

**Dissertation Paper Title:**

**Rights of the Accused in Bangladesh: A Critical  
Appraisal of Legal Framework**

**Submitted By**

**Nahid Akter Prianka**

**ID: 2015-3-66-008**

**Course Title: Supervised Dissertation**

**Course Code: LAW 406**

**Dissertation Supervisor**

**Md. Pizuar Hossain**

**Lecturer**

**Department of Law**

**East West University**

## **Declaration**

I hereby certify that the thesis has been composed solely by me and that it has not been submitted, in whole or in part, in any previous application for a degree. I declare that to the best of my knowledge and belief it does not contain any material previously written or published by another person except where due reference is made in the text.

**Signature**

**Nahid Akter Prianka**

## **Acknowledgement**

First of all, I like to convey my gratitude to Mahua Zahur, (Senior Lecturer and Chairperson, Department of Law, East West University) for giving me such opportunity to do this research work. I am also very grateful to my supervisor Md. Pizuar Hossain, (Lecturer, Department of Law, East West University) for helping me to choose the topic for my thesis. I will remain ever grateful for his continuous guidance, patience, effort, advice, and invertible suggestion throughout the research. Despite my initial shortcomings and unskilled or inexperience in legal research, his guidance for my work has been essential for completing this thesis. I am wholeheartedly grateful to him for all his efforts.

I would like to thank Barrister Dr. Tureen Afroz, (Professor, Department of Law, East West University) who gave me the basic knowledge in the course of Constitutional Law 1 and Mohammad Ataul Karim, (Senior Lecturer, Department of Law, East West University) who gave me the best knowledge of him when I was doing the course of Constitutional Law 2. I also want to thank respected Rafea Khatun (Lecturer, Department of Law, East West University) who gave me the best knowledge of him when I was doing the course of Law on Criminal Procedure and Law of Evidence.

And finally, I want to thank my parents for the indefinable efforts they have given in my welfare, my studies and my past and future.

## **Abstract**

This research work mainly deals with a critical analysis under the Laws of Bangladesh in relation to the rights of the accused. Many provisions of *the Constitution of the People's Republic of Bangladesh*, *the Code of Criminal Procedure 1898*, *the Evidence Act 1872* and special laws ensure to guarantee certain basic rights of the accused. This paper has also discussed the laws with various case principles and tried to show how the Courts are taking decisions regarding this sensitive issue. In addition, this paper also discusses particular standards of international instrument for the rights of the accused and comparative discussion with the laws of Bangladesh. The laws of Bangladesh guarantee all the basic rights of the accused; however, violation of fundamental rights has been reported in many criminal cases in Bangladesh. In this research paper, I tried to narrate the real situation of rights of accused in Bangladesh and outline some recommendations for amendments of relevant laws which is the most important to reduce the scope and possibility of the abuse of the power of different organs. Finally, I concluded this paper with a short summary of the key issues. This research paper has been prepared on the basis of a qualitative research. The secondary resources of this study such as the legal statute, books, journal articles, and newspaper reports have been applied.

<b>Table of Content.....</b>	<b>Page Number</b>
<b>I. Introduction.....</b>	<b>7-8</b>
<b>II. Legal Framework of Bangladesh concerning Rights of the Accused.....</b>	<b>8-19</b>
<i>[A] Protection of Right to Life and Personal Liberty.....</i>	<i>9-10</i>
<i>[B] Safeguards as to Arrest and Detention.....</i>	<i>10-11</i>
<i>[C] Protection against Torture and Inhuman Punishment.....</i>	<i>12-14</i>
<i>[D] Right to Defense and Right to Legal Assistance.....</i>	<i>14</i>
<i>[E] Fair Trial by an Independent Tribunal or Court.....</i>	<i>14-15</i>
<i>[F] Protection against Double Jeopardy.....</i>	<i>15-16</i>
<i>[G] Other Laws Relating to Rights of the Accused .....</i>	<i>16-19</i>
<b>III. International Framework of Rights of the Accused.....</b>	<b>19-26</b>
<i>[A] Presumption of Innocence.....</i>	<i>19-20</i>
<i>[B] Impartiality and Non-Discrimination.....</i>	<i>20-21</i>
<i>[C] Right against Self-Incrimination.....</i>	<i>21-23</i>
<i>[D] Right to a Hearing and Effective Remedy.....</i>	<i>23</i>
<i>[E] Protecting Human Dignity.....</i>	<i>24-26</i>
<b>IV. Challenges to Ensure Rights of the Accused in Bangladesh.....</b>	<b>26-34</b>
<i>[A] Right to Life and Personal Liberty.....</i>	<i>26-28</i>
<i>[B] Arbitrary Arrest and Detention.....</i>	<i>28</i>
<i>[C] Torture in Remand.....</i>	<i>28-31</i>
<i>[D] Corruption of Law Enforcement Agencies.....</i>	<i>33</i>
<i>[E] Custodial Rape &amp; Custodial Death.....</i>	<i>32-33</i>
<i>[F] Protection against Double Jeopardy and the Miscarriage of Justice.....</i>	<i>33</i>

<i>[G] Miscellaneous</i> .....	34
<b>V. Recommendations</b> .....	35-38
<b>VI. Conclusion</b> .....	38-39
<b>VII. Bibliography</b> .....	40-44

## I. Introduction

“Rights of the accused” signify all the rights and privileges of the accused persons against whom a criminal case has been filed. The rights described in the *Universal Declaration of Human Rights (UDHR)* provide a legal basis for a free and fair environment in the national and international polity which is inscribed in Part III of the *Constitution of People’s Republic of Bangladesh 1972 (Bangladesh Constitution)*.<sup>1</sup> The preamble of the Constitution states that it shall be a fundamental aim of the states to realize a socialist society in which the rule of Law, fundamental human rights and freedom, equality and justice will be ensured.<sup>2</sup>

All legal systems ensure to guarantee particular basic rights of the accused. The Bangladesh Constitution also ensures the fundamental rights of the citizens of Bangladesh.<sup>3</sup> Except in accordance with law, it rejects any kind of discrimination in terms of religion, race, caste, sex or place of birth and it cannot be deprived of life or personal liberty.<sup>4</sup> According to its Articles 31, 32 and 33,<sup>5</sup> citizens are entitled to enjoy the protection of the law, safeguards as to arrest and detention and treated in accordance with law.<sup>6</sup> Article 35 ensures fair trial in criminal prosecution such as a man should not be punished before conviction. Until it can be proven that he or she is guilty, a person on trial is considered as innocent.<sup>7</sup> Most important principle is that guilt must be established beyond a reasonable doubt, and that if there is a reasonable doubt about

---

<sup>1</sup> A. Z. M. Arman Habib, ‘Legal protection of the accused’ *The Daily Star*, (11 August 2015); Link: <https://www.thedailystar.net/law-our-rights/legal-protection-the-accused-124807>.

<sup>2</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2<sup>nd</sup> edn, 2006) 129.

<sup>3</sup> Habib (n 2).

<sup>4</sup> Ibid.

<sup>5</sup> *The Constitution of the People’s Republic of Bangladesh 1972*, arts 31, 32 and 33.

<sup>6</sup> Ibid.

<sup>7</sup> Amena Jahan Jhilik, ‘Innocent until proven guilty’ *The Daily Star*, 20 august 2019.

the guilt of the accused, he or she is to be acquitted.<sup>8</sup> A detailed description of the basic fundamental rights of an accused is outlined below in this paper.

Although there are statutory and constitutional safeguards to protect the liberty and security of citizens, in practice, there are many allegations of misuse or abuse of provisions of the laws.<sup>9</sup> Such allegations made me interested to find out the real situation of rights of accused. For this purpose, I have divided this paper into six parts to discuss various relevant matters from both national and international perspectives. First part of this paper focuses on the meaning of the right of an accused and the basic information regarding this matter. Second part of this paper describes various laws of Bangladesh regarding rights of an accused. Third part of this paper narrates about the rights of an accused under International Instruments. Fourth part of this paper elaborates the challenges which we have to face in our daily life style. Fifth part of this paper refers to some recommendations for reducing the scope and possibility of the abuse of power and that will help accused person to be adjudicated by a fair trial. Finally, last part of this paper sums up of the whole research paper and the main findings.

## **II. Legal Framework of Bangladesh concerning Rights of the Accused**

Every legal system provides certain basic rights of the accused. The laws in Bangladesh also ensure the protection of prisoner's rights. These include the protection of right and personal liberty, safeguards as to arrest and detention, protection against torture, fair trial, and right to defense and protection against double jeopardy. The accused rights are divided into three stages. They are- An accused has some particular rights during the period of any investigation (pre-trial stage), enquiry or trial of offence under which he is charged (trial stage) and he should be protected from those punishment which is not giving according to the law (post-trial stage). He also should be protected against any arbitrary or illegal arrest. As human beings, prisoners are entitled to all of the human rights.

---

<sup>8</sup> *The Prosecutor vs. Vasiljevic* (IT-98-32-T), Judgment, 29 November 2002, para. 12; *The Prosecutor vs. Niyitegeka* (ICTR-96-14-T), Judgment and Sentence, 16 May 2003, para. 45; *The Prosecutor vs. Milos̄evic* (IT-02-54-T), Reasons for Decision on Assignment of Defence Counsel, 22 September 2004, para. 68.

<sup>9</sup> Abdullah Al-Faruque and Hussain Mohammad Fazlul Bari, Arbitrary Arrest and Detention in Bangladesh, Australian Journal of Asian Law, Vol. 19, No. 2, Article 10, 30 May 2019.



### ***[A] Protection of Right to Life and Personal Liberty***

As per the Article 32<sup>10</sup> of the Bangladesh Constitution, ‘[n]o deprivation of life or liberty is permissible unless it is done in accordance with a law’. It guarantees right to life and personal liberty to the entire citizen of Bangladesh. The state also cannot impose any restriction over a non-citizen for keeping the security without reasonable cause.<sup>11</sup> It is the pre-trial right of the accused because he must give a notice of his offence under which he is charged before deprivation of life or liberty and he is given the opportunity to show cause against deprivation. It is not necessary to inform him of the full details of the offence, but the information should be sufficient to give him an idea of the offence he is alleged to have committed.<sup>12</sup> It is considered as a trial and post-trial right because the accused are entitled to right to life unless they are sentenced to death by a competent court.

In the case of *Bangladesh Society for the Enforcement of Human Rights and others vs. Government of Bangladesh and others*<sup>13</sup>, prostitutes initially get themselves confined to the brothels and get the required protection to continue in profession by the local administration whereby they are maintaining their livelihood which the state in absence of prohibitory legislation has a duty to protect and a citizen has the right to enforce that right Article 11<sup>14</sup> providing for dignity of human person though not enforceable but the sex-workers as citizens have enforceable right under Article 31 and Article 32.<sup>15</sup>

Similarly, in the case of *Faustina Pereira vs. State and others*<sup>16</sup>, when any prisoner keeps in jail after serving out the sentence, it is considered as violation of human rights and fundamental

---

<sup>10</sup> *The Constitution of the People’s Republic of Bangladesh* 1972, art 32.

<sup>11</sup> Islam (n 3), p-95.

<sup>12</sup> *Rowshan Bijaya S. Ali Khan vs. East Pakistan* [1965] 17 DLR 1.

<sup>13</sup> *Bangladesh Society for the Enforcement of Human Rights and others vs. Government of Bangladesh and others* [2001] 53 DLR 1.

<sup>14</sup> *The Constitution of the People’s Republic of Bangladesh* 1972, art 11.

<sup>15</sup> *Ibid*, arts 31 and 32.

<sup>16</sup> *Faustina Pereira vs. State and others* [2001] 53 DLR 414.

rights which is guaranteed by the Constitution. Additionally, in the case of *Bangladesh vs. BLAST*<sup>17</sup>, the police officer shall not exercise the power arbitrarily which is violating the liberty, dignity, honor and fundamental rights of a citizen. These rights are enshrined in Article 32 and Article 33<sup>18</sup> which are mentioned as inalienable and inherent rights of a citizen so that no one can curtail the same. Since the effective enforcement of the fundamental rights will prevail over the subordinate laws so that these rights are required to be scrupulously protected and safeguarded. The right to life and personal liberty are also protected by this case. Therefore, no person shall be deprived of life or personal liberty as per the laws of the Bangladesh because it is a fundamental right which is guaranteed by the Constitution itself.

### ***[B] Safeguards as to Arrest and Detention***

As per Sections 54 and 167<sup>19</sup>, '[t]he police have powers to arrest a person without warrant on reasonable suspicion'. But that reasonable suspicion must relate to definite averments considered by the police officer himself before arresting person. The definition of reasonable suspicion is given in the case of *Saifuzzaman (Md) vs. State and others*.<sup>20</sup> According to the case *Saifuzzaman (Md) vs. State and others*<sup>21</sup>, 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. It is pre-trial right of the accused.

In the *Alhaj Md. Yusuf Ali vs. the State*<sup>22</sup> case, under section 54<sup>23</sup> the police have not powers to arrest a person without reasonable suspicion. A police officer was arresting a person unjustifiably

---

<sup>17</sup> *Bangladesh, represented by the Secretary, Ministry of Law, Justice & Parliamentary Affairs vs Blast* [2017] 69 DLR (AD) 63.

<sup>18</sup> *The Constitution of the People's Republic of Bangladesh* 1972, arts 31 and 32.

<sup>19</sup> *The Code of Criminal Procedure* 1898, ss 54 and 167.

<sup>20</sup> *Saifuzzaman (Md) vs. State and others* [2004] 56 DLR 324.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Alhaj Md. Yusuf Ali vs. The State* [2002] 22 BLD 231.

or otherwise than on reasonable grounds. The Court held that the police officer is punished under the section 220<sup>24</sup>, even though he was arresting him with bona fide belief. In addition, the accused has the right to be produced before the nearest magistrate within 24 hours of his arrest and he cannot be detained in custody beyond the period of 24 hours without the authority of the magistrate. Those safeguards can be found in the Sections 60 and 61.<sup>25</sup> It is a pre-trial right of the accused.

In the case of *Dolon vs. State*<sup>26</sup>, an officer of an elite force did not produced the accused before the nearest magistrate within 24 hours of his arrest. It was held that he had violated the mandatory provision of law. An aggrieved person regarding this matter can file a writ petition under Article 102.<sup>27</sup> According to the case of *Professor Nurul Islam and others vs. Government of the People's Republic of Bangladesh and Others*<sup>28</sup>, the provisions as to fundamental rights in our constitution are self executor and any violation of the provisions is subject to judicial review and this court could remedy the wrong by issuing appropriate declarations directions for enforcement of any of the fundamental rights.

### ***[C] Protection against Torture and Inhuman Punishment***

Clause 5 of Article 35<sup>29</sup> of the Bangladesh Constitution prohibits torture to the accused or the application of cruel, inhuman punishment or treatment upon him. The right of protection of the

---

<sup>23</sup> Ibid.

<sup>24</sup> The *Penal Code*, 1860, s 220.

<sup>25</sup> The *Code of Criminal Procedure* 1898, ss 60 and 61.

<sup>26</sup> *Dolon vs. State* [2002] 64 DLR (AD) 501.

<sup>27</sup> *The Constitution of the People's Republic of Bangladesh* 1972, art 102.

<sup>28</sup> *Professor Nurul Islam and others vs. Government of the People's Republic of Bangladesh & ors* [2000] 52 DLR 413.

<sup>29</sup> Ibid, art 35 (5).

citizens against torture is adopted in our constitution by the Article 35.<sup>30</sup> Generally there is a widespread belief that most of the information and confessions expelled during the time of remand are not voluntary because usually the police officer tortures the accused during the time of remand and tries to compel the accused to be a witness against himself. In many incidents, victims died after arrest even before they were produced to the courts. Therefore, the Bangladesh Constitution and *the Code of Criminal Procedure* 1898 adhere to the protection and respect for fundamental human rights, equality. For this reason, any statement or confession which made by the accused voluntarily in any stage, that statement or confession shall be recorded and signed in the manner provided in Section 364.<sup>31</sup> That power to record statement or confession is given to those magistrates who are mentioned in Section 164.<sup>32</sup>

In Bangladesh, custodial confessions are outlawed unless made to a Magistrate.<sup>33</sup> It is a pre-trial right of the accused. Confession should not only be voluntary but it also must be true. For the purpose of establishing its truth examination of the confession and its comparison with remaining evidence of the prosecution and probability of the case would be relevant. According to the Section 24<sup>34</sup>, there being no corroboration on any material particular of the confessional statement, it is unsafe to maintain conviction of the respondents. It is a during trial right of the accused.

In the case of *State vs. Ali Kibria*<sup>35</sup>, for the purpose of establishing its truth examination of the confession, such statements are examined by other materials on record. But such statements are not corroborated by other materials on record. Therefore, the court held that the guilty has not brought home to the condemned prisoner beyond reasonable doubt.

---

<sup>30</sup> *Id.*

<sup>31</sup> *The Code of Criminal Procedure* 1898, s 364.

<sup>32</sup> *Ibid*, s 164.

<sup>33</sup> *The Code of Criminal Procedure* 1898, ss 162 and 164 and *The Evidence Act* 1872, ss 25 and 26.

<sup>34</sup> *The Evidence Act* 1872, s 24.

<sup>35</sup> *State vs. Ali Kibria* [1991] 43 DLR 512.

Similarly, in the case of *State vs. Shafique*<sup>36</sup>, though respondent Abid Ali implicated himself in the statement to be an offender, but there was no corroborative material of the confessional statement. It is held that though the respondent confessed himself in the statement to be an offender, it was unsafe to maintain it because the circumstantial evidence was not sufficient to lead to the guilt of the accused conclusively. Therefore, the confessional statement did not consider being true in the fact of this case.

Furthermore, according to Section 27 of the *Evidence Act* 1872, '[a] statement made by the accused in police custody that leads to the recovery of incriminating information is, when it is found to be true, admissible in court'. But it does not cover the rest of part of the statement which is not proved by material evidence. In the case of *Abul Kashem and others vs. State*<sup>37</sup>, It is not the distance by which the place of occurrence is shifted is material but it is the prosecution case which has been different because of shifting of the place of occurrence and this has cast a suspicious on the prosecution case. Based on the circumstances after examining the whole evidence and the prosecution is found suspicious and the prosecution becomes doubtful to the Court. Then in the judgment of the case, the court held that the accused is entitled to benefit of doubt in these circumstances, not as a matter of grace, but as of right.

Additionally, in the case of *State vs. Abul Hashem*<sup>38</sup>, the legal duty of the Magistrate is to remove the other influence and inducement of the police completely from the mind of the accused before recording their confession as per law. But in this case, the Magistrate had no idea or acumen of that legal duty and he did not obey his duty. Without practicing his duty, magistrate sent the accused persons to the police custody after recording their confessional statements. Therefore, it was held that the confessional statement, which was made by the accused, cannot be considered either against the maker or against their co-accused. Therefore, we can say that Bangladesh Constitution and *the Code of Criminal Procedure* 1898 protect the accused from torture during the custody which is seen in abovementioned cases.

---

<sup>36</sup> *State vs. Shafique* [1991] 43 DLR (AD) 203.

<sup>37</sup> *Abul Kashem and others vs. State* [2004] 56 DLR 132.

<sup>38</sup> *State vs. Abul Hashem* [1998] 50 DLR (HCD) 17.

### ***[D] Right to Defense and Right to Legal Assistance***

The arrestee has a constitutional right to consult and defend by a lawyer at the time of arrest. Section 340<sup>39</sup> and Article 33<sup>40</sup> provide that any person accused of an offence before a criminal court may have that right to defend his case by a pleader of his own choice. It is a pre-trial right of the accused.

According to the case of *Moslemuddin Sikder vs. Chief Secretary*<sup>41</sup>, the arrested person must be given a reasonable opportunity to engage a counsel and the counsel must be given a reasonable opportunity to defend him. *The Legal Remembrance's Manual 1969* provides that even '[a]n indigent person accused of an offence punishable with death sentence is to be provided with the assistance of a lawyer at the expense of the state'.<sup>42</sup> Right to defend his case by a pleader of his own choice is a fundamental right.

### ***[E] Fair Trial by an Independent Tribunal or Court***

Every court of justice is to remain open to all citizens as publicly is the authentic hall mark of judicial as distinct from administrative procedure. According to the Article 35(3)<sup>43</sup> and Section 352<sup>44</sup>, '[e]very accused of a criminal offence shall have the right to a speedy and public trial by an impartial court or tribunal established by law'. Fair trial means public trial by an independent and impartial court or tribunal. It is a during trial right of the accused because it ensures the justice of the accused.

---

<sup>39</sup> *The Code of Criminal Procedure 1898*, s 340.

<sup>40</sup> *The Constitution of the People's Republic of Bangladesh 1972*, art 33.

<sup>41</sup> *Moslemuddin Sikder vs. Chief Secretary* [1956] 8 DLR 526.

<sup>42</sup> Paragraph 6, Chapter XII, quoted in *State vs. Purna Chandra* [1970] 22 DLR 289.

<sup>43</sup> *The Constitution of the People's Republic of Bangladesh 1972*, art 35 (3).

<sup>44</sup> *The Code of Criminal Procedure 1898*, s 352.

According to the case of *Muhibur Rahman Manik and others vs. Bangladesh and Others*<sup>45</sup>, no stringent provision has been incorporated in the new law even regarding bail. There is no reason how this reduction of the time limit will affect the petitioners when the other conditions relating to trial remains the same which is mentioned in article 35(3).<sup>46</sup> In discharge of its constitutional obligation, any accused has power to give the necessary direction to the government for securing his right to speedy trial. The requirement of fair trial may also involve legal aid for the indigent accused.

### ***[F] Protection against Double Jeopardy***

According to Article 35 (1)<sup>47</sup>, '[n]o person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence and shall not be given any penalty greater than or different form that which might have been inflicted under the law in force at the time of the commission of the offence'. It is a during trial right of accused.

As per Article 35 (2)<sup>48</sup>, '[n]o person shall be prosecuted or punished for the same offence more than one'. It is called Protection against Double Jeopardy. The principle is divided from the maxim "*Nemo debet bis vexari*" which means that a man must not be put in peril twice for the same offence.<sup>49</sup> The concept was also established in Section 403 of the *Code of Criminal Procedure, 1898*. It is a post-trial right of the accused.

In *Abul Jabbar vs. Bangladesh*<sup>50</sup> case, plaintiff tried to punish the accused twice for the same offence. The court held that a person cannot be tried twice for the same offence. Similarly, In the

---

<sup>45</sup> *Muhibur Rahman Manik and others vs. Bangladesh and others* [2003] 55 DLR 636.

<sup>46</sup> *The Constitution of the People's Republic of Bangladesh* 1972, art 35 (3).

<sup>47</sup> *Ibid*, art 35 (1).

<sup>48</sup> *Ibid*, art 35 (2).

<sup>49</sup> Ridwanul Hoque, 'Criminal Law and the Constitution: The Relationship Revised', Special Issue Bangladesh Journal of Law, (Dhaka: Bangladesh Institution of Law and International Affairs, November 2007); Link: <https://www.lawyersnjournalists.com/article/criminal-law-and-the-constitution-of-bangladesh-part-2/>.

<sup>50</sup> *Abul Jabbar vs. Bangladesh* [1981] 33 DLR 230.

case of *State vs. Ershad Ali Sikder and others*<sup>51</sup>, one record of any proceeding kept that want to be used in that suit as an evidence. The court held that the record of one proceeding is not to be treated as a part of the record of another proceeding and each record of the proceeding must be independent.

Again, in the case of *H.M. Ershad vs. State*<sup>52</sup>, it was said that the subsequent proceeding was not for the same offence for which the accused was once tried and punished. So that proceeding is not prohibited under the Article 35(2)<sup>53</sup> and Section 403.<sup>54</sup> Therefore the court held that the prohibition will be attracted only when the subsequent proceeding is for the same offence for which the accused was once tried and punished. Therefore, protection against double jeopardy is a fundamental right which is protected by the above mentioned case also.

#### ***[G] Other Laws Relating to Rights of the Accused***

The *Prisons Act* 1894 specifically protects the rights of prisoners<sup>55</sup> under the following provisions: -

- a) Section 24 mentions that after admission every prisoner must be examined by a Medical Officer as soon as possible.<sup>56</sup> As a result, they enjoy a healthy life. It is regarded as a trial and post-trial right of the accused;
- b) Section 27 states that women require to be kept separately from male prisoners and for males under the age of 21 years require to be kept separate from older males.<sup>57</sup> For this reason, the

---

<sup>51</sup> *State vs. Ershad Ali Sikder and others* [2004] 56 DLR 185.

<sup>52</sup> *H.M. Ershad vs. State* [1993] 45 DLR 533.

<sup>53</sup> *The Constitution of the People's Republic of Bangladesh* 1972, art 35 (2).

<sup>54</sup> *The Code of Criminal Procedure* 1898, s 403.

<sup>55</sup> Greg Moran of Greg Moran and Associates, *Criminal Justice in Bangladesh - A best practise Handbook for members of the criminal justice system*, Final Draft - November 2015, p-88-89.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Id.*



accused can enjoy the right to protection of law. It is a pre-trial, trial and post-trial right of the accused;

- c) Section 29 mentions that prisoner must allow to use any cell to communicate with a prisons officer for solitary confinement and a Medical Officer or Subordinate must be visited at least once a day in solitary confinement when anyone kept in solitary confinement.<sup>58</sup> Medical Officer or Subordinate has always paid particular attention to prisoners undergoing solitary confinement, because it can have an extremely damaging effect on the mental, somatic and social health of those concerned.<sup>59</sup> It is a post-trial right of the accused;
- d) Section 31 states that non-convicted prisoners allow to receive food, clothing, bedding and other necessities from friends and relatives.<sup>60</sup> Because until it can be proven that he or she is guilty, a person on trial is considered as innocent. That is a pre-trial and trial right of the accused;
- e) Section 33 mentions that the prison provides clothing and bedding to the non-convicted prisoners.<sup>61</sup> Because until it can be proven that he or she is guilty, a person on trial is considered as innocent. It is a pre-trial and trial right of the accused;
- f) Section 35 limits the working hours of a prisoner which are including hard labour. A prisoner can work nine hours per day and a Medical Officer must be checked from time to time when those performing hard labour.<sup>62</sup> As a result, the concern authority cannot abuse their power. It is a trial and post-trial right of the accused;
- g) Sections 37 to 39 mention that special care to be taken for sick prisoners by the prison.<sup>63</sup> As a result, they enjoy a healthy life. It is a pre-trial, trial and post-trial right of the accused; and

---

<sup>58</sup> *Id.*

<sup>59</sup> The research evidence for this is well summarised in Sharon Shalev's 'A Sourcebook on Solitary Confinement' Mannheim Centre for Criminology (London, 2008); Link: [www.solitaryconfinement.org](http://www.solitaryconfinement.org).

<sup>60</sup> Moran (n 55).

<sup>61</sup> *Ibid.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

h) Section 40 allows non-convicted prisoners to meet with their lawyers.<sup>64</sup> For this reason, prisoner can defend his case by a pleader of his own choice. It is a pre-trial and during trial right of the prisoner.

Two other laws are very important to establish prisons and prisoner's right; namely *the Torture and Custodial Death (Prevention) Act 2013* prohibits torture or inhumane treatment of anyone in custody which are also including non-convicted and sentenced prisoners.<sup>65</sup> It also allows compensation to the victims for their torture and to the families of anyone who dies in custody due to inhumane treatment or torture.<sup>66</sup> In the case of *Rahim Bux vs. Crown*<sup>67</sup>, confession is taken by forcefully to authority in the custody; therefore that confession is excluded under the Law.

Another one *the Children Act 2013*, which states that 'children in conflict with the law should only be sentenced to prison in the most serious cases, and that children in detention in a Child Development Centre, certified institution or prison must be properly treated and kept separately from adults'.<sup>68</sup> In the view of the definition of child as appearing in section 2(f)<sup>69</sup> appellant Nasir ought to have been tried by Juvenile Court according to the case of *Md. Nasir Ahmed vs. The State*.<sup>70</sup> Therefore, it is held that trial of child along with adult is forbidden by law. The trial of the appellant being held not by Juvenile Court is hit by want of jurisdiction. In the case of *Kadu vs. State*<sup>71</sup>, the court provides the same decision. In this case, the court also held that joint trial of appellant Sunil, a child, along with adults was illegal.

---

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Rahim Bux vs. Crown* [1952] 4 DLR 53.

<sup>68</sup> *Ibid.*

<sup>69</sup> *The Children Act 1974.*

<sup>70</sup> *Md. Nasir Ahmed vs. The State* [1990] 42 DLR 89.

<sup>71</sup> *Kadu vs. State* [1991] 43 DLR 163.

### III. International Framework of Rights of the Accused

The legal systems of national and international level provide particular standards for the rights of the accused.<sup>72</sup> Those legal systems ensure that no harm will be done to the accused and his right to a fair trial will be assured.<sup>73</sup> The idea of some form of summary justice for major war criminals inflamed by the Churchill and other Allied leaders during the time of Second World War.<sup>74</sup> After that, it is improved gradually.

#### *[A] Presumption of Innocence*

Blackstone's famous words are that "it is better that ten guilty persons escape than that one innocent suffer".<sup>75</sup> Most important is the principle that guilt must be established beyond a reasonable doubt, and that if there is a reasonable doubt about the guilt of the accused, he or she is to be acquitted.<sup>76</sup> Today the principle of "presumption of innocence" is explicitly recognized not only by the Article 11 (1)<sup>77</sup> but also by most of the constitutions and international treaties. Similarly until proved guilty, everyone charged with a criminal offence shall have the right to be presumed innocent under Article 14(2).<sup>78</sup>

Like the *UDHR* and the *ICCPR*, a person on trial is also considered as innocent under Articles 31, 32 and 33 of the Bangladesh Constitution.

---

<sup>72</sup> Karolina Kremens, 'The Protection of the Accused in International Criminal Law According to the Human Rights Law Standard' (December 2011).

Link:[https://www.researchgate.net/publication/265192899\\_The\\_protection\\_of\\_the\\_accused\\_in\\_international\\_criminal\\_law\\_according\\_to\\_the\\_Human\\_Rights\\_Law\\_Standard](https://www.researchgate.net/publication/265192899_The_protection_of_the_accused_in_international_criminal_law_according_to_the_Human_Rights_Law_Standard).

<sup>73</sup> *Ibid.*

<sup>74</sup> Arie J. Kochavi and Prelude to Nuremberg, *Allied War Crimes Policy and the Question of Punishment* (Chapel Hill University of North Carolina Press, 1998) pp. 63–91.

<sup>75</sup> Dr. Markus Englerth, '10 Basic Rights of Accused Persons in Criminal Proceedings', Link: <https://liberal-international.org/what-we-do/events/li-human-rights/li-human-rights-committee-parliamentarians-meeting-geneva-2016/10-basic-rights-accused-persons-criminal-proceedings-geneva-2016/>.

<sup>76</sup> Vasiljevic' (n 10); Niyitegeka (n 10) and Milos'evic' (n 10).

<sup>77</sup> The *Universal Declaration of Human Rights* 1948, art 11 (1).

<sup>78</sup> The *International Covenant on Civil and Political Rights* 1966, art 14(2).

The presumption of innocence has defined by The European Court of Human Rights. As per Law, when the members of a court have carrying out their duties, they should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused.<sup>79</sup> It also pursue that it is the duty for the prosecution to inform the accused of the case under which he has been charged so that he may prepare and present his defense accordingly, and to adduce sufficient evidence for the support of his defense.<sup>80</sup>

### ***[B] Impartiality and Non-Discrimination***

On the basis of age, caste, ethnicity, gender, religion, nationality, employment or sexual orientation, any kind of discrimination must be avoided. Furthermore, to ensure the impartiality of criminal proceedings all decision-makers involved should be shielded from undue outside influence.<sup>81</sup> The right of impartiality and non-discrimination is ensured by most of the constitutions and international treaties of different countries. ‘No distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty’.<sup>82</sup> ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ according to the Article 2.<sup>83</sup> Furthermore, ‘[e]veryone has the right to life, liberty and the security of person’.<sup>84</sup> ‘All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination’.<sup>85</sup>

---

<sup>79</sup> *Barbera vs. Spain* [1988] 11 EHRR 360, para. 77.

<sup>80</sup> *Ibid.*

<sup>81</sup> Englerth (n 75).

<sup>82</sup> *UDHR*, art 2 and *ICCPR*, art 2.

<sup>83</sup> *Ibid.*

<sup>84</sup> *UDHR*, art 3 and *ICCPR*, art 9(1).

<sup>85</sup> *UDHR*, art 7 and *ICCPR*, art 17.

The Bangladesh Constitution also secures the right of impartiality and non-discrimination the basis of age, caste, ethnicity, gender, religion, nationality, employment or sexual orientation under the Article 27<sup>86</sup> and the Article 28.<sup>87</sup> In addition to that, no person shall be deprived of life or personal liberty under the Article 31 and the Article 32. All are similar to the *UDHR* and the *ICCPR*.

In the case of *R. vs. Williams*<sup>88</sup>, Victor Daniel Williams, an aboriginal, was charged with the robbery of a Victoria Pizza Parlour, Mr. Williams chose to plead not guilty and to continue on with a trial by judge and jury. At issue here is whether the evidence of widespread bias against aboriginal people in the community raises a realistic potential of partiality. The courts below accepted that there was widespread prejudice against aboriginal people in the community. At the Court of Appeal, it is held that there needs to be stronger evidence supporting his motion than just general bias in the community. The appeal was dismissed and the conviction was upheld.

### ***[C] Right against Self-Incrimination***

In a fair judicial system no person must be forced to testify against himself.<sup>89</sup> This principle is included in many constitutions and human rights treaties. Not only it is forbidden to torture the accused for obtaining a confession but also any kind of undue pressure exercised to obtain a statement from an accused person must be deemed illegal.<sup>90</sup> Law enforcement authorities should be resisted to inform the accused of his right to remain silent upon first contact.<sup>91</sup>

The accused is entitled ‘not to be compelled to testify against himself or to confess guilt’ under the Article 14(3)(g).<sup>92</sup> Everyone shall be entitled to have adequate time and facilities for the

---

<sup>86</sup> *The Constitution of the People’s Republic of Bangladesh* 1972, art 27.

<sup>87</sup> *Ibid*, art 28.

<sup>88</sup> *R. vs. Williams* [1998] 1 S.C.R. 1128.

<sup>89</sup> Englerth (n 75).

<sup>90</sup> *Ibid*.

<sup>91</sup> *Id*.

<sup>92</sup> *ICCPR*, art 14(g).

preparation of his defense and to communicate with counsel of his own choosing. Freedom from self-incrimination is acknowledged not only by the Article 14(3)(g)<sup>93</sup> but also by the *Code of Criminal Procedure* 1898. Any statement or confession which made by the accused voluntarily in any stage, that statement or confession shall be recorded and signed in the manner provided in section 364.<sup>94</sup> That power to record statement or confession is given to those magistrates who are mentioned in section 164.<sup>95</sup> No person must be forced to incriminate himself.

In the case of *Miranda vs. Arizona*<sup>96</sup>, Miranda was arrested from his home and taken in custody to a police station.<sup>97</sup> He was then interrogated by two police officers for two hours which resulted in a written confession.<sup>98</sup> The United States Supreme Court ruled that the Fifth Amendment privilege against self-incrimination.<sup>99</sup> The Miranda warning (a suspect) is the name of the formal warning that is required to be given by law enforcement in the United States to criminal suspects in police custody before they are interrogated, in accordance with the Miranda ruling.<sup>100</sup> The aim of this rule is to ensure the aware of the right of the accused before questioning that are reasonably likely to elicit an incriminating response.

#### ***[D] Right to a Hearing and Effective Remedy***

No fair judicial system will ignore the right of hearing of the accused to become an autonomous participant in the proceedings. In fact, a criminal case cannot be concluded before the accused

---

<sup>93</sup> Ibid.

<sup>94</sup> *The Code of Criminal Procedure 1898*, s 364.

<sup>95</sup> Ibid, s 164.

<sup>96</sup> *Miranda vs. Arizona* [1966] 384 U.S. 436; Link:<https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-miranda-v-arizona>.

<sup>97</sup> Ibid

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

has been granted a chance to make him heard.<sup>101</sup> The accused should, furthermore, be allowed to ask for new and potentially exonerating evidence to be taken and considered by the authorities.<sup>102</sup> If the accused is convinced that his rights have been violated, he must have an effective opportunity to voice his complaint.<sup>103</sup>

Nowadays, in full equality to a fair and public hearing by an independent and impartial tribunal is apparently accepted not only by the Article 10<sup>104</sup> but also by the Article 14<sup>105</sup> in the determination of everyone's rights and obligations and of any criminal charge against him. Similarly, '[e]very accused of a criminal offence shall have the right to a speedy and public trial by an impartial court or tribunal established by law' under the Article 35(3)<sup>106</sup> and Section 352.<sup>107</sup> The Court stated in *Union Alimentaria Sanders SA vs. Spain*<sup>108</sup> that the duty of the applicant is only to 'show diligence in carrying out the procedural steps relevant to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings.'

### ***[E] Protecting Human Dignity***

All the aforementioned principles serve to protect the dignity of the accused as a human being. Any form of torture, abuse and cruelty in the period of interrogation is absolutely forbidden. Humiliating public confession must be deemed illegal when it is taken by any kind of undue pressure. Failure to recognize it disqualifies a person from serving in law enforcement and

---

<sup>101</sup> Englerth (n 75).

<sup>102</sup> Ibid.

<sup>103</sup> *Id.*

<sup>104</sup> UDHR, art 10.

<sup>105</sup> ICCPR, art 14(1).

<sup>106</sup> *The Constitution of the People's Republic of Bangladesh* 1972, art 35 (3).

<sup>107</sup> *The Code of Criminal Procedure* 1898, s 352.

<sup>108</sup> *Union Alimentaria Sanders SA vs. Spain*, Judgment of 7 July 1989, appl. no. 11681/85, paragraph 35.

should itself be deemed a criminal offence.<sup>109</sup> There can be no impunity for those who violate essential human rights in the name of law enforcement or justice.<sup>110</sup>

The right of dignity ensures under the various articles of the *UDHR* and the *ICCPR*. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>111</sup> In particular, no one shall be subjected without his free consent to medical or scientific experimentation. In addition to, everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.<sup>112</sup> No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Furthermore, an accused of any offence shall not be compelled to be a witness against himself in any stages of proceeding under the Article 14(3)(g).<sup>113</sup>

In Bangladesh, the right of dignity is also assured for the accused under the Article 27, 31, 33, 35<sup>114</sup> and Section 24.<sup>115</sup> The *Constitution of Bangladesh* adheres to the protection and respect for fundamental human rights, equality. The constitutional safeguards such as arrest and detention are incorporated in Articles 27, 31, 33 and 35.<sup>116</sup> According to Section 24<sup>117</sup>, it clearly says that confession is irrelevant either it is taken by showing fear or insisted to accused for confession in front of authority.

---

<sup>109</sup> Englerth (n 75).

<sup>110</sup> Ibid.

<sup>111</sup> *UDHR*, art 5 and *ICCPR*, art 7.

<sup>112</sup> *UDHR*, art 9 and *ICCPR*, art 9.

<sup>113</sup> *ICCPR*, art 14(3)(g).

<sup>114</sup> *The Constitution of the People's Republic of Bangladesh 1972*, arts 27, 31, 33 and 35.

<sup>115</sup> *The Evidence Act 1872*, s 24.

<sup>116</sup> *The Constitution of the People's Republic of Bangladesh 1972*, arts 27, 31, 33 and 35.

<sup>117</sup> *The Evidence Act 1872*, s 24.



In the case of *Chahal vs. United Kingdom*<sup>118</sup>, Since an Indian Sikh living in the UK was a high-profile supporter of Sikh separatism, so that he would be tortured if deported to India which he claimed.<sup>119</sup> On doubt of being a terrorist, the UK still sought to deport him.<sup>120</sup> In a very vital case, the European Court of Human Rights held that Article 3<sup>121</sup> prohibited his deportation as he faced a real risk or inhuman or degrading treatment.<sup>122</sup> The Court insisted that his suspected involvement in terrorism was not relevant.<sup>123</sup> The protection delivered by Article 3<sup>124</sup> is absolute. It also extends to every human being regardless of their conduct.<sup>125</sup>

In the case of *LB Hillingdon vs. Steven Neary*<sup>126</sup>, when Steven's (a young man with autism) father was sick, he needed temporary care. His father assumed his son would remain at his usual care at home. Because of anxiety about his conduct, the local council laid Steven in a specialist unit. His father thought this to be an interim move. His father challenged this decision when the council persists on keeping him in the specialist unit for longer. It is held that the council had violated his Article 5<sup>127</sup> rights and unlawfully deprived him of his liberty. Steven enabled to return home for that order.

---

<sup>118</sup> *Chahal vs. United Kingdom* [1996] 23 EHRR 413.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Id.*

<sup>121</sup> *The European Convention of Human Rights* 1953, art 3.

<sup>122</sup> *Chahal* (n 118).

<sup>123</sup> *Ibid.*

<sup>124</sup> *The European Convention of Human Rights* 1953, art 3.

<sup>125</sup> *Chahal* (n 118).

<sup>126</sup> *LB Hillingdon vs. Steven Neary* [2011] EWHC 1377 (COP).

<sup>127</sup> *The European Convention on Human Rights* 1953, art 5.

#### **IV. Challenges to Ensure Rights of the Accused in Bangladesh**

The purpose of this research is to narrate a real situation of accused rights. The Bangladesh Constitution guarantees all the basic rights of the accused; however, violation of fundamental rights has been sometimes reported in a developing country like Bangladesh.

##### ***[A] Right to Life and Personal Liberty***

Right to life and personal liberty to citizens is guaranteed by the Article 31<sup>128</sup> and are enforceable against the State also. A man or woman qualifies to scheme his/her own life in the manner he/she likes best which is the fundamental right of the citizen.<sup>129</sup> Right to life and personal liberty is one of the fundamental rights of the people of Bangladesh which is guaranteed by its Constitution.<sup>130</sup>

Despite having the fundamental human rights secured in our Constitution, , it has been broadly reported in Bangladesh that in the last few years there has been a lots of extrajudicial killings. That extrajudicial killings has been going on in the name of gunfights, encounters or crossfire, even though we live in a democracy and our Constitution assures and protects fundamental rights for every individual in our country.<sup>131</sup> Although the concern authorities in Bangladesh investigate into a recent extensive killing and disappearances, but no effective steps have been taken yet by the authorities against that extensive killing and disappearances.

In the case of *Sharif Nurul Ambia vs Dhaka City Corporation Represented by its Mayor and others*<sup>132</sup>, the public interest which should be championed by the agencies is ignored or prevented at the instance of the vested interests. It is unfortunate to witness the close collaboration between them. It is dazzling illustration of the fact that even though in the

---

<sup>128</sup> *The Constitution of the People's Republic of Bangladesh* 1972, art 31.

<sup>129</sup> Staff Reporter, 'Right to Life and Personal Liberty: Statutes vs. Status, *Banglanews24.com*', Link: <https://www.banglanews24.com/law/article/17653/Right-to-Life-and-Personal-Liberty-Statutes-vs-Status>.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Id.*

<sup>132</sup> *Sharif Nurul Ambia vs. Dhaka City Corporation Represented by its Mayor and others* [2006] 58 DLR (AD) 253.

environmental filed the respondent no 1 is a very significant body and is entrusted with the duty to conserve the environment, still has arisen as instrument of exploitation and this is in broad part due to private interest in the garb of 'greater public interest and for acceleration of revenue'<sup>133</sup>. The right to life inherent in Article 32<sup>134</sup> does not contemplate so.

For example, in the case of *Ripon Mridha vs. Shah Mohammad Awalad Hossain, SI Md Mohiuddin & others*<sup>135</sup>, the SI, Md Mohiuddin, demanded Tk. 3 lakhs from Ripon and his business partners Afzal Hossain and Ripon promising them protection from any case and torture. After the trio refused to provide the money, he threatened them with killing in crossfire, the case records say, adding, Mohiuddin picked up Ripon Mridha and Afzal.<sup>136</sup> He then beat up them by hanging from the ceiling at the police station suing them over false charges. The SI poured hot water on the face of the three people, forcing them to admit the crimes mentioned in two cases filed against them.<sup>137</sup>

After 42 years of independence and almost 22 years of democracy, the state has not yet perfectly fulfilled its legal duty to take necessary steps to prevent extrajudicial killings and disappearances and use all means to carry out serious investigation of alleged cases.

### ***[B] Arbitrary Arrest and Detention***

Arbitrary arrest and Detention are very common practice in Bangladesh.<sup>138</sup> Although there are statutory and constitutional safeguards to protect the liberty and security of citizens, in practice,

---

<sup>133</sup> Ibid.

<sup>134</sup> *The Constitution of the People's Republic of Bangladesh* 1972, art 32.

<sup>135</sup> Anisur Rahman Swapan, 'SI sued for extortion using 'crossfire' threat' (*The Dhaka Tribune*, 9 February 2017) Link: <https://www.dhakatribune.com/bangladesh/crime/2017/02/09/si-sued-extortion-using-crossfire-threat>.

<sup>136</sup> Ibid.

<sup>137</sup> *Id.*

<sup>138</sup> Faruque (n 9).

there are many allegations of misuse or abuse of provisions of the laws that regulate arrest and detention.<sup>139</sup>

In the case of *Mehnaz Sakib vs Bangladesh*<sup>140</sup>, since the detenu was arrested under section 54<sup>141</sup>, it was incumbent upon the police to produce her before a magistrate within 24 hours. But the police did not produce her before a magistrate within 24 hours. The court held that the detenu's right which is guaranteed by the Constitution had been violated by the police.

### ***[C] Torture in Remand***

'Remand' is essential for the purpose of interrogation because the accused is involved in a cognizable offence which is stated by the police officer before taking the permission of remand. At present, the practice is that an accused is taken on 'remand' only for the purpose of interrogation or for extorting information from the accused through interrogation; though it is not mentioned in sub-section (2) of section 167<sup>142</sup> that 'remand' can be allowed for the purpose of interrogation. No proper guidelines are given regarding that when such request should be granted or when rejected by the Magistrate. For the lacking of the law, the police officer and Magistrates try to abuse that power.<sup>143</sup> Being motivated by the executive body or for any personal interest, police officers prayed unreasonable remand under section 167.<sup>144</sup> The Magistrates in absence of any proper guideline, either being dictated by the executive organ or otherwise have been accustomed to follow a 'parrot like' order on the forwarding letter of the police officer authorizing detention either in the police custody or in jail.<sup>145</sup>

---

<sup>139</sup> Ibid

<sup>140</sup> *Mehnaz Sakib vs. Bangladesh* [2000] 52 DLR 526.

<sup>141</sup> *The Code of Criminal Procedure* 1898, s 54.

<sup>142</sup> Ibid, s 167(2).

<sup>143</sup> Staff Reporter, 'Police Power of Arrest and Remand,' *The Daily Star*, 23 July 2005.

<sup>144</sup> *The Code of Criminal Procedure* 1898, s 167.

<sup>145</sup> Staff Reporter (n 143).

In the case of *Afzalul Abedin and others v Bangladesh*<sup>146</sup>, the very few cases in which the abuse of police power was challenged and were litigated either in “public interest” by national organizations or by rich and powerful persons who were subjected to such abuse by police. Furthermore, in the case of *BLAST vs. Bangladesh*<sup>147</sup>, it is mentioned that the very system of taking 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 addition, there is widely held belief that the accused did not voluntarily confess to the police on remand. Approving police remand in different time totally destroys the purpose behind it.<sup>148</sup> A person coming before the Magistrate will not be transfer again to the police remand which has no guarantee unless he has already completed 15 days.<sup>149</sup> Furthermore, As per Sections 54<sup>150</sup>, the police have powers to arrest a person without warrant on reasonable suspicion. That power is also misused by the police.

The death of Shafi Uddin is one example of this kind of torture.<sup>151</sup> On suspicion of involvement in a theft, Shafi Uddin was arrested.<sup>152</sup> He was taken into remand for 3 days, when he was produced before the magistrate.<sup>153</sup> Thereafter he was assaulted with hockey sticks by the police.<sup>154</sup> As a result, He was injured so badly and died in the way to the hospital. In accordance with the confessional statement of him, he was involved in this theft.<sup>155</sup> After that, the police

---

<sup>146</sup> *Afzalul Abedin and others vs. Bangladesh* [2003] 8 BLC (HCD) 601.

<sup>147</sup> *Bangladesh Legal Aid and Services Trust (Blast) and others vs. Bangladesh and others* [2003] 55 DLR 363.

<sup>148</sup> Staff Reporter (n 143).

<sup>149</sup> *Ibid.*

<sup>150</sup> *The Code of Criminal Procedure* 1898, s 54.

<sup>151</sup> Saira Rahman, ‘The Use and Abuse of the Laws of Confession in Bangladesh’, <<http://www.biliabd.org/article%20law/Vol-7%20special%20issue/Dr.%20Saira%20Rahman%20Khan.pdf>> accessed 10 July 2019.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

went to recover the stolen goods from a specific house.<sup>156</sup> But Shafi fell sick on the way. For this reason, they rushed him to the hospital, but it was too late.<sup>157</sup> Eyewitnesses at the hospital morgue saw serious injuries on Shafi's body which was stated by them. The police coerced staffs at the morgue alter the contents of the autopsy report which was also stated by them.<sup>158</sup>

For example of forced confession, In this case, Mozammel Hossain (Minni's father) alleged that Minni has been forced to confess her involvement in the murder of her husband Rifat Sharif.<sup>159</sup> Her father also quoted his daughter as saying.<sup>160</sup> "If you don't tell the court what we [police] ask you to, you will be remanded again," No lawyer represented her at the time, and her father claimed local lawyers did not take their case because of "influence and threat" by some influential politicians which is a violation of the fundamental rights guaranteed under article 33 of the Constitution and also contrary to the Appellate Division verdict in Bangladesh VS BLAST case".<sup>161</sup> Police claimed Minni, the number one witness in the murder case, admitted her link with the attack on her husband, whom she had married just months ago.<sup>162</sup> Police also said, Rifat Farajee, key suspect, gave confessional statement before Senior Judicial Magistrate Mohammad Sirajul Islam, but did not disclose its content.<sup>163</sup> But under Article 35(4)<sup>164</sup>, no person shall be compelled to be a witness against himself. Therefore, many misuses or abuse of provisions of the laws are seen at present.

---

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Staff Reporter (n 143).

<sup>160</sup> *Ibid.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *The Constitution of the People's Republic of Bangladesh 1972*, art 35(4).

### *[D] Corruption of Law Enforcement Agencies*

Although there are statutory and constitutional safeguards to protect the liberty and security of citizens, in practice, there are many allegations of misuse or abuse of provisions of the Laws. For example, during custody and interrogation, accused have been tortured by the RAB (Rapid Action Battalion) and other security agencies.<sup>165</sup> One complaint of such came from a young man. For protesting against the assault of an old man, he was arrested by the RAB agents.<sup>166</sup> Later, the RAB agents were tortured him in several times.<sup>167</sup> On fabricated charges, Azizur Rahman Shohel and Atiquer Rahman Jewel from Rajshahi were arrested on 27 July 2005.<sup>168</sup> It is alleged that they were tortured because they were being incapable of paying a sufficient bribe.<sup>169</sup> After that, they were hospitalized at the Rajshahi Medical School Hospital under police custody.<sup>170</sup> Further example of torture in Bangladesh was the May 2007 case of torture against Tasneem Khalil (a journalist and blogger).<sup>171</sup> During the interim government, he was tortured in the custody of Directorate General of Forces Intelligence.<sup>172</sup> Khalil scribed a report published by Human Rights Watch after his release.<sup>173</sup> After fleeing from Bangladesh, Sweden granted Khalil asylum.<sup>174</sup> Nowadays, bribery is consisting in the vain to vain of the court and police administration of Bangladesh.

---

<sup>165</sup> Abdul Fattah, 'Fundamental Rights in Bangladesh Constituion', <[https://www.academia.edu/29472085/Fundamental\\_Rights\\_in\\_Bangladesh\\_Constitution](https://www.academia.edu/29472085/Fundamental_Rights_in_Bangladesh_Constitution)> accessed 29 June 2019.

<sup>166</sup> *Ibid.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

### ***[E] Custodial Rape & Custodial Death***

At present, the percentage of custodial rape and custodial death is increasing day by day. Some incidents regarding this matter come in front of us. Even sometimes, many incidents do not come in front of us because the victims, who are in custody, they do not allow to bring a case against the accused or their case does not take by the police for their personal interest.

For example, the police in Rajshahi recorded an incident of custodial rape on 9 October against an Assistant Sub-Inspector (ASI) of Boalia Police Station on charges of raping a field worker of an insurance company.<sup>175</sup> Victim was harassed constantly by the ASI Faruk in the phone.<sup>176</sup> The rapist also threatened the victim saying that he is a policeman and raped her.<sup>177</sup> Afterwards, the victim stated the incident to her mother.<sup>178</sup> Her mother admitted her to the One Stop Crisis Center (OCC) with the aid of a person named Alam.<sup>179</sup> After filing of the case, ASI Abdul Hamid and Faruk went into hiding who were named in the first information report.<sup>180</sup>

An example of custodial death, Faruk and Hasan are cousins and both are accused in the murder case.<sup>181</sup> They went to the court to appear before it in connection with the case.<sup>182</sup> At one stage of hearing, Hasan started chasing Faruk at the courtroom and stabbed him in front of Judge Fatema Ferdous as the victim tried to hide under a table inside the judge's chamber.<sup>183</sup> Police arrested Hasan soon after the incident and police suspect Hasan carried the knife with him when he came

---

<sup>175</sup> 'Assignment on Torture and Custodial Violence in Bangladesh', <<https://www.assignmentpoint.com/arts/law/assignment-on-torture-and-custodial-violence-in-bangladesh.html>> accessed 29 June 2019.

<sup>176</sup> *Ibid.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Staff Reporter, 'Accused Stabbed Dead in front of Judge inside Courtroom in Cumilla,' *The Daily Star*, 27 July 2019; Link: <https://www.thedailystar.net/country/accused-stabbed-dead-in-front-judge-cumilla-courtroom-1771768>.

<sup>182</sup> *Ibid.*

<sup>183</sup> *Id.*



to the court to appear before it.<sup>184</sup> Therefore, many misuses or abuse of provisions of the laws are seen at present.

### ***[F] Protection against Double Jeopardy and the Miscarriage of Justice***

The “doctrine of double jeopardy” means prosecuting a person for the second time for the same offence for which he has already been convicted or acquitted legitimately.<sup>185</sup> There are statutory and constitutional safeguards to protect that right, in practice, there are not many allegations of misuse or abuse of provisions of the Laws. Some cases are available in this issue. But every case tries to ensure that right. On the other hand, the judiciary does not enjoy independence as far as the administration of justice is concerned in terms of logistics, manpower, integrity and the adjudication of the cases.<sup>186</sup> Besides, there is a serious lack of judicial competence and commitment to upholding the rule of law among many judicial officers.<sup>187</sup> Therefore, the judiciary cannot ensure the fair

For instance, in the case of *Syeda Sajeda Chowdhury vs. State*<sup>188</sup>, when the basic ingredient of the offence is absent from the materials on record and still the court is allowing to continue the proceeding of the case, that continuation of the case is an abuse of the process of the court. On basis of mere statement stated by the police officer, a court of law cannot precede the case without revealing the allegation of the fact constituting the offence. Such statement shall be treated only a mere opinion of police officer concerned and cannot be the basis of any judicial action by the court justice. At present, government cannot ensure the fair and speedy trial also because of misuses of provisions of the laws.

---

<sup>184</sup> *Id.*

<sup>185</sup> Chandrasekhar Nyshadham, ‘What is double jeopardy with reference to Constitution of India?’, <<https://www.quora.com/What-is-double-jeopardy-with-reference-to-Constitution-of-India>> accessed 29 June 2019.

<sup>186</sup> M. Sikder Tagor, ‘Breach of Human Rights: Criminal Justice System In Bangladesh’; Link: [https://www.academia.edu/10230064/BREACH\\_OF\\_HUMAN\\_RIGHTS\\_CRIMINAL\\_JUSTICE\\_SYSTEM\\_IN\\_BANGLADESH\\_3\\_thesis\\_paper\\_](https://www.academia.edu/10230064/BREACH_OF_HUMAN_RIGHTS_CRIMINAL_JUSTICE_SYSTEM_IN_BANGLADESH_3_thesis_paper_).

<sup>187</sup> *Ibid.*

<sup>188</sup> *Syeda Sajeda Chowdhury vs. State* [2010] 62 DLR 441.

## *[G] Miscellaneous*

The *Nari O Sisu Nirjatan Daman Ain 2000* mentioned that it denies the bails of an accused until the completion of investigation. Until a minor boy received the death sentence, the unjustness of this Act never become an issue for judicial scrutiny. The *Public Safety Act 2000 (PSA)* contained certain provisions which are conflict with the accused's right.<sup>189</sup> For example, section 16(2) mentions that it is compulsory to deny the bail of the accused until the period of investigation ends. Section 24(1) barred to challenge of any action or order by a special court. That provision is conflict with the constitutional right which is given to the accused as of right.

Another example of the tendency of over-criminalization of act is *The Law and Order Disruption Crimes Act, 2002 (STA)*.<sup>190</sup> Like the above-mentioned statutes, the STA affected seriously on the right of an accused, such as, by providing for summary and exceedingly speedy trial.<sup>191</sup> From the context of Bangladesh, sometimes speedy trial may counterproductive for justice and an unreasonably tardy trial would not yield justice.<sup>192</sup>

When a person do any act or do not any act which he is bound to do or bound to do not that act under any laws or enactments and that act or omission constitutes an offence under the enactments or laws and the liability of the offender shall be prosecuted under those laws or enactments and also be punished according to that laws or enactments. As per Section-26<sup>193</sup>, court will not bar two trials in respect of the two offences. But as per Section-26<sup>194</sup>, Judges cannot give punishment for the same set of facts under two sections.

---

<sup>189</sup> Criminal Law and The Constitution of Bangladesh (Part-2);  
<<https://www.lawyersnjurists.com/article/criminal-law-and-the-constitution-of-bangladesh-part-2/>>accessed 21 June 2019.

<sup>190</sup> Ibid.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *The General Clauses Act 1897*, s 26.

<sup>194</sup> Ibid.

## V. Recommendations

First of all, the *Penal Code* 1860 should define the meaning of torture as required by *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1987.<sup>195</sup> As per the Article 1 of CAT<sup>196</sup>,

‘the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions’.<sup>197</sup>

Whether that definition of torture follows by the Bangladesh or not, that totally depends upon it because that Law is an International Law. If Bangladesh add that definition in our national Law, then that have to follow by the citizen of Bangladesh mandatorily.

Secondly, the judgment in *BLAST vs. Bangladesh*<sup>198</sup> provide some important recommendations for amendments of relevant laws which is the most important to reduce the scope and possibility of the abuse of police power. The Parliament and Ministry of Justice should amend *The Code of Criminal Procedure* 1898 according to the guidelines provided by the Supreme Court in the *BLAST* case.<sup>199</sup>

---

<sup>195</sup> Tagor (n 186).

<sup>196</sup> *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1987.

<sup>197</sup> *Ibid*, art 1.

<sup>198</sup> *Bangladesh Legal Aid and Services Trust (Blast) and others vs. Bangladesh and others* [2003] 55 DLR 363; please visit this link: <https://www.blast.org.bd/issues/justice/214-3806of1998> to know about the guidelines.

<sup>199</sup> *Ibid*.

Thirdly, it is incumbent upon the police to produce the accused before a magistrate within 24 hours<sup>200</sup> and when any arrested persons are temporarily detained in locations other than police stations, the detained person should be transferred to the nearest Police Station as early as possible. Those rights should be ensured by the Government.

Fourthly, all arrests made without warrant in their respective stations shall be reported to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate by the Officers in charge of police stations and they can also advise if those persons have been admitted to bail or otherwise.<sup>201</sup> Whenever necessary, the officer in charge may grant bail to the vulnerable members of the community such as children, the elderly, women and disabled people.<sup>202</sup> This will help the accused to get a fair trial. Under *The Code of Criminal Procedure*, 1898, those rights are given to the accused. But it should be more effective.

Fifthly, before granting a remand, the Magistrate should examine the given reasons for granting a remand. The decision should be made after an inquiry into whether his prayer of remand should be grant or not. After that the conditions of detention and interrogation by the police during the remand procedure should be examined by the judiciary. After examination if it is discovered that any statement which is made by the accused as a result of torture, that statement should declared inadmissible by the judiciary which is confirmed by the Articles 12 and 13.<sup>203</sup> The self-incriminating statements should be prohibited which is enshrined in Article 35(4).<sup>204</sup> In practice, there are many allegations of misuse of provisions of the laws. Therefore, necessary step should be taken for ensuring those rights.

Sixthly, Section 132 and other legal provisions of the *Code of Criminal Procedure* 1898 must be repealed which is related to the immunity provisions for public officials that engage in torture.

---

<sup>200</sup> *The Code of Criminal Procedure* 1898, s 54.

<sup>201</sup> *Ibid*, s 62.

<sup>202</sup> *Ibid*, ss 496 and 497.

<sup>203</sup> *The UN Convention against Torture* 1987, arts 12 and 13.

<sup>204</sup> *The Constitution of the People's Republic of Bangladesh* 1972, art 35(4).

Because it is obstructed to the victims of human rights violations from giving complaints against State officials suspected of being the authors, instigators or accomplices of such acts. According to Article 46<sup>205</sup>, ‘Parliament may by law make provision for indemnifying any person in the service of the Republic’. Because of this provision, parliament has scope to abuse the power. Therefore, Bangladesh should limit the power given to Parliament, by excluding acts of torture and other cruel, inhuman or degrading treatment or punishment from the scope of acts for which public officials can be indemnified, by amending Article 46 of the Bangladesh Constitution.<sup>206</sup>

Seventhly, the accused have right to enjoy a speedy trial.<sup>207</sup> But in practice it is not possible to ensure that right because of the backlog of the courts, limitation of the court, limitation of judges etc. therefore, the concern authority should take necessary step to ensure that right.

Eighthly, with the corresponding of international human right standards, prison condition should be developed. Necessary step should be taken by the Government for reducing the overcrowding of prison system. To attend to medical emergencies, medical officer’s facilities should have in the prison system and detention period for the prisoners. It also should be ensured the strict separation of police custody, detention on remand, imprisonment of convicts in terms of location and separation juvenile from adult detainees. Furthermore, It should be implemented a mandatory and periodic system of effective, independent and impartial judicial control of pre-trial detention, during trial detention and post-trial detention. The Officer-in-charge of the police station must inspect the detention facilities who detain at police station or other prison in regular basis to ensure the welfare and security of detained persons.

Ninthly, for reducing the bribery of court official and police official work, their all clarkia work should be computerized. In addition, to minimize the abuse of power, the power of investigation should be given to the officer in charge of the police station into any allegations of police misconduct or unlawful behavior related to the arrest and/or detention in custody of an individual

---

<sup>205</sup> Ibid, art 46.

<sup>206</sup> Tagor (n 186).

<sup>207</sup> *The International Covenant on Civil and Political Rights* 1976, art 14(3).

or of all deaths in custody. He also must inform his supervisor of progress in the investigation on a regular basis related to arrest or detention or all deaths in custody.<sup>208</sup> This will help the accused to get a fair trial. Under *The Code of Criminal Procedure*, 1898, those rights are given to the accused. But it should be more effective.

Tenthly, proper training and awareness is needed for collecting material and forensic information which is helping to prevent arbitrary arrests based solely off of a spurious complaint or FIR and excessive reliance on confessions. That frequently highlight as a crucial way of ensuring better protection of human rights. Training and awareness raising about international human rights standards is not only needed for the police but also for the judges, prosecutors, lawyers, prison officials, and other officials in enforcement agencies.<sup>209</sup>

Finally, those who are the victims of arbitrary or prolonged police custody and detention on remand should provide compensation.

## **VI. Conclusion**

After the above discussion, we can conclude that the rights and privileges of a person accused of a crime which is guaranteeing him a fair trial that is called as “rights of the accused”. All legal systems provide certain basic rights of the accused. The Laws in Bangladesh also ensure the protection of prisoner’s rights. These includes- the protection of right and personal liberty, safeguards as to arrest and detention, protection against torture, fair trial, right to defense and protection against double jeopardy. The accused rights are divided into three stages. They are- An accused has some particular rights during the period of any investigation (pre-trial stage), enquiry or trial of offence under which he is charged (trial stage) and he should be protected from those punishment which is not giving according to the law (post-trial stage). He also should be protected against any arbitrary or illegal arrest. Under the Law of the Bangladesh, guilt must be established beyond a reasonable doubt, and that if there is a reasonable doubt about the guilt of the accused, he or she is to be acquitted.

---

<sup>208</sup> *The Code of Criminal Procedure* 1898, s 176(1).

<sup>209</sup> Tagor (n 186).

Under International Instruments, an accused has some particular rights such as presumption of innocence, right against self-incrimination, right to a hearing and effective remedy, impartiality and non-discrimination and dignity etc. In this situation, if above-mentioned recommendations are maintained properly, the criminal justice system in Bangladesh may become an ideal system. It will ensure fairness of trial and proceedings of the case, as well as non-violence of human rights and procedural and substantive safeguard. Training and awareness raising about international human rights standards is needed for the police, judges, prosecutors, lawyers, prison officials, and other officials in enforcement agencies. In such training program, persons who have been victims of human rights violations by the police and other sections of society should be invited to talk to the police or judges or other officials. Thus, sensitization of the police or judges or other officials to the importance of human rights has to be the cornerstone of the efforts to improve the present situation.

## **Bibliography**

### **Statutes**

1. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1987.
2. *The Children Act*, 1974.
3. *The Code of Criminal Procedure*, 1898
4. *The Constitution of the People's Republic of Bangladesh*, 1972
5. *The Evidence Act*, 1872
6. *The General Clauses Act*, 1897
7. *The International Covenant on Civil and Political Rights*, 1966,
8. *The Penal Code*, 1860
9. *The Prisons Act*, 1894
10. *The Torture and Custodial Death (Prevention) Act*, 2013,
11. *The UN Convention against Torture*, 1987
12. *The Universal Declaration of Human Rights*, 1948
13. *The European Convention of Human Rights*

### **Books**

1. Sikder Abdus Sattar, *The Penal Code, 1860* (Dhaka, Eastern Publication System, 1<sup>st</sup> edn, 2016).
2. Kochavi Arie J. and Prelude to Nuremberg, *Allied War Crimes Policy and the Question of Punishment* (Chapel Hill University of North Carolina Press, 1998) pp. 63–91.
3. Moran Greg of Greg Moran and Associates, *Criminal Justice in Bangladesh - A best practise Handbook for members of the criminal justice system, Final Draft - November 2015*, p-88-89.
4. Haque Justice Mohammad Hamidul, *Trial of Civil suits and Criminal Cases* (Dhaka, Priyanka Printers & Publications, 2<sup>nd</sup> edn, 2017).
5. Islam Mahmudul, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2<sup>nd</sup> edn, 2006) 129.



6. Paul Nirmal Chandra, *The Nari O' Shishu Nirjatan Daman Ain, 2000 & Other relate Laws* (Dhaka, Shams Publication, 3<sup>rd</sup> edn, 2016)
7. Hoque Ridwanul, 'Criminal Law and the Constitution: The Relationship Revised', Special Issue *Bangladesh Journal of Law* (Dhaka: Bangladesh Institution of Law and International Affairs, November 2007);  
Link:<https://www.lawyersnjurists.com/article/criminal-law-and-the-constitution-of-bangladesh-part-2/>

### **Journal Articles**

1. Faruque Abdullah Al and Hussain Mohammad Fazlul Bari, *Arbitrary Arrest and Detention in Bangladesh*, *Australian Journal of Asian Law*, Vol. 19, No. 2, Article 10, 30 May 2019.
2. Englerth Dr. Markus, '10 Basic Rights of Accused Persons in Criminal Proceedings', Link: <https://liberal-international.org/what-we-do/events/li-human-rights/li-human-rights-committee-parliamentarians-meeting-geneva-2016/10-basic-rights-accused-persons-criminal-proceedings-geneva-2016/>
3. Tagor M. Sikder, 'Breach of Human Rights: Criminal Justice System In Bangladesh'; Link:[https://www.academia.edu/10230064/BREACH\\_OF\\_HUMAN\\_RIGHTS\\_CRIMINAL\\_JUSTICE\\_SYSTEM\\_IN\\_BANGLADESH\\_3\\_thesis\\_paper\\_](https://www.academia.edu/10230064/BREACH_OF_HUMAN_RIGHTS_CRIMINAL_JUSTICE_SYSTEM_IN_BANGLADESH_3_thesis_paper_).

### **Cases**

1. *Abul Jabbar vs. Bangladesh* [1981] 33 DLR 230.
2. *Abul Kashem and others vs. State* [2004] 56 DLR 132.
3. *Afzalul Abedin and others vs. Bangladesh* [2003] 8 BLC (HCD) 601.
4. *Alhaj Md. Yusuf Ali vs. The State* [2002] 22 BLD 231.
5. *Bangladesh Legal Aid and Services Trust (Blast) and others vs. Bangladesh and others* [2003] 55 DLR 363.

6. *Bangladesh Legal Aid and Services Trust (Blast) and others vs. Bangladesh and others* [2003] 55 DLR 363; please visit this link: <https://www.blast.org.bd/issues/justice/214-3806of1998> to know about the guidelines.
7. *Bangladesh Society for the Enforcement of Human Rights and others vs. Government of Bangladesh and others* [2001] 53 DLR 1.
8. *Bangladesh, represented by the Secretary, Ministry of Law, Justice & Parliamentary Affairs vs Blast* [2017] 69 DLR (AD) 63.
9. *Barbera` vs. Spain* [1988] 11 EHRR 360, para. 77.
10. *Chahal vs. United Kingdom* [1996] 23 EHRR 413.
11. *Dolon vs. State* [2002] 64 DLR (AD) 501.
12. *Faustina Pereira vs. State and others* [2001] 53 DLR 414.
13. *H.M. Ershad vs. State* [1993] 45 DLR 533.
14. *Kadu vs. State* [1991] 43 DLR 163.
15. *LB Hillingdon vs. Steven Neary* [2011] EWHC 1377 (COP).
16. *Md. Nasir Ahmed vs. The State* [1990] 42 DLR 89.
17. *Mehnaz Sakib vs. Bangladesh* [2000] 52 DLR 526.
18. *Miranda vs. Arizona* [1966] 384 U.S. 436; Link:<https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-miranda-v-arizona>.
19. *Moslemuddin Sikder vs. Chief Secretary* [1956] 8 DLR 526.
20. *Muhibur Rahman Manik and others vs. Bangladesh and others* [2003] 55 DLR 636.
21. Paragraph 6, Chapter XII, quoted in *State vs. Purna Chandra* [1970] 22 DLR 289.
22. *Professor Nurul Islam and others vs. Government of the People's Republic of Bangladesh & ors* [2000] 52 DLR 413.
23. *R. vs. Williams* [1998] 1 S.C.R. 1128.
24. *Rahim Bux vs. Crown* [1952] 4 DLR 53.
25. *Rowshan Bijaya S. Ali Khan vs. East Pakistan* [1965] 17 DLR 1.
26. *Saifuzzaman (Md) vs. State and others* [2004] 56 DLR 324.
27. *Sharif Nurul Ambia vs. Dhaka City Corporation Represented by its Mayor and others* [2006] 58 DLR (AD) 253.

28. *State vs. Abul Hashem* [1998] 50 DLR (HCD) 17.
29. *State vs. Ali Kibria* [1991] 43 DLR 512.
30. *State vs. Ershad Ali Sikder and others* [2004] 56 DLR 185.
31. *State vs. Shafique* [1991] 43 DLR (AD) 203.
32. *Syeda Sajeda Chowdhury vs. State* [2010] 62 DLR 441.
33. *The Prosecutor vs. Vasiljevic* (IT-98-32-T), Judgment, 29 November 2002, para. 12; *The Prosecutor vs. Niyitegeka* (ICTR-96- 14-T), Judgment and Sentence, 16 May 2003, para. 45; *The Prosecutor vs. Milos̄evic* (IT-02-54-T), Reasons for Decision on Assignment of Defence Counsel, 22 September 2004, para. 68.
34. *Union Alimentaria Sanders SA vs. Spain*, Judgment of 7 July 1989, appl. no. 11681/85, paragraph 35.

### **Newspaper Articles**

1. Habib A. Z. M. Arman, 'Legal protection of the accused' *The Daily Star*, (11 August 2015);
2. Jhilik Amena Jahan, 'Innocent until proven guilty' *The Daily Star*, 20 august 2019.
3. Swapan Anisur Rahman, 'SI sued for extortion using 'crossfire' threat' (*The Dhaka Tribune*, 9 February 2017);  
Link: <https://www.dhakatribune.com/bangladesh/crime/2017/02/09/si-sued-extortion-using-crossfire-threat>
4. Kremens Karolina, 'The Protection of the Accused in International Criminal Law According to the Human Rights Law Standard' (December 2011);  
Link: <https://www.thedailystar.net/law-our-rights/legal-protection-the-accused-124807>.  
Link: [https://www.researchgate.net/publication/265192899\\_The\\_protection\\_of\\_the\\_accused\\_in\\_international\\_criminal\\_law\\_according\\_to\\_the\\_Human\\_Rights\\_Law\\_Standard](https://www.researchgate.net/publication/265192899_The_protection_of_the_accused_in_international_criminal_law_according_to_the_Human_Rights_Law_Standard)
5. Staff Reporter, 'Accused Stabbed Dead in front of Judge inside Courtroom in Cumilla,' *The Daily Star*, 27 July 2019; Link: <https://www.thedailystar.net/country/accused-stabbed-dead-in-front-judge-cumilla-courtroom-1771768>.
6. Staff Reporter, 'Police Power of Arrest and Remand,' *The Daily Star*, 23 July 2005.

7. Staff Reporter, 'Right to Life and Personal Liberty: Statutes vs. Status, *Banglanews24.com*', Link: <https://www.banglanews24.com/law/article/17653/Right-to-Life-and-Personal-Liberty-Statutes-vs-Status>.
8. The research evidence for this is well summarised in Sharon Shalev's 'A Sourcebook on Solitary Confinement' Mannheim Centre for Criminology (London, 2008); Link: [www.solitaryconfinement.org](http://www.solitaryconfinement.org).

### **Websites and Blogs:**

1. Rahman Saira, 'The Use and Abuse of the Laws of Confession in Bangladesh', <<http://www.biliabd.org/article%20law/Vol7%20special%20issue/Dr.%20Saira%20Rahman%20Khan.pdf>> accessed 10 July 2019.
2. Fattah Abdul, 'Fundamental Rights in Bangladesh Constituion', <[https://www.academia.edu/29472085/Fundamental\\_Rights\\_in\\_Bangladesh\\_Constitution](https://www.academia.edu/29472085/Fundamental_Rights_in_Bangladesh_Constitution)> accessed 29 June 2019.
3. 'Assignment on Torture and Custodial Violence in Bangladesh', <<https://www.assignmentpoint.com/arts/law/assignment-on-torture-and-custodial-violence-in-bangladesh.html>> accessed 29 June 2019.
4. Chandrasekhar Nyshadham, 'What is double jeopardy with reference to Constitution of India?', <<https://www.quora.com/What-is-double-jeopardy-with-reference-to-Constitution-of-India>> accessed 29 June 2019.
5. Criminal Law and The Constitution of Bangladesh (Part-2); <<https://www.lawyersnjurists.com/article/criminal-law-and-the-constitution-of-bangladesh-part-2/>> accessed 21 June 2019.