 lacs from Golam Rabbi. But he also refused to pay hush money. As a result they inflicted inhuman torture on him.

iii. On 31 January 2016, Sub Inspector (SI) Ratan of Adabar Police Station accompanied by a number of constables stopped a female student of ASA University at Shia Masjid while returning home upon finishing her classes. They accused her of carrying yaba forcing her to get off the rickshaw and later on forcefully took her to an electronic shop near Japan Garden City ordering everyone to go out from the shop. Afterwards, SI Ratan harassed the girl sexually.

-----Source: ASK Investigation

### Statistic of Torture

The data concerning violation of human right has been collected from Ain o Shalish Kendra Annual Report 2018 and Odhika Annual Report 2018. According to the report of Odhikar, 2018 about 625 persons were tortured, from 2004 to 2018 (up to May), by LEA (law enforcement agency) where 280 person died for torture and from 2001 to 2017 about 3,209 person died from extra-judicial killing by LEA. In 2017, 155 people died for extra-judicial killing (Table 3). Among 155 people 13 died for torture; 139 for crossfire; 2 for beaten and 1 for shot that are the reflection of violation of human rights specially right to life even fundamental rights also and such violation is not being under control rather it is increasing rapidly day by day where in 2018, from January to May, within five month the death of person for extra-judicial killing stands to 222.

**Table: 1**

Statistics of Violation of Human Right: January- December 2017													
Types of Violation of Human Rights	January	February	March	April	May	June	July	August	September	October	November	December	Total
Crossfire	15	17	19	8	8	12	17	9	2	11	11	10	139
Shot to death	1	0	0	0	0	0	0	0	0	0	0	0	1
Tortured to	0	0	1	1	1	1	1	1	2	3	1	1	13

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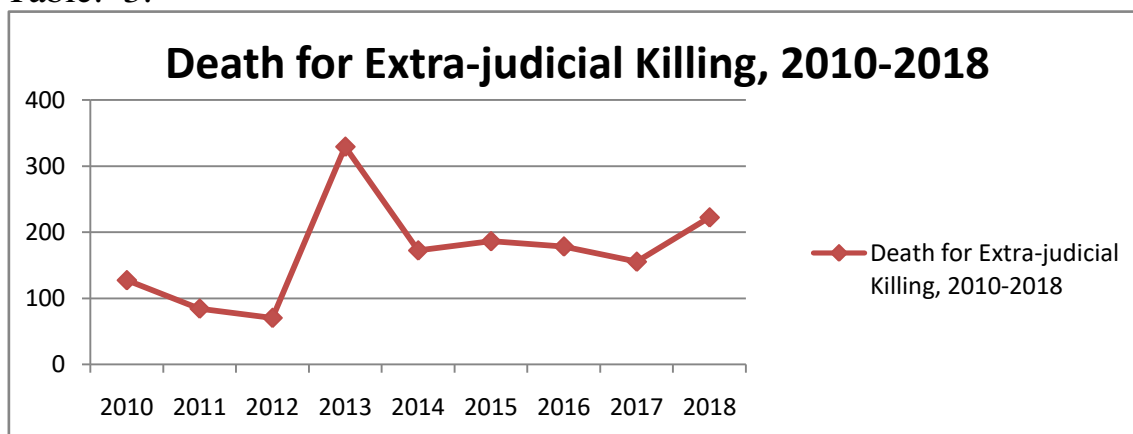
death													
Beaten to death	0	0	0	1	0	0	0	0	0	1	0	0	2
Death in Jain	1	5	4	2	4	6	7	4	8	5	8	5	59
<b>Total</b>	<b>17</b>	<b>22</b>	<b>24</b>	<b>12</b>	<b>13</b>	<b>19</b>	<b>25</b>	<b>14</b>	<b>12</b>	<b>20</b>	<b>20</b>	<b>16</b>	<b>214</b>

*Source: Ain o Salish Kendra Annual Report, 2018 & Odhikar Annual Report, 2018*

**Table: 2**

Statistics of Violation of Human Right: January- May 2018						
Types of Violation of Human Rights	January	February	March	April	May	Total
Crossfire	18	6	17	28	147	216
Shot to death	1	1	0	0	0	2
Tortured to death	0	0	1	1	2	4
Death in Jain	6	5	9	7	8	35
<b>Total</b>	<b>25</b>	<b>12</b>	<b>27</b>	<b>36</b>	<b>157</b>	<b>257</b>

Table: 3:



*Source: Ain o Salish Kendra Annual Report, 2018 & Odhikar Annual Report, 2018*

### Reasons of Occurring Torture in BD

- 1. Excess Power of Police:** The Bangladesh Police is recognized by the Police Act (1861), the Code of Criminal Procedure (1898), the Police Regulation, Bengal (1943), the Armed Police Battalions Ordinance (1979) and relevant Metropolitan Police Acts. **Police Act, 1861** specifies the power of police, superintendence of the

force, power of inspector-general to make rules, special police and their powers, and duties of police officers. **Code of Criminal Procedure, 1898** empowers the police to arrest any suspicious persons under **section 54** of this Act and specifies their powers to investigate an offence. **Police Regulation of Bengal, 1943, section 316** empowers police to arrest without warrant on reasonable suspicion and **section 27** of evidence Act also gives priority to accept statement made by the accused in police custody.

2. **Greediness of Money:** It plays very effective role for not to ensure human right and fundamental right. Because, most of our lawful authorities are used to take bribe to do an act or omission. As a result the enforcement of fundamental rights is being obstructed.
3. **Political Influence:** It is another backing point of not ensuring fundamental right. As a result of having political bad hand many offenders can easily release from any case through recommendation by the political concerned authority to the person who is acting as a judge of concerned case. Even many times a case is not filed after informing to the police station on an offence by the victim because of political backing and linking with the police officer.
4. **Lack of Proper Monitory System:** Lack of adequate monitory on law sectors specifically on activities of the judges and lawyers and Law enforcement agency, human right is not ensuring properly.
5. **Illiteracy on Law:** Most of the employees of government organization are not aware of their right. Often they don't understand whether their right is violated or not. at the end, employee agree the decision of superior authority.
6. **Failure to Ensure Good Governance:** A good government can bring a peaceful society where the violation of human right can't be occurred. If the government of a state is not good governance and its rule is arbitrary then the violation of human right is deemed as a seli matter. So good governance surely plays a vital role to ensure right of human.

## Findings

In this research paper the paper successfully finds out the judicial precedents of arrest, detention, remand and extra-judicial killing and its non-implementation in our county. In this regard it reveals the reason of wrongful arrest, detention, and extra-judicial killing where the paper make liable the section 54, 161, 167 of CrPc; 3 of the SPA; and section 26, 316 of PRB, which is treated as black laws, for abuse of aforesaid powers. Specially section 54 and 167 of CrPc along with section 3 of SPA being mostly used by the political party are the exclusive weapon of the ruling party to defect opposite. On the other hand to protect the

person from attack under said black laws judicial body has established definite judicial precedents and guidelines but it is matter of sorry that such precedents aren't still now being implemented by the executive body. In this respect the paper shows the means of reducing abuse of power, by the LEA in exercising power of arrest without warrant, detention, remand and extra-judicial killing, with stipulating five points thus; amending black laws, establishing monitory system under NHRC, raising activity of NHRC, establishing separate police branch for interrogation and ensuring accountability of LEA.

### **Concluding Remarks**

As the term “torture” is not only an apple of discord in our country but also a bone of contention in the world wide. So its absolute reduction is a bolt from the blue but its standard can be under control by only the well-established government with the implementation of above mentioned recommendations. And it is duty of the people to establish a good government in a state. However, the term ‘torture’ includes a lot of means by which it may be occurred but in this paper the term ‘torture’ only referring four ways of causing torture namely; arrest, detention, remand and extra-judicial activities of LEA<sup>57</sup> is illustrated as per national and international laws and precedents. Moreover, as it is a hard nut to crack of our society, concerned authority, NGO, human right institutions, clubs and people of society should raise the awareness and make known to all about legal knowledge which may turn over a new leaf in ensuring rule of law. Besides these, in order to preventing arbitrary arrest and torture as well as detention and remand firstly government should remove or amend black laws stipulated above; secondly state should establish a separate police branch only for remand under judiciary; thirdly **Police Thana Monitory Committee**<sup>58</sup> under NHRC<sup>59</sup> for every 3 or more thana should be formed; fourthly **Accountability of LEA**<sup>60</sup> have to be ensured by enacting new laws; fifthly **E-Thana Service** should be accurately maintained.

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<sup>57</sup>Law Enforcement Agencies which include Police, RAB, BGB, DB Police, NSI, Army, Navy, Coast Guard, etc.

<sup>58</sup> A new committee title “Police Thana Monitory Committee” should be established who shall oversee the 3 police thana on the activities of police concerning any arbitrary arrest as well as torture and shall make report after every month. Then the committee shall publish the report to its web-page through e-service where the summary report shall publish after 6 years in a daily two newspaper one is Bangla and another is English.

<sup>59</sup>National Human Right Commission of Bangladesh (NHRC).

<sup>60</sup> Accountability of LEA refers to that the LEA must be accountable for their illegal activities and arbitrary arrest, detention and remand. In this respect, new laws for ensuring accountability and transparency of LEA should be launched.

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