

Effective Policing to Defend the Human Rights Protection in Bangladesh

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Abstract

Protection of Human Rights is a very significant term in the world and effective policing may play a vital role for these. Police is a body authorized by the government to enforce existing laws. In Bangladesh the police get authority including special powers under the Constitution and other relevant laws² for protecting human rights. Police can play vital role in criminal justice system by making investigation and final report for discharging an innocent, keep role to get the right of fair trial and also by arresting suspected person. And thus protect human rights honestly. But human rights are sometimes violated by police force itself when they misuse their power for personal interest, for political influence or for others causes. This study has tried to explore the powers of police which may help them in protecting human rights and also to find out the limitations faced by them to perform their assign duty for this purpose. I also suggest some recommendation for overcoming existing shortcomings so that police may be turned into a positive force to upward and protect human rights efficiently. This study is based mainly on the information from relevant domestic and international statutes and also on secondary data including research works, journal, books, and newspaper.

Keywords: Human Rights, Law enforcing agency, Preventive measures, bureaucratic interference, Investigation.

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I. INTRODUCTION

Human Rights protection is a crying need all over the world and the police as a law enforcing agency needs to play crucial role in this arena. The Constitution of Bangladesh, the Police Act, 1861 and the Universal Declaration of Human Rights, 1948(UDHR) etc provide legal provisions for protection of human rights in Bangladesh and there is also an organized police force in Bangladesh to uphold this protection. Police enforce existing laws and also get some special powers for the sake of ensuring justice and protecting human rights under The Code of Criminal Procedure, 1898 (CrPC) and Special Power Act, 1974. Police may help a victim to get justice by making investigation and final report for discharging an innocent or make charge sheet for proceeding in trial stage and thus can ensure its role to get the right of fair trial. Police may also prevent violation of human rights before committing the occurrence by arresting suspected persons. But according to various news and contemporary issues, it is supposed that human rights situation of Bangladesh is poor and sometimes violated by police itself when they misuse their power for personal interest or for political or any other reasons. This study attempts to describe how Human Rights are violated by Police, what deficiencies the Police have to perform their duty accordingly and how the Police can be made more effective and dutiful.

II. METHODOLOGY OF THE RESEARCH:

This study is mainly based on qualitative approach and we have gathered information from text books, journals, existing research reports and internet as secondary sources and have also gone through the statutes, case laws in national and international level as primary source. From the statutes we gathered legal aspects for the protection of human rights and other research works help us to improve our idea about the existing problem. And also views of many scholars help us to find out the possible solution by understanding the problem profoundly. As the study is not out of limitation as we have used secondary sources and discussed only Bangladesh perspective.

Human Rights and Violation of Human Rights

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² Including i.e. Bangladesh Constitution, The Police Act, 1861; The Universal Declaration of Human Rights, 1948; the Code of Criminal Procedure, 1898 and The Special Power Act, 1974.

Human rights are common issue which is provided by birth for a human being as well as for a citizen. It is commonly understood as "inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being." Human rights are thus conceived as universal (applicable everywhere) and egalitarian (the same for everyone).³ These are ascribed "naturally," which means that they are not earned and cannot be denied on the basis of race, creed, ethnicity or gender. These rights are often advanced as legal rights and protected by the rule of law. These rights are based mainly on- Guaranty which is given by the State or Government and so the main responsibility to protect it lies on the government. Besides, these involve a notion of a contract between the State and its Citizens that encoded in its constitution and other legal instruments for protection and deliverance, though it is not enforceable by the court in Bangladesh except the fundamental rights enshrined in part III of the constitution.

For the above two key points, Guaranty and Contract, it is the police who as a law enforcing agency are to ensure the safety of all the members of our society with a sense of security.

Human rights violations occur when associations by state (or non-state) actors abuse, ignore, or deny basic human rights (including civil, political, cultural, social and economic rights) and also when any state or non-state actor breaches any part of the UDHR treaty or other international human rights or humanitarian law. In Bangladesh, human rights are violated under the headings of murder, political killings, extra judicial killings, mob lynching, unlawful arrest and detention, attack on journalists etc.

Relationship between Human Rights and Police System

The protection of human rights should stand alongside the prevention and detection of crime and the preservation of social order is one of the primary functions of police system. For this reason, creation of a human rights culture within police agencies is one of the most important tasks faced by police personnel at present. To recognize the human rights culture, the police, as a member of the human family, should enjoy some human rights for themselves such as the right to life, the economic, social and cultural rights etc. The ways in which a police official is recruited, trained, equipped, briefed, deployed and supervised can have a direct impact on whether or not he or she is killed or survives in a potentially fatal situation. So the special human rights needed by police should also be acknowledged and tried to be met.

According to the view of Dr Ralph Crashaw (2005) The relationship between human rights and the Police should be characterized by following three concepts

- protection of human rights
- respect to human rights,
- And entitlement of human rights for their own.

In Bangladesh, an organized police force headed by Inspector General of Police has been set up as a national force to keep social orders and to protect human rights by enforcing related legal provisions.

Role of Police in Protecting Human Rights

It is primary duty of the Government to protect the life and the property of the citizens. As police is the authorized department for this duty of govt., the public depend primarily upon police for personal safety and for the safety of their property. Actually policemen are to enforce law and to keep their position neutral though it is rare in the middle income country⁴ like Bangladesh. For maintaining public safety and peace and tranquility in the society police get duty as right under following legal ways;

Preventive function

The CrPC, 1898⁵ says about the preventive actions of police for ensuring safety of public life and property where police can prevent any suspected criminal from repeating same crime or other offence. They perform it in the form of arrest with or without warrant and proper inspection as well as investigation. Though Police can arrest even without warrant, the person arrested without warrant must be brought to the nearest magistrate within 24 hours.⁶ Article 33 of Bangladesh Constitution also ensures it⁷.

Power of Investigation

³ https://en.wikipedia.org/wiki/Human_rights (visited on 20.08.2019)

⁴ . According to World Bank in Bangladesh on its 50 th birthday on March 27, 2019. (<https://www.worldbank.org/en/country/bangladesh/overview>)

⁵ . Sections 149 to 153.

⁶ . Sections 46 to 67 of the Code of Criminal Procedure, 1898.

⁷ . Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate

Police may be helpful to public by investigating the criminal activities of the miscreants properly and diligently⁸. As a criminal case starts with the filing of FIR⁹ with the officer in charge of a police station, police may help people by recording proper information and by investigating the case prudently. They may play a positive role here to pave the way for ensuring justice by forming a 'charge sheet' for prosecution or a 'final report' to discharge the falsely arrested one.

Interrogation by police

Any investigating police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case under section 161 of the CrPC, 1898 with some conditions including maintaining civilities, using no coercion, no torture etc. and any confession gained by this interrogation in the absence of magistrate or third party will not be considered as evidence under The Evidence Act, 1872. In this stage, police may act very effectively for finding offender and make the victim satisfied by ensuring fair trial.

Search and Seizure

To promote the course of investigation, police is authorized to make search, to order the production of relevant documents, seize any suspicious property, call witness, require them to attend the court and arrest suspected persons. Police can conduct a search with or without warrant on the basis of some documentary reports of crimes and the criminal laws of Bangladesh assigned this power to the police through The Code of Criminal Procedure 1898¹⁰. This search and seizure must have to be lawful and in the presence of the independent witness of the locality.

Police as prosecutor

When crime occurs, the state becomes victim as a guardian of the party. Here police investigate to identify the real offender and public prosecutor conducts the case. The success of the prosecution case depends on the efficiency of the police investigation because the charge against the accused must be proved beyond any reasonable ground. Here police play effective role to protect human rights by ensuring right to justice even the victim not being a direct party of the case.

Role in international arena

To prevent crime, close connection and co-operation all over the world is needed and so Bangladesh has become a member of Interpol in 1988. Bangladesh police are also playing a remarkable role in United Nations peace keeping mission from 1989 which prove their efficiency to protect victims in amicable way. To prevent human rights violation, Bangladesh police might be a great strength if it pledges in that regard.

Abuse of Police Power

Many human rights activists¹¹ and media express that police often abuse their power of unwarranted arrest under section 54 of the CrPC, 1898. Some ambiguous phrases 'reasonable suspicion', 'reasonable complaint', 'credible information', 'any person who has been concerned in any cognizable offence' etc help police to do this in the name of discretion.

Another way to abuse is the power under section 167 of the said Act in the name of police remand for completing police investigation with the permission of magistrate beyond 24 hours. Here many occurrences happen against human right of the detainee. Inhumane torture and custodial death often occurs due to severe violation of human rights. But for the sake of justice or as an official duty, most of the time magistrate often allow this remand period.

BLAST (Bangladesh Legal Aid and Services Trust), ASK (Ain O Salish Kendra) and Others vs. Bangladesh and Others¹² is an example in this regard where arbitrary arrest and unreasonable police remand have been challenged. In this case, Shamim Reza Rubel, a student of Independent University, was arrested by Detective Branch of Police and later on he died in custody through brutal torture by police in the name of remand. This shocking incident raised severe criticisms and protests against police by human right organizations and civil society for abusing power of section 54 and 167 of the CrPC, 1898 (Prodhon, 2010).

Problems faced by Police:

⁸ . applying the laws under sections 154 to 176 of the CrPC, 1898.

⁹ .First Information Report which documented to the police station as information after happening a criminal offence.

¹⁰ . Section 96 to 105

¹¹ . Odhikar, Human Rights Watch etc.

¹² Writ petition no. 3806, 1998.

Police they themselves are also human being and so they are not above mistake. As we are saying about police power and human rights sometimes they also do some unethical activities in spite of being honest. Among various problems faced by them, the followings are notable barriers for performing their duties reasonably.

Political and bureaucratic interference are the most significant impediments to police efficiency and have resulted in the worst forms of abuse including illegal detention, death in custody, torture and pervasive corruption. All governments, till now, have used the police to crush political enemies while many politicians have used them to advance their personal interests. Low police salaries and government control of promotions and transfers etc remind that police are dependent on the political leadership, which prevents investigation of serious issues of corruption, organized crime or other matters so that some political leaders would prefer remain untouched (ICG,2009).

Code of Conduct for Police should be established to guide their actions as per the dictates of Law and the aspirations of the people. The Police must bear faithful allegiance to the Constitution, and must respect and uphold the rights of the citizen as guaranteed by it and by international laws.

Inadequate Curriculum of training for the police personnel is considered to be a factor for poor performance of the officers. The quality of new officer's training is poor. Constables receive six months of physical and weapon training at various training schools around the country but its curriculum is inadequate. New recruits still train on horses and practice with bayonets. As a result, the junior ranks generally have a weak grasp of police procedures and the proper use of force when dealing with criminals or crowds. Trainers at Sardah criticise the academy's curriculum as prioritizing "physical toughness over mental toughness" and say that it focuses too heavily on the study of law, without enough attention given to subjects such as counter-terrorism, criminology, human rights, management and investigations (ICG, 2009).

Human Rights functions should be included in their training program for building a human rights culture in the police organization. It will be helpful to prevent crime without any violation of human rights.

Overtime Work without additional payment acts as demoralizing for the police force. Constables are severely overworked. On average, low ranking officers are to work anywhere from twelve to sixteen hour shifts but are rarely compensated for more than an eight-hour day. They can't even chase criminals because they don't possess enough energy after such long working hours. Vacation days are also unheard of. Many constables are prevented from taking annual leave or public holidays, and often sneak away citing health or family problems. In one case a Dhaka constable was even threatened with suspension for taking leave to attend his father's burial (ICG, 2009).

A fund should be created and administered jointly by the police and parliamentarians, for financially rewarding of the police for exceptional policing. Other incentives such as participation on UN peacekeeping operations, additional training, swift promotion etc may be used as rewards for good practice.

Poor Salary Structure is another reason of unsatisfactory performance of police manpower. The salary of the police is too meager to meet the increasing daily expenses. Conditions of service and facilities, particularly for the subordinate ranks, are poor and drive police morale downwards; salaries for gazetted officers are far from generous and among the lowest in the civil service. For instance the monthly pay and allowances of the IGP, the highest ranking in the force, amounts to Tk78, 000; on the other hand, at the very bottom of the pay scale, the monthly salary of a police constable is only Tk 8,250 (Bangladesh Gazette, 2015).

Better investment is need to ensure that the police can protect and serve citizens and police salaries should be raised and the resources should be allocated to pay for much needed facilities and to increase expense budgets of individual stations and departments. These will help to keep police mentally and financially satisfied and promote their respect to their duty.

Frequent Transfers compound problems with infrequent promotions. Officers at all ranks spend usually two years at each duty station but sometimes as little as six months before they are rotated. Transfers are intended to serve two purposes: increase officers' skills by exposing them to different policing environments and decrease police corruption by limiting links to corrupt politicians and criminal networks. In practice, it is a major source of financial corruption in the police force. High prices are paid to politicians, government bureaucrats or commanding officers for lucrative postings where officers can make side incomes larger than their salaries. Citizens and officers alike complain that transfers result in a loss of police efficiency and lower skill levels. A U.S. official in Dhaka familiar with Bangladesh's security services said that once a police officer was trained up and got a feel for the local community, he's transferred. Building trust with the community and learning the local situation takes time, it's not automatic (ICG, 2009).

Existence of Quick Solution of problems often led to violation of Human Rights. Very often harsh beatings and torture are used to obtain investigative facts and information from a criminal suspect. As all police don't have the materials or the knowledge to conduct proper investigations like forensic ones, some resort to torture methods for finding the desirable investigation. Also pressure from superiors to solve crimes quickly

encourages torture. If the crimes are not solved in one's area then he/she could be transferred, demoted or fired. Some police think that torture saves time.

Measures to Make Effective Law Enforcing Agency

To get desired performance from police, some effective measures should be taken to overcome the prevalent problems. Some of these measures are noted below.

Reform of police is critical to create the required capacity for ensuring internal security. An effective reform process may be brought about even without a new police law. The reforms may include improved salary, reward and pension structures, and welfare services. Introducing new training methods and procedures and modernization of the recruitment system may be useful to overcome the unsatisfactory condition of police. These are essential for improving mentality towards their duty.

Insulation from political Inference of police essential for performing their duty. Generally appointment, promotion, transfer etc are used as various means to fulfill political interest. So effective law should be ensured to protect the police force from undue political inferences and the mentality of the politicians should be changed for greater development of the country. As a matter of policy, officers should remain at their duty station for at least two years before being transferred. Because this can allow officers to develop requisite skills and local knowledge for effective crime control and build the relationships necessary for successful community policing efforts which is important for better performance. The IGP should be a tenured position and appointed neutrally on the basis of experience, better performance, leading personality, honesty. The PIO (Public Investigating Officer) should also be empowered to investigate the activities and honesty of police officials for promotion.

Others steps

Besides the measures mentioned above, other steps can help to achieve the objectives of Police to curb violation of Human Rights. These are:

- Improving relation between police and media because media plays significant role in bringing public and police in closer relationship.
- Improving morality of Police by imparting ethical training.
- Proving appropriate punishment for abusing special power by police.
- Clarification of related laws are necessary to overcome problems of ambiguous terms such as reasonable suspicion, credible information, reasonable complaint under which police get special power and immunity.
- Investigation department should be separated from the police department where police is the perpetrator.

By removing shortcomings and improving social attitude in addition to police training may reduce the rate of human rights violation and improve police role in this regard. If police personnel are able to perform their duty honestly, people will respect them as a protector of human rights.

III. CONCLUSION

As a main part of law enforcing agencies, police has some powers in Bangladesh for ensuring justice and protecting human rights under the Code of Criminal Procedure, 1898 and Special Powers Act, 1974. By playing a vital role in criminal justice system, police may help a victim to get justice by performing their assigned duty diligently¹³. Vigilance of police by arresting suspected persons can prevent violation of human rights by preempting its occurrence. But in practice police often misuse their power for personal interest or acting whimsically and violate human rights in the name of remand and arrest beyond legal conscience. To make police personnel aware of their duty towards society, the Supreme Court has provided some guidelines in various cases including guidelines for arrest without warrant and remand. Police being the protector of human rights of people should be able to act honestly, sincerely and with a devoted mind. Also, their own security of service and family members as well as financial solvency should be properly provided by the Government. It is hopeful that governmental support in this case is being increased specially the salary scale but human rights of themselves and their family are yet in darkness. So for effective policing is one of the most important instruments for curbing the violation of human rights in Bangladesh and effective policing can be ensured both by the police themselves by upholding ethics and official commitment as well as by providing human rights to them and their family by the authority.

¹³. by making investigation and giving final report for discharging its duty

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