



DISSERTATION

on

Enforced Disappearance: A Critical Analysis from the Perspective of International Human Rights Law and the Constitution of Bangladesh

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The dissertation titled **Enforced Disappearance: A critical analysis from the perspective of International Human Rights Law and Constitution of Bangladesh** prepared by **Rashedul Islam ID 2016-2-66-019** submitted to Dr. Nabaat Tasnima Mahbub, Assistant Professor, Department of Law, for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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Acknowledgment

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List of Abbreviations

VS Versus

UN United Nation

SC Supreme Court

IPC Indian Penal Code

ASK Ain O Shalish Kendra

HRW Human Rights Watch

OUP Oxford University Press

ICC International Criminal Court

CAT Convention Against Torture

IHL International Humanitarian Law

OAS Organization of American States

CrPC The Code of Criminal Procedure

UNSC United Nations Security Council

ECHR European Court of Human Rights

UNGA United Nations General Assembly

NHRC National Human Rights Commission

CED Committee on Enforced Disappearances

UDHR Universal Declaration of Human Rights

UNGA The Universal Declaration of Human Rights

ICRC International Commission of Red Cross States

ICCPR International Covenant on Civil and Political Rights

WGEID Working Group on Enforced or Involuntary Disappearance

OHCHR Office of the United Nations High Commissioner for Human Rights

UNHCHR United Nations Office of the High Commissioner for Human Rights

ICPPED International Convention for the Protection of All Persons from Enforced Disappearances

Abstract

The practice of enforced disappearance is not new. Globally, this phenomenon occurs. The Rome Statute is the only legally binding document applicable in all cases of enforced disappearances, but there is no universal document. Describes enforced disappearance and its multiple nature, and guides you through the process of drafting legally binding documents within the UN framework. It is well known that enforced disappearances are a complex issue. As a result of forced disappearance, several human rights are violated simultaneously, including the right to privacy and dignity, the right to not suffer torture or cruel, inhumane, or degrading treatment, the right to be detained in humane conditions, the right to legal representation the right to a fair trial and the right to a family life; and even the right to life when abducted. According to Amnesty International, enforced disappearance is a human rights violation when someone gets arrested, detained, or kidnapped by the government or agents, who deny they're being held or hide where they're from the government, taking them out of the legal protection system.

The number of enforced disappearances in Bangladesh has been alarming according to reports from some national and international human rights organizations. There are a lot of unsolved cases and law enforcement agencies keep denying involvement. An international convention was adopted to eliminate the crime. It's also a crime against humanity under some other international conventions.

In this dissertation, I analyze and scrutinize the socio-legal aspects of forced disappearance and suggest a way to overcome the situation. The paper will examine the legal status of enforced disappearances in a domestic and global perspective and draw a conclusion about how to stop it. Yet Bangladesh's criminal laws don't recognize forced disappearance as an offense, despite the fact that it's a thing. Even so, the right to life is a fundamental right guaranteed by the Bangladesh constitution, and it's being violated constantly. There's a huge impact on the victim's family and on the whole community. In order to prevent further consequences, Bangladesh needs to become a party to the International Convention for the Protection of All Persons from Enforced Disappearance immediately. Without it, forced disappearances will have massive consequences for the nation.

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Chapter One

Introduction

1.1 Background

This research paper is based on the topic of **“Enforced Disappearance: A Critical Analysis from the Perspective of International Human Rights Law and the Constitution of Bangladesh”**. According to this study, the major issues of enforced disappearances are described as it relates to both the human right to life and its laws on an international scale and Bangladeshi laws regarding such disappearances. Identify the relevant laws, as well as any limitations or shortcomings of international law and domestic law. Enforced disappearance has been one of the crucial crimes in international law and from a Bangladesh perspective. Globally, it violates human rights. Thousands of people fear for their daily lives, as well as their relatives. They have gone through mental and emotional torture called depression and unexpected death. Hoping and waiting for a piece of news that the closest ones will not ever come to the home. In addition, the effects of this act have a profound impact on the rights of each person. This includes the protective rights by law, or in other words, the right to safety¹. It has been acknowledged by the United Nations that forced disappearance describes grave violation of own and personal rights to be recognized as a person by the law. According to the United Nation, it is also their right of every individual to be free and their security, it is also their right to be protected against torture as well or to be subjected to any kind of cruelty, inhumanity, or degrading treatment because of their situation². In the case of the victim and the victim's family, their right to lead a normal life was also threatened³.

In many countries, the percentage of enforced disappearances has risen in recent years, according to reports compiled by organizations that monitor national and international human rights. There is only limited support available to these families, as they are often socially and culturally isolated. Women of disappeared victims, for example, are sometimes left in limbo after disappearing, even though, in certain cultures, widows are well supported within their own

¹ Tullio Scovazzi and Gabriella Citroni, “The Struggle against Enforced Disappearance and the 2007 United Nations Convention” (Martinus Nijhoff Publisher 2007) https://www.corteidh.or.cr/tablas/24205_completo.pdf accessed November 6, 2022

² “International Day of the Victims of Enforced Disappearances” (*United Nations*) <https://www.un.org/en/observances/victims-enforced-disappearance> accessed November 6, 2022

³ Article 1, “International Convention for the Protection of All Persons from” <https://www.ohchr.org/sites/default/files/disappearance-convention.pdf> accessed November 6, 2022

communities. A serious issue has been created because of it. There is a growing group of human rights activists and security experts who are concerned about the number of enforced disappearances that are occurring in international territories, including Bangladesh⁴. Many people were untraceable. This crime constitutes a grave security concern in Bangladesh. This dissertation paper will analyze critically the existing legal functions that are related to the practice of enforced disappearances is a practice that violates human rights. On the other hand of the human rights and Bangladeshi constitution, this is relevant, to figure out how these legal functions relate to Forcible disappearance⁵. There is a high probability that the fate of a person who has disappeared will never be revealed, and that their fate will remain an unsolved mystery. However, it cannot simply be said that a person has disappeared. The truth is that someone must know what has happened to them. It is clear that somebody is responsible, but they are all too often never prosecuted. Even so, the victim and their family have a right to justice and compensation⁶.

1.2 Research Question

It is the purpose of the research paper to analyze the scenario of "Enforced Disappearance" within international human rights law and the legal provisions of Bangladesh, as well as its limitations relating to it. Although this research paper is limited to a few questions, the purpose will be to answer these questions to accomplish the objectives of this study.

- To what extent the issue of enforced disappearance has been addressed in the international human rights law and the laws of Bangladesh?
- What are the limitations of the laws relating to enforced disappearance in the international and domestic context?

⁴ “Legal Aid and Human Rights Organization - Ain O Salish Kendra (Ask)” <https://www.askbd.org/ask/wp-content/uploads/2014/08/Human-Rights-Violation-Report-2013.pdf> accessed November 6, 2022

⁵ Ibid

⁶ Van Schaack, “Crimen sine Lege: Judicial Lawmaking at the Intersection of Law and Morals”, 97 Georgetown Law Journal (2008), p. 97 & 119 <https://core.ac.uk/download/pdf/149264394.pdf> accessed November 7, 2022

1.3 Research Justification

The law and institutional mechanisms associated with enforced disappearances in Bangladesh have not been studied in an in-depth review, to gain a deeper understanding of the practice and theory behind the phenomenon from the perspective of relevant provisions; the present study seeks to fill in some of the gaps. This paper seeks to explore and analyze the existing legal and institutional contexts that govern enforced disappearances under international law. It also analyzes violations of basic human rights in the existing laws in Bangladesh, and the international human rights commission's approach to human rights. It also identifies setbacks in the mechanisms and provides recommendations to overcome them.

1.4 Research Methodology

In general, this study takes an approach grounded in a theoretical approach using data and information systematically collected and analyzed in a systematic manner. This serves as a framework for the study. To complete this dissertation, I used qualitative methods. Although the study uses qualitative methods, it relies heavily on critical analysis loopholes. For the sources, relevant literature reviews have been conducted including relevant books, journals, review abstracts, published articles, laws and other available resources searched on this issue. References have been cited using the OSCOLA format throughout this research paper.

1.5 Literature Review

Dr. Ali Riaz, the Centre for Governance Studies (CGS) advisory board. His article⁷ was published in March 2022, named on “Where are they?” the enforced disappearance allegations have been documented by different national and international human rights groups for more than a decade. It was also recommended that the law relating to law enforcement agencies be amended as well as that the National Human Rights Commission be re-established, which will include representatives from human rights organizations, journalists, and the legal profession. In every Enforced disappearance incident, he suggested proper investigation and proposed an investigation team with

⁷ Dr. Ali Riaz, “Where Are They?” <https://cgs-bd.com/cms/media/documents/3167569e-c0ea-438b-a821-2d8309733cfe.pdf> accessed November 7, 2022

the government personnel and representatives of national, and international human rights organizations, and civil society in this regard.

Mateo Corrales Hoyos published a research paper named “Addressing the Crimes of Torture and Enforced Disappearances in Latin America: Achievements and Challenges from a Human Rights Perspective⁸” According to this research, international and domestic pressures are insufficient to address gross violations of torture and enforced disappearances. A complex interaction between treaties, case law, laws, and state pressure at the international, regional, and domestic levels is necessary to change state behavior about human rights.

Md. Raisul Islam Sourav published an article named “Enforced Disappearance: An Undefined Crime In Bangladesh⁹” according to his article “The majority of enforced disappearances are unsolved, and law enforcement agencies have repeatedly denied involvement. An international convention was adopted to eliminate this crime. In some international conventions, it is also considered a crime against humanity. However, the right to life is one of the most fundamental rights guaranteed by the Bangladesh constitution, which is being violated by this crime. Victims' families and the whole society are affected. To stop further consequences, Bangladesh needs to sign the International Convention for the Protection of All Persons from Enforced Disappearance as soon as possible”.

1.6 Limitations of the Study

My research work should be interpreted with some important limitations. This issue might have been able to get a better outcome only if there are no time limitations. This research work is based on a short number of resources. In Bangladesh, enforced disappearance has limited articles and journals which was come during research work. I have included articles, laws, organizations, and journals to provide context for points made in the research but with this limited number of studies and articles, this research work is done with extreme care.

⁸ Mateo Corrales Hoyos, “Addressing the Crimes of Torture and Enforced Disappearances” (*Global Politics Review* May 19, 2019) <https://ideas.repec.org/a/gpr/journal/v5y2019i1-2p5-62.html> accessed November 7, 2022

⁹ Md. Raisul Islam Sourav, “Enforced Disappearance: An Undefined Crime in Bangladesh.” https://www.researchgate.net/publication/281897723_Enforced_Disappearance_An_Undefined_Crime_in_Bangladesh accessed November 7 2022

1.7 Chapter Outline

Chapter 1 discussed the general concept and background of enforced disappearance, research question, research justification, research methodology, literature review and limitations of the study.

Chapter 2 contains background and definition of enforced disappearance in international law and national law, aspects of International Convention of to Protect All Persons from Enforced Disappearance (ICPPED), importance of the international conventions, conceptual issues related to enforced disappearance etc.

Chapter 3 discusses about the enforced disappearance and the laws of Bangladesh.

Chapter 4 contains some critical analysis overview of existing legal and institutional mechanism.

Chapter 5 concludes this research by suggesting some recommendations.

Chapter Two

Enforced Disappearance in International Law and Bangladesh

2.1 Background

Defining enforced disappearance in international law in this chapter, including the protection provided by the International Convention. Then, it will discuss the aspects and importance of International Convention to Protect All Persons from Enforced Disappearance (ICPPED). After that it refers some conceptual issues related with forced disappearance. On Rule.98 Of the ICRC mentioned and discussed about the instrument of Bangladesh and lastly it discussed the practice of enforced disappearance in international and local context.

2.2 Defining Enforced Disappearance in International Law and National Law

The act of enforcing disappearances is a serious violation of human rights. It is considered a crime against humanity when it is systematic and perpetrated against civilians. According to the Article 2¹⁰ of the International Convention for the Protection of All Persons from Enforced Disappearances, "Enforced disappearance" refers to a deprivation of liberty through arrest, detention, abduction or any other form by agents of the State or by individuals or groups acting under the state's authorization, support, or acquiescence when a person or group acts in an unlawful manner. The deprivation of liberty is followed by a refusal to acknowledge it or a concealment of the fate or whereabouts of the lost person, which means that the person is no longer protected by the law. In this way, it refers to a situation where a person has been arrested, detained, or abducted, followed by a refusal to acknowledge that person's fate after being arrested, detained or abducted¹¹.

¹⁰ "International Convention for the Protection of All Persons from Enforced Disappearance" (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced> accessed November 13, 2022

¹¹ "What Is Enforced Disappearance?" (Hafiza Merkezi) <https://hakikatadalethafiza.org/en/what-is-enforced-disappearance> accessed November 13, 2022

By the middle of the twentieth century, Disappearances by force were a common occurrence during those times, during the Nazi occupation of Europe, these practices were carried out on a large scale. The crime is regarded as a crime against humanity. To protect all persons from forced disappearance, the United Nations Security Council in December 2006 issued the United Nations Convention for the Protection of All Persons from Enforced Disappearance. This was a result of the growing prevalence of this crime in the global community. As a result of this convention, it will come into effect on December 23, 2010. The Convention has only been implemented into the national laws of a few states so far. Among its objectives are preventing enforced disappearances, finding the truth when they do occur or an incident occurs, punishing the perpetrators, and providing a safe environment for victims and their families. An additional legal relevance of this agreement as a result it not only assures the safety of the victims and their families, but also organizes the inquiry, investigation, and punishment of this heinous crime. War and political instability are exceptional circumstances that may result in forced disappearances¹². Under Bangladeshi criminal law, the scope is limited, but under this Convention, victims are compensated. As well as properly defining the crime of enforced disappearance, this Convention specifies the necessary steps that must be taken by a state to prevent it from happening, minimize its occurrence, and allow an appropriate investigation against the perpetrators to ensure the rights of the victims¹³. Article 2¹⁴ of the Convention defines enforced disappearance as refers to an event in which a person is abducted, arrested, or detained by members of the state.

The Convention for the Protection of Persons from Enforced Disappearances, which has been adopted by the United Nation for the protection of people from enforced disappearances. A set of criteria constitutes the basis for understanding enforced disappearances in terms of these criteria¹⁵:

- i. There have been arrests, confinements, abductions, or other forms of liberty deprivation.

¹² Sourav MRI, "Enforced Disappearance: An Undefined Crime in Bangladesh" (April 30, 2016) <http://dspace.daffodilvarsity.edu.bd:8080/handle/20.500.11948/1453> accessed November 16, 2022

¹³ "Human Rights Situations That Require the Council's Attention" (*United Nations*) <https://digitallibrary.un.org/record/3879518> accessed November 16, 2022

¹⁴ "International Convention for the Protection of All Persons from Enforced Disappearance" (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced> accessed November 16, 2022

¹⁵ *Ibid*

- ii. Individuals or groups of people carry out this behavior with the approval and assistance of state agencies.
- iii. As a result of this behavior, the missing individual's fate or whereabouts are kept confidential.
- iv. There is no protection from the law for the consequences of the disappearance of a person.

Furthermore, this Convention stipulates that under Article¹⁶ 6(1) (a) and (b) of the Convention, any person who commits, commands, or aids in an enforced disappearance is guilty of the crime, as well as any superior who is aware or deliberately ignores facts that make it evident or supervises subordinates who are committing an enforced disappearance. Therefore, forced disappearance violates human rights and may conflict with many other crimes, including:

- i. Rights to life, safety, and liberty of individuals¹⁷
- ii. It is prohibited to torture or punish anyone in an inhumane manner¹⁸
- iii. Detention conditions must be humane¹⁹
- iv. Free movement is a fundamental right²⁰

The Constitution of the People's Republic of Bangladesh, Act no. of 1972, provides that all the rights listed above can be directly or indirectly enforced by the courts.

The International Covenant on Civil and Political Rights protects the right to liberty and security. It forbids the holding or imprisoning of anyone without justification or in compliance with the law, according to Article 9²¹ of the Covenant. Due to the lack of attention given to forced disappearances by the police in Bangladesh, they are not considered crimes. To prevent this kind of crime and to protect everyone from forced disappearance, it is essential that Bangladesh ratifies the International Convention for the Protection of All Persons from Enforced Disappearance without delay and passes a law as soon as possible to protect all citizens.

¹⁶ Ibid

¹⁷ See, Article 32, “The Constitution of The People’s Republic of Bangladesh, ACT NO. OF 1972”

¹⁸ See, Article 35, “The Constitution of The People’s Republic of Bangladesh, ACT NO. OF 1972”

¹⁹ See, Article 33, “The Constitution of The People’s Republic of Bangladesh, ACT NO. OF 1972”

²⁰ See, Article 36, “The Constitution of The People’s Republic of Bangladesh, ACT NO. OF 1972”

²¹ “International Covenant on Civil and Political Rights” (OHCHR) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> accessed November 16, 2022

The status of the convention, 30 states that support the convention, and 90 have signed on to it. It should be noted that 12 states acknowledged and accepted the Convention's Committee on Enforced Disappearance (CED) as competent to receive and examine messages from individuals claiming violations of their rights under the Convention as well as communications from countries alleging that another state is not fulfilling and failing to meet its responsibilities under the Convention in relation to the enforcing of forced disappearances.

2.3 Aspects of the International Convention to Protect All Persons from Enforced Disappearance

Before the 2010 Convention, enforced disappearances weren't specifically addressed by a universal legal binding instrument²². The Rome Statute of the International Criminal Court was the only one that referred to enforced disappearances as crimes against humanity and provided for prosecutions and reparations²³. The 1992 UN Declaration on the Protection of All Persons from Enforced Disappearance, the 1996 Inter-American Convention, and customary international humanitarian law prohibited enforced disappearances before 2010. As a protection mechanism, this previously existing framework exhibited serious gaps and ambiguities. In spite of its flaws, the Convention fills some legal gaps.

- i. In the first place, the Convention makes enforced disappearance a crime under international law, which is unavoidable even in exceptional circumstances, such as war, political instability, or other crises.
- ii. Second, the Convention says national laws must criminalize enforced disappearances.
- iii. As for third, it enshrines the right of victims or their families to full and effective reparation and justice.
- iv. Lastly, the Convention created the Enforced Disappearances Committee, which started working in November 2011.

There was only one mechanism dealing specifically with enforced disappearances before the Convention entered into force, the UN Working Group on Enforced or Involuntary

²² Cassese, *International Criminal Law*, 2nd edition (OUP 2003), p. 80.

²³ Meron, *The Humanization of Humanitarian Law* (Brill 2000), pp. 94 & 239.

Disappearances²⁴. Based on reports of disappearances submitted by relatives of disappeared people or human rights organizations acting on their behalf, this Working Group continues to exist and performs important work as a rapid response mechanism when states are believed to have committed enforced disappearances.

The Convention defines 'victim' in greater detail than the 1992 Declaration and regional conventions. In the Convention, 'victim' refers to both the abducted person as well as anyone who has been harmed by enforced disappearances. Both direct and indirect victims are included in this definition, so family members can qualify as torture victims if they ignore the whereabouts of their relative²⁵. The UN Convention on Human Rights establishes, for the first time ever in a human rights treaty, the explicit right of each victim of enforced disappearance to know the precise circumstances of their disappearance, the progress and results of the investigation, and the fate of that person when he or she goes missing. Moreover, contrary to the 1992 Declaration and various human rights documents that have been written throughout history, the Convention also lists forms of reparation. It covers material and moral damages and other forms of reparation, like:

- i. In some cases, restitution;
- ii. The rehabilitation process;
- iii. Satisfaction, including restoring dignity and reputation;
- iv. Guarantees of non-repetition²⁶.

In this way, reparations follow the provisions of General Assembly resolution A/RES/60/147²⁷. This resolution emphasized the importance of an effective remedy in cases of gross violations of international human rights law and serious breaches of international humanitarian law. According to the resolution, all states are responsible for investigating violations of human rights, prosecuting those allegedly responsible if there's enough evidence, and punishing those found guilty if they're

²⁴ Berman & Clark, *State Terrorism: Disappearances*, in 13 Rutgers Law Journal (1982), pp. 531 <https://scholarship.libraries.rutgers.edu/esploro/outputs/journalArticle/State-terrorism-disappearances/991031611548904646> accessed November 16, 2022

²⁵ *Bazorkina v. Russia*, appl. no. 69481/01, 27.07.2006, and *Edriss El Hassy v. The Libyan Arab Jamahiriya*, No. CCPR/C/91/D/1422/2005.

²⁶ Article 24 of the Convention.

²⁷ United Nations, General Assembly resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (16th December 2005), available at <http://undocs.org/A/RES/60/147> accessed on November 16, 2022

found guilty. Additionally, it outlines obligations for states to cooperate with one another and to help international judicial organs investigate and prosecute crimes. In the pursuit of international justice, states should facilitate extradition, surrender offenders to other states and to appropriate international judicial bodies, offer judicial assistance, and cooperate. Supporting and protecting victims and witnesses is part of this, in line with international human rights legal standards, like the prohibition of torture²⁸.

The resolution also mentions rehabilitation²⁹, which should include medical care and psychological support, as well as legal and social services. The Convention is noteworthy because it stipulates that access to rehabilitation is also provided under the Convention. The United Nations Human Rights Treaties provide for various forms of reparation when a human right is violated, however this type of reparation, a novel form of reparation in international human rights treaties, is not provided for in any of these treaties at this time. It is only currently practiced by the Committee against Torture (CAT), which is responsible for monitoring torture and other cruel, inhuman or degrading treatment, which are prohibited.

²⁸ Ibid

²⁹ The possibility of rehabilitation was initially foreseen in the (GA Resolution A/RES/60/147) https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf accessed on November 17, 2022

2.4 Protecting all persons from Enforced Disappearance: Importance of the International Convention

From Mexico to Syria, from Herzegovina to Spain, from Bosnia and Bangladesh to Laos³⁰, it was a serious problem in all regions of the world. It was only under the Rome Statute of the International Criminal Court that crimes against humanity and enforced disappearance could be prosecuted and compensation awarded to victims³¹. Before 2010, enforced disappearances were also prohibited by two legal instruments, the 1992 A Declaration on Enforced Disappearances by the UN³² and the Inter American Convention on Forced Disappearance of Individual Rights is a treaty of the Organization of American States³³ which was adopted in 1994 and entry into force 1996. These legal frameworks fail to provide sufficient protection due to both ambiguity and gaps. While the present Convention has some flaws, it corrects some existing gaps.

As a first point, the Convention makes enforced disappearance an international crime. It reminds people that they are not subject to it, even in exceptional circumstances, like war or threats of war, internal political instability, or any other public emergency. This treaty is important because it obliges states to implement it into their national laws. Ensure that impunity does not prevail in enforced disappearances. Victims and their families are guaranteed access to justice and full and effective reparations. Until now, the only mechanism specializing in enforced disappearances was the UN Working Group on Enforced Involuntary Disappearances³⁴. After its establishment in 1980, this organization has received and evaluated reports about disappearances submitted by family members of disappeared persons or human rights organizations. Using this rapid response mechanism, the Working Group seeks investigations into cases where it believes

³⁰ “What Would You Do If State Authorities Made Your Loved One Disappear?” (*Amnesty International* November 23, 2022) <https://www.amnesty.org/en/what-we-do/enforced-disappearances> accessed on November 17, 2022

³¹ Ibid

³² UN General Assembly resolution 47/133 of (18 December 1992) [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_47_133_3.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_47_133.pdf) accessed November 17, 2022

³³ “Inter-American Convention on Forced Disappearance of Persons” <http://humanrightscommitments.ca/wp-content/uploads/2019/04/Inter-American-Convention-on-Forced-Disappearance-of-Persons.pdf> accessed on November 25, 2022

³⁴ “Working Group on Enforced or Involuntary Disappearances” (*International Justice Resource Center*, September 19, 2017) <https://ijrcenter.org/un-special-procedures/working-group-on-enforced-or-involuntary-disappearances/> accessed November 25, 2022

an enforced disappearance has occurred. Moreover, it ensures that state compliance with the Declaration on the Protection of All Persons from Enforced Disappearance is maintained³⁵.

In the same manner, the Committee on Enforced Disappearance (CED) may receive urgent requests from relatives, legal representatives, or others, asking the state party concerned to clarify the fate of the disappeared. In addition, it will be able to consider individual complaints from persons who claim to be victims of a violation of the Convention. It will only happen after states parties have recognized the Committee's competence³⁶. In addition, the Committee can monitor implementation and state parties' compliance with their obligations under the 2010 Convention.

2.5 Conceptual Issues Related to Enforced Disappearances

Human rights and international criminal law have both contributed to the evolution of the definition of enforced disappearance. According to Article 2 of the ICPPED, a universal definition of enforced disappearance was found in the draft of ICPPED on June 26, 2006. As a result, Article 2 of the Convention considers the following elements when defining enforced disappearances³⁷:

- i. Any form of deprivation of liberty to the vulnerable person, such as arrest, detention, abduction, etc.
- ii. It is carried out by agents of the state or by individuals or groups of individuals with state support and consent
- iii. It is followed either by denying that liberty was taken or by concealing the disappearance's fate
- iv. Disappeared persons are to be excluded from legal protection by this conduct.

On the other hand, it is of general agreement that the elements of this crime should, at the very least, include the following:

³⁵ Ibid

³⁶ "Individual Communications" (*OHCHR*) <https://www.ohchr.org/en/treaty-bodies/individual-communications> accessed November 29, 2022

³⁷ Patiño MCG, "Rights Related to Enforced Disappearance: New Rights in the International Convention for the Protection of All Persons from Enforced Disappearance" in Andreas von Arnould, Kerstin von der Decken and Mart Susi (eds), *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric* (Cambridge University Press 2020)

- i. In any case, depriving someone of their freedom
- ii. Unrecognition of freedom infringement
- iii. A disappeared person is excluded from all universal rights, due to the two above elements
- iv. An act committed by the State or the State's acquiescence led to the person's disappearance.

There are several basic characteristics of the offence which are relevant to Bangladesh's context, including the following:

- i. Authorities do not provide proper direction in relation to the disappearance of people.
- ii. Their response is always to deny the occurrence and impose blame on others.
- iii. It harasses affected families by asking them to go to other agencies
- iv. A long list of pleas is shown by the concerned authority over a period.

In general, the above indicators are consistent with the common scenario regarding persons disappearing in Bangladesh. A clear example of this offence can be seen, for instance, on a badminton court. In this case, players from each side are always much more likely to pass the badminton ball to the opponent side rapidly and frequently. This will force the rival to commit an error and win the point.

Several human rights are violated by enforced disappearance, which are specified in the universal documents, such as the right to individual security, the right to protection under the law, the right not to be deprived of one's liberty arbitrarily, and the right not to be tortured or treated cruelly and inhumanely³⁸. In addition, this practice poses a serious threat to human security, as it directly threatens the right of people to live freely without fear. In addition, it also threatens the rule of law enshrined in a democratic society. Due to these reasons, in addition to ICPED, several international organizations are also monitoring and contributing to eliminating enforced disappearances, including the United Nations Office of the High Commissioner for Human Rights (UNHCHR), Amnesty International, and Human Rights Watch³⁹.

³⁸ "Enforced Disappearance, Torture and Arbitrary Detention" <https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/enforced-disappearance-torture-and-arbitrary-detention/> accessed on November 29, 2022

³⁹ "Universal Declaration of Human Rights" (*United Nations*) <http://www.un.org/en/documents/udhr> accessed December 1, 2022

Chile's supreme court Sandoval case and the decision of Sandoval⁴⁰ the Supreme Court has ruled for the first time that the amnesty law does not apply to convictions and sentences for enforced disappearances. In the case⁴¹ of the Supreme Court of Chile, forced disappearance is an ongoing crime until proof of the victim's death can be established. The Amnesty Law does not apply in this case. Limitation statutes and amnesties lead to impunity for the perpetrator. Even though the Statute of the International Criminal Court clearly provides, in Article 29, that "crimes within the jurisdiction of the court shall not be subject to any limitations period", it is silent when it comes to amnesties under its jurisdiction. Whether the application of an amnesty law in domestic legislation renders a state unable or unwilling to genuinely prosecute an offender may be determined by the Court. The Court of Appeal's decision that amnesty for enforced disappearances would defeat the purpose and object of the treaty is thus an innovative interpretation of the Constitution by a national court that deserves the Supreme Court's attention. Forced disappearance is an international crime, specifically a crime against humanity, according to the Court of Appeals. Among the legal consequences are individual responsibility and State responsibility, universal jurisdiction, extradition or trial obligations, and the inapplicability of statutes of limitation. A method of gaining benefit from executive or legislative action that may lead to impunity for a crime⁴².

⁴⁰ Lafontaine, Fannie; "No Amnesty or Statute of Limitation for Enforced Disappearances: The Sandoval Case before the Supreme Court of Chile," *Journal of International Criminal Justice*, Vol. 3, Issue 2, 2005, pp. 469-484 <https://academic.oup.com/jicj/article/3/2/469/854266> accessed on December 1, 2022

⁴¹ The Sandoval Case; Case No. 517 of 2004, the Supreme Court of Chile.

⁴² Lafontaine F, "No Amnesty or Statute of Limitation for Enforced Disappearances: The Sandoval Case before the Supreme Court of Chile" (*Journal of International Criminal Justice* December 5, 2014) https://www.academia.edu/2476878/No_Amnesty_or_Statute_of_Limitation_for_Enforced_Disappearances_The_Sandoval_Case_before_the_Supreme_Court_of_Chile accessed on December 2, 2022

2.6 Rule 98 of the International Commission of the Red Cross States (ICRC)

According to Rule 98⁴³ of the International Committee of the Red Cross, those who are forced to disappear are subject to punishment. The practice of forced disappearance is prohibited. State practice enshrines this rule as a norm of customary international law applicable both to international and non-international armed conflicts. An enforced disappearance may violate or threaten to violate a number of customary rules of international humanitarian law, most notably the prohibition against arbitrary deprivation of liberty. While Bangladesh has some laws on other legal matters, it lacks a legal instrument on enforced disappearance, which is stated it has no legal instrument of Rule 98⁴⁴ on the website of the ICRC.

2.7 The Practice of Enforced Disappearance in International and Local Contexts

Enforced disappearance is not a newly discovered crime. It can be traced back to the Second World War, when thousands of people, mostly Jews, were secretly transferred to Germany from occupied territories. During that time, German authorities established the 'Gestapo', a secret police force, to prosecute the crime. These abducted people were either killed on the spot or sent to the 'Concentration Camps' to be brutally killed⁴⁵.

Enforced disappearances evolved as a systematic practice in Latin America after the Second World War, particularly in Guatemala between 1963 and 1966. It spread to other Latin American countries such as El Salvador, Chile, Uruguay, Argentina, Brazil, Colombia, Peru, Honduras, Bolivia, Haiti, and Mexico in the 1970s and 1980s. The internal situation of all these states was characterized by minor armed conflicts and tensions. Most of those who disappeared in those countries were members of political parties, trade union members, teachers, students, cultural leaders, and minorities⁴⁶. As well as Africa, Europe, and Asia, the offense was practiced during the same period. From 1970 to 2000, around 100,000 Latin Americans were abducted. If Asia,

⁴³ Rule 98 of the International Committee of the Red Cross (ICRC) https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule98 accessed on December 5, 2022

⁴⁴ No instrument on Rule 98 is no found. Available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_bd accessed on December 5, 2022

⁴⁵ Supra note 1

⁴⁶ Ibid

Africa, and Europe are added to this calculation, the total number of victims goes up to 300,000 to 500,000. However, the actual sum of the cases of enforced disappearance is more than that⁴⁷.

In Bangladesh, the practice of enforced disappearance has its historical roots back to the time of the War of Independence in 1971. There was a lot of intellectual activity going on during this period, in which several Bangladeshis, including university professors, writers, novelists, journalists, actors, doctors, engineers, lawyers, artists, and others, were the victims of enforced disappearances carried out by the then Pakistani Military Junta with the involvement of their local collaborators⁴⁸. This group of perpetrators brutally killed Bangladeshi intellectuals and ordinary people on the last day of the war. After a number of these abducted persons became missing, their dead bodies were later found at various locations in Dhaka or at close locations to their residences.⁴⁹ After independence, Zahir Raihan⁵⁰, a renowned Bangladeshi cultural activist and novelist, and Kalpana Chakma⁵¹, a human rights activist, were the two most prominent forced disappearance cases. However, enforced disappearances have become an alarming phenomenon in Bangladesh since 2006. Activists for human rights have been alerted to the fact that it has been so widespread that it has caused concern. According to statistics⁵², 30 victims were recorded in 2011, while only one was recorded in 2007.

⁴⁷ Ibid, see also, Lauritsch, Katharina; “We Need the Truth: Enforced Disappearance in Asia,” Equipo de Estudios Comunitarios y Accion Pisosocial (ECAP), Guatemala, 2010.

⁴⁸ “1971: Martyred Intellectuals’ Day in Bangladesh,” (The Daily Star, “Profiles of martyred intellectuals) (December 14, 2009), available at: <http://www.executedtoday.com/2009/12/14/1971-martyred-intellectuals-day-in-bangladesh/> accessed on December 10, 2022

⁴⁹ Mascarenhas, Anthony; *The Rape of Bangladesh, India*: Vikas Publications, 1972, pg. 111-120.

⁵⁰ Naadir Junaid; “Dreams devoured: The tragic disappearance of Zahir Raihan” *The Daily Prothom Alo*, January 30, 2021 <https://www.thedailystar.net/opinion/news/dreams-devoured-the-tragic-disappearance-zahir-raihan-2036093> accessed on December 10, 2022.

⁵¹ Kajalie Shehreen Islam, “The Disappearance of Kalpana Chakma,” *Star Weekend Magazine* 7 (25), June 20, 2008 <https://www.thedailystar.net/magazine/2008/06/03/hr.htm> accessed on December 10, 2022.

⁵² See, Odhikar Annual Human Rights Reports from 2009 to 2012 <https://odhikar.org/human-rights-report-2012-odhikar-report-on-bangladesh/> accessed on December 10, 2022

2.8 Conclusion

This chapter has presented definition of enforced disappearances, conceptual issues, aspects, and importance of ICPPED. The Rule 98 does not exist on the ICRC database of Bangladeshis legal instrument which was the major findings and lacking's after analyzing the things. Here, discussed about protection of all persons through international convention. Lastly, in this chapter talks about practice of enforced disappearances after World War II and in Bangladesh after liberation war.

Chapter Three

Enforced Disappearance and the Laws of Bangladesh

3.1 Background

Through laws and institutional arrangements related to constitutional provisions, as part of this chapter, it has some relevant referred articles of the Constitution of Bangladesh. Includes some criteria of the Code of Criminal Procedure, 1898, and the Penal Code, 1860, of Bangladesh and mentioned the Prevention of Oppression against Women and Children Act, 2000. Lastly it discussed about the grave violation of Human Rights.

3.2 Laws relating to forced disappearances under Bangladesh's Constitution

The Constitution of the People's Republic of Bangladesh governs all legal procedures in the country. Initiating rules, obligations, and even signing and ratifying international legal instruments must follow this supreme document. The Constitution of Bangladesh declares enforced disappearance as a crime under at least four articles⁵³. Among these is the protection of basic human rights in general, including civil and political rights. Other Articles include specific prohibitions against enforced disappearances. The Constitution states in Article 11: 'Democracy and Human Rights':

“The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed”.⁵⁴

Article 31 titled ‘Right to protection of law’ states:

“To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action

⁵³ Articles no. 11, 31, 32 and 33 (1). “The Constitution of People’s Republic of Bangladesh, Act no. of 1972”

⁵⁴ Article 11, “The Constitution of the People’s Republic of Bangladesh, 1972,<http://bdlaws.minlaw.gov.bd/act-367/section-24559.html> accessed on December 15, 2022

*detrimental to the life, liberty, body, reputation, or property of any person shall be taken except in accordance with law”.*⁵⁵

The Constitution states in Article 32 ensures the ‘Protection of right to life and personal liberty’ for a Bangladeshi citizen through the following declaration: *“No person shall be deprived of life or personal liberty save in accordance with law.”*⁵⁶ By declaring the procedures of arrest or detention, Article 33 (1) protects a person from illegal detention or even abduction: *“No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice”.*⁵⁷ Article 36 titled ‘Freedom of Movement’ states, *“Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh”.*⁵⁸

Thus, any person who becomes the victim of enforced disappearance is deprived of these four basic rights of the highest law of the country. A person is arrested by the law enforcement agencies according to the Constitution after being informed of the exact reason for the arrest. It would be a clear violation of the Constitution if law officers denied that rule to arrest or detain, regarding the protection of personal freedom, human rights, and arrest procedure. As a result, these law enforcers would be held accountable for violating the Constitution.

⁵⁵ Article 31, “The Constitution of the People’s Republic of Bangladesh, 1972”, <http://bdlaws.minlaw.gov.bd/act-367/section-24579.html> accessed on December 15, 2022

⁵⁶ Article 32 “The Constitution of the People’s Republic of Bangladesh, 1972”, <http://bdlaws.minlaw.gov.bd/act-367/section-24580.html> accessed on December 15, 2022

⁵⁷ Article 33(1) “The Constitution of the People’s Republic of Bangladesh, 1972”, <http://bdlaws.minlaw.gov.bd/act-367/section-24581.html> accessed on December 15, 2022

⁵⁸ Article 36 “The Constitution of People’s Republic of Bangladesh, 1972”, <http://bdlaws.minlaw.gov.bd/act-367/section-24584.html> accessed on December 15, 2022

3.3 Forced Disappearance under the criminal laws and other laws of Bangladesh

Forced disappearance, involuntary disappearance, or enforced disappearance is not a crime in Bangladeshi law. Under Article 7(1)(i) of the Rome Statute⁵⁹, involuntary disappearance is a domestic crime. Therefore, if the act doesn't fit the Rome statute's definition, the state has sole jurisdiction for prosecute. The Parliament of Bangladesh has set several criminal provisions and they are largely based on British legal practices from the nineteenth century. A few of these laws are indirectly related to enforced disappearances.

3.3.1 The Penal Code of 1860

The 'Penal Code of 1860' has sections 359, 362, 363, 364, 367 and 368 that define abduction, describe various purposes of abduction and kidnapping, and give punishments for it. Kidnapping and abduction provisions in the Penal Code of 1860 may nevertheless be applicable⁶⁰ and such laws prohibit kidnappings and abductions as well as the detention of people without a warrant.

According to the section 359, two types of kidnapping exist: those from Bangladesh and those from lawful guardianships. According to the section 362, anyone who forcefully or deceptively induces another person from their place of residence is said to abduct them. According to the section 363, An individual who kidnaps a person from Bangladesh or from his legal guardianship is liable for seven years' imprisonment, as well as a fine. According to the section 364, When a person is kidnapped or abducted in order to be murdered or to put them in danger of being murdered, they will face life imprisonment or rigorous imprisonment for a period of up to ten years, and they will be fined. According to the section 367, If an abductor kidnaps or abducts anyone to subject them to grievous hurt, slavery, or unnatural lust of another, or knows that such person is likely to be subjected or disposed of in such a way, they shall be subject to imprisonment for up to ten years and fines. According to the section 368, If someone knows they have been

⁵⁹ "Rome Statute International Criminal" <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> accessed December 20, 2022

⁶⁰ Huq, Penal Code, 5th ed. (Anupam Gyan Bhandar 2010)

kidnapped or abducted and conceals or confines them, they will be punished in the same way as if they had kidnapped or abducted them with the same intention or knowledge.

A kidnapping can be classified into two types under section 359, kidnapping from Bangladesh and kidnapping from a lawful guardianship. Someone who carries someone out of Bangladesh without their consent, or that of a legal representative, is kidnapping them. Taking or enticing a minor or someone of unsound mind out of the custody of their lawful guardian is kidnapping. It's punishable by seven years in prison and a fine for kidnapping. If the kidnapping is with the intent to murder, the prison sentence can be increased to ten years or life. A murder after an abduction is punishable by death or life in prison, under section 302 of the Penal Code. In addition to that, if the kidnapping or abduction is committed with the intention of forcible confinement, the punishment is seven years in prison plus a fine.

The practice of enforced disappearance is commonly understood as an offence committed directly or indirectly⁶¹. According to these criminal laws, kidnapping and abduction do not cover the activities of law enforcers. This means that these laws don't directly apply to enforced disappearance in Bangladesh.

⁶¹ See, the universal definition of enforced disappearance provided by ICPPED in 2006.

3.3.2 The Code of Criminal Procedure, 1898

Another law directly affects enforced disappearances in Bangladesh. Section 54(1)⁶² of the 'Code of Criminal Procedure 1898' outlines the legal procedures that must be followed by law enforcement personnel when they arrest somebody without having a warrant to do so. There are nine conditions for arresting someone without a warrant.

Section 54 (1) states: Any police-officer may, without an order from a Magistrate and without a warrant, arrest-

Firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;

Thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

Sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

Seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

⁶² Ministry of Law, Bangladesh, "The Code of Criminal Procedure 1898," Part III: General Provisions, Chapter XVI of Arrest, Escape and Retaking, Section 54 (1), March 22, <http://bdlaws.minlaw.gov.bd/act-75/section-14518.html> accessed on December 22, 2022

Eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);

Ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

In Bangladesh however, law enforcement agencies have reportedly taken advantage of Section 54 (1) of this Act by using it to commit enforced disappearances and enforced detentions. Law enforcement members are allowed by this law to arrest or detain any person at any time without showing the reason for the arrest or detention.⁶³

3.3.3 Other Laws

A person can be punished for kidnapping a child under the age of ten so it can be killed or subjected to grievous harm, slavery, or sexual abuse, or he or she can be imprisoned for seven to fourteen years, or even hanged to death or life imprisonment⁶⁴. Additionally, if a person kidnaps or abducts a woman to force her to marry someone against her will, or to force or seduce her to have sexual relations, the punishment is death, life, or imprisonment between ten and twenty years along with a fine⁶⁵.

⁶³ “Section 54 and 167 of CRPC: Some Recommendations” (*BLAST’s mission is to make the legal system accessible to the poor and the marginalized.*) <https://www.blast.org.bd/issues/criminaljustice/269> accessed on December 24, 2022

⁶⁴ Sections 6, 7 & 12 of the Prevention of Oppression against Women and Children Act, 2000 (Bangladesh).

⁶⁵ Section 5 of the Prevention of Oppression against Women and Children Act, 2000 (Bangladesh).

3.4 Grave Violation of Human Rights as well as National and International Laws

The practice of enforced disappearance is also a cumulative violation of human rights⁶⁶. The Republic's duty to ensure the safety of every citizen's life and property. Furthermore, the government has a responsibility to protect the rights of citizens that are guaranteed by the Constitution⁶⁷. ICCPR Articles 6 and 2 require Bangladesh to guarantee its people's right to life and to provide prompt and effective reparations for violations. Furthermore, it is required to align its legislation with the ICCPR⁶⁸. According to the Constitution of the People's Republic of Bangladesh: every citizen has an inalienable right to enjoy the protection of the law, and to be treated according to the law, and only the law will do, wherever they are, and every other person within Bangladesh for the time being. It's especially important to follow the law and do nothing that harms a person's life, liberty, body, reputation, or property⁶⁹. On the other hand, there is another Article in the Constitution that states: no one shall be deprived of his or her life or personal liberty in accordance with law except as required by law⁷⁰. This has not been implemented and this most fundamental right continues to be repeatedly violated with complete impunity, in spite of those rights being most fundamental. The Universal Declaration of Human Rights, 1948 prohibits Government from arbitrary arresting with its clear-cut text as it includes: "no one shall be subjected to arbitrary arrest, detention, or exile" As a result of forced disappearances, every right to freedom from illegal arrests was violated⁷¹. As a matter of fact, each enforced disappearance is a violation of our right to be free from illegal arrests and harassment⁷². It is stipulated in Article 14 of the covenant that state parties must ensure all persons charged with a

⁶⁶ Ratner, Abrams & Bischoff, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, 3rd ed. (OUP 2009), pp. 128-29

⁶⁷ Ibid

⁶⁸ Md Raisul Islam Sourav, 'Enforced Disappearance: An Undefined Crime in Bangladesh' [2015] Vol.7(4) *International Journal of Business, Economics and Law*, p122

⁶⁹ Article 31, "The Constitution of the People's Republic of Bangladesh, 1972", <http://bdlaws.minlaw.gov.bd/act-367/section-24579.html> accessed on December 24, 2022

⁷⁰ Article 32, "The Constitution of the People's Republic of Bangladesh, 1972", <http://bdlaws.minlaw.gov.bd/act-367/section-24580.html> accessed on December 24, 2022

⁷¹ Article 9 "Universal Declaration of Human Rights" (*United Nations*) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed on December 25, 2022

⁷² Lauterpacht, *The Law of Nations and the Punishment of War Crimes*, in 21 *British Yearbook of International Law* (1944), p. 58. https://heinonline.org/HOL/LandingPage?handle=hein_journals/byrint21&div=9&id=&page accessed on December 25, 2022

criminal offense receive a fair and public trial, and the process shall run 'without undue delay.' It is also required in the covenant that Bangladesh must protect the freedom of expression⁷³

The law enforcement authorities had detained the suspect at the time of the illegal arrest without any warrant of arrest issued by any court of law. It is a clear violation of the Constitution that they did not inform him about the grounds for his arrest, did not bring him before a Magistrate Court⁷⁴. ICCPR prohibits the grave violations of rights outlined above, and Bangladesh has ratified that treaty. According to the ICCPR, Bangladesh must ensure a fair and public trial for anyone charged with a criminal offense, as well as protecting freedom of expression. In addition, Bangladesh is a signatory to the Convention Against Torture (CAT). The Bangladesh government must ensure that anyone alleging torture has the right to complain to and have his case investigated impartially by competent authorities under CAT.⁷⁵

3.5 Conclusion

In this chapter, Bangladeshi Constitution with the relevant laws regarding enforced disappearance, which include the Penal Code of 1860 as well as the Code of Criminal Procedure of 1898 and the Prevention of Oppression against Women and Children Act, 2000. Examine the grave violations of human rights. Globally, forced disappearances are one of the most heinous crimes because they are committed by state agencies, either directly or indirectly. The state must take steps to end the practice of enforced disappearance by respecting, protecting, and fulfilling individuals' rights.

⁷³ Article 19 “International Covenant on Civil and Political Rights” (*OHCHR*)
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
accessed on December 25, 2022

⁷⁴ Arfan Ahmed, “Laws Relating to Arrest without a Warrant in Bangladesh, India and Pakistan: A Comparative Analysis” (*Southeast University Journal of Arts and Social Sciences*)
https://www.seu.edu.bd/seujass/downloads/vol_03_issue_01_Jun_2020/SEUJASS-Vol03Issue01-11.pdf accessed
on December 26, 2022

⁷⁵ Dr. Mohammad Shahabuddin, “The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance” (March 2013)
http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/348ec5eb_22f8_4754_bb62_6a0d15ba1513/Study%20Report%20ICCPR.pdf accessed on December 28, 2022

Chapter Four

Analysis of the current legal and institutional mechanisms

4.1 Introduction

There is an overview of both national and international laws in this chapter, and analysis of current status of the existing legal instrument and analysis of section 54 of the Code of Criminal Procedure, 1898. In this chapter has some relevant case reference through analysis from international perspectives and lastly it was discussed about the prevention of forced disappearance under CED.

4.2 A Critical Review of the Existing legal and institutional mechanism

In Bangladesh, enforced disappearance has increased due to the lack of legal instruments that protect against it. The Government of Bangladesh has not yet signed and ratified ICCPED to bind itself to international legal obligations against forced disappearance. On December 20, 2006, the United Nations General Assembly adopted Resolution A/RES/61/177 outlining the ICCPED policy on enforced disappearance. As part of the Convention, the practice of enforced disappearance is defined universally, investigations into cases of enforced disappearance are required, and the offenders must be punished. States are all signatory parties to the Convention and are required to follow its rules and procedures. The legal and institutional frameworks must be in place to eliminate the practice of forced disappearances within the states.

In addition, domestically, there is a lack of specific laws relating to enforced disappearance, due to a disregard for international obligations. After filing a case of enforced disappearance, law enforcement agencies begin their investigation as if the case were an ordinary kidnapping. The victims are most likely to remain untraced forever or to be found dead after they are gone, while kidnapped persons are most likely to return after the kidnappers have fulfilled their demands⁷⁶. The law-enforcement agencies should not apply the legal procedures from cases of kidnapping or abduction to enforced disappearance cases.

⁷⁶ Tamanna Khan; "An ominous Trend," The Star 14 (763), February 03, 2012, <http://www.thedailystar.net/magazine/2012/02/01/cover.htm> (accessed on December 28, 2022)

Bangladesh's rule of law is failing due to frequent allegations of involuntary disappearances. Every citizen's right to life and property belongs to the Republic. As a constitutional body, it's also responsible for protecting citizens' fundamental rights⁷⁷. There are a lot of fundamental rights that are grossly violated by the government of Bangladesh when it detains people without due process.

The Constitution states that:

*“Everyone has an inalienable right to enjoy the protection of the law, and to get treated according to it, and only according to it. This applies to every citizen anywhere, and to every other person in Bangladesh for the time being, as well, and specifically, no action that damages a person's life, liberty, body, reputation, or property is permitted except when it's legal”.*⁷⁸

In reality, this fundamental right is repeatedly violated. The government has violated these two articles by not protecting and treating its citizens according to the law. Victims have been detained by law enforcement without warrants, which is illegal. In such cases, law enforcement doesn't tell the arrestee why they're being arrested, they don't bring it before the nearest Magistrate Court, and they don't even let him talk to a lawyer. These elements are clearly in violation of the Constitution⁷⁹.

Bangladesh's law enforcement agencies are alleged to have used Section 54 (1) of the Code of Criminal Procedure 1898 to justify enforced disappearances, which talks about the rules concerning the arrest and detention of individuals without a warrant. According to that section of the Criminal Procedure Code, law enforcement agencies have the authority to arrest and detain on suspicion alone. When that happens, the person must obey the laws of the country as well as go with the law enforcement officers in order to comply with the laws of the country. Under that particular section of the Criminal Procedure Code, law enforcement members have impunity⁸⁰. The description that was provided by the eyewitnesses about the outlook of the offenders in most

⁷⁷ Listed in Part III of the Constitution of the People's Republic of Bangladesh.

⁷⁸ Article 31, “The Constitution of The People's Republic of Bangladesh” (ACT NO. OF 1972)

⁷⁹ Article 33(2), “The Constitution of The People's Republic of Bangladesh” (ACT NO. OF 1972)

⁸⁰ “Section 54 of the Cr. P. C. and Abusing the Law.” (*The Lawyers & Jurists* July 6, 2011)

<https://www.lawyersnjurists.com/article/section-54-of-the-cr-p-c-and-abusing-the-law> accessed on January 1, 2023

of the cases of enforced disappearances actually matched the description provided by the law enforcement agencies. There are several human rights organizations claiming that law enforcement agencies in Bangladesh are directly involved in the practice of enforced disappearances, which are claimed by a number of such organizations⁸¹.

It has also been observed that there is a lack of cooperation between law enforcement agencies in dealing with cases of disappearances. This is among some of the agencies. A person may therefore experience some panic in the fear of the enforced disappearance of a family member if the RAB or DB Police arrest them, causing panic among the family members on the fear of enforcing the disappearance if a said arrest is made by RAB or DB Police.⁸² Due to inadequate legal measures while national human rights organizations, like NHRC, the government isn't doing anything about enforced disappearances. Therefore, this motionless role of the state may be known as a major factor contributing to the gradual increase of enforced disappearances in Bangladesh.

⁸¹ FIDH and Odhikar, “Bangladesh: Criminal justice through the prism of capital punishment and the fight against terrorism,” October 2010, p. 36. <https://odhikar.org/bangladesh-criminal-justice-through-the-prism-of-capital-punishment-and-the-fight-against-terrorism/> accessed on January 2, 2023

⁸² “About Odhikar” (*Protecting human rights in Bangladesh*) <https://odhikar.org/about-us/about-odhikar> accessed on January 2, 2023

4.3 An analysis of International Law

International human rights bodies have defined what constitutes torture when it comes to enforced disappearances. For example, the European Court of Human Rights examined an alleged violation of Article 3 of the ECHR on torture and other degrading or inhuman treatment in *Bazorkina v. Russia*⁸³. When it came to such a violation, the actual disappearance was not the key criterion; it was the authorities' responses and attitudes once they became aware of the problem. In this case, the court found that the mother suffered distress and anguish after her son disappeared and she wasn't able to find out what happened to him. As Article 3⁸⁴ prohibits cruel treatment, the way the authorities treated her complaints amounted to 'inhuman treatment'.

The UN Convention on enforced disappearances has become a reference for CAT. A key part of CAT is the requirement that states parties criminalize torture with appropriate penalties in their domestic laws and eliminate safe havens for torture perpetrators by creating all sorts of jurisdictions, including criminal jurisdictions, in accordance with Articles 5–9. When torture is involved in enforced disappearances, states are obligated to criminalize it. States have positive obligations to prevent, investigate, and punish perpetrators of enforced disappearances and torture under the jurisprudence of regional human rights courts like the ECtHR and the Inter-American Court on Human Rights. In the case of *Velasquez Rodriguez vs Honduras*⁸⁵, the latter court looked at Article 1(1) of CAT and examined the positive obligations it entails. States have two obligations under the Convention: First, they have to respect the rights and freedoms provided for by the Convention, and second, they have to guarantee everyone under their jurisdiction the right to exercise those rights. State must prevent, investigate, and punish all violations of the Convention's rights and, if possible, restore the violated rights and compensate for damage. During the case of *Edriss El Hassy vs. The Libyan Arab Jamahiriya* case, the UN Human Rights Committee focused on state party obligations and said it was crucial that states parties set up judicial and administrative mechanisms to deal with the allegations. State Parties can get in trouble for failing to investigate allegations of violation if they don't investigate them. States parties had a duty to investigate human

⁸³ *Bazorkina v. Russia*, appl. no. 69481/01, 27.07.2006, para. 139.

⁸⁴ *Ibid*, para. 142.

⁸⁵ *Velasquez Rodriguez vs Honduras*, Inter-American Court of Human Rights (IACrTHR (Ser. C) No. 4), 29 July 1988, available at: <http://www.refworld.org/docid/40279a9e4.html> accessed on January 2, 2023

rights abuses, especially enforced disappearances and torture, and also to prosecute, try, and punish those who committed them.

4.4 Forced disappearance and the Committee on Enforced Disappearance (CED)

As with the Committee against Torture (CAT), the Committee on Enforced Disappearance (CED) has a similar form and function. CED is made up of ten experts in the human rights field who serve on the committee independently and impartially. Within two years of accepting the Convention, it is required that each state party submit a report to the Committee about the initiatives they have taken to implement the Convention within the past two years. As a result of examining the report, the Committee will make general suggestions and recommendations to the state party. In addition, the Committee can transmit requests for urgent action to state parties sent by or on behalf of relatives of disappeared persons to clarify their fate and whereabouts. It can also undertake visits if it receives reliable information indicating a state party is seriously violating the provisions of the Convention. In addition, it can bring to the attention of the UN General Assembly situations of widespread or systematic enforced disappearances. Moreover, the Committee has developed and implemented an optional individual complaints system that individuals may use if they wish. The Committee can consider communications made by individuals or on their behalf claiming to have been victims of a violation of the Convention by a state party that accepts the Committee's competence. State parties may also submit communications to the Committee that claims another state party is failing to fulfill its obligations under the Convention if the state party concerned has agreed to the optional procedure.⁸⁶

⁸⁶ Md Raisul Islam Sourav, 'Enforced Disappearance: An Undefined Crime in Bangladesh' [2015] Vol 7(4) International Journal of Business, Economics and Law, p112

4.5 Conclusion

In this chapter, in considering any decision that needs to be made by the international community, it is important to consider the issues of human rights violations and forced disappearances diplomatically. As a result, donor agencies must ensure that all persons receive equal protection under the law and must refrain from kidnapping or torturing people because of their political identity. To stop the growing phenomenon of enforced disappearances, every country must sign the Convention for the Protection of All Persons from Enforced Disappearance as soon as possible and implement it fully in their own domestic legislation.

Chapter Five

Conclusion

5.1 Major Findings

In most cases, state agencies are responsible for forced disappearances around the world. The state acts as a patron of crime, whereas it is responsible for protecting the rights of all human beings to life and liberty. Forced disappearances must be ended by setting policies to protect and respect individuals' rights not to be subjected to enforced disappearances. Currently, there is no legal instrument in place in these countries that can be used to prosecute the criminals in order to prosecute them for the crimes they have committed.

For Bangladesh until a specific law is passed, it will be very difficult to eradicate this crime from the country due to the lack of a legal framework. In a liberal interpretation, courts do not have jurisdiction to punish anyone. Although the Constitution of the Republic guarantees the right to life and personal liberty, a new law is needed to prevent and punish such crimes.

When a member of a family has disappeared, they are often unable to find closure and come to terms with the absence of their loved one emotionally. They suffer from severe psychological distress, sometimes leading to physical illness. There is no way to keep children from experiencing these kinds of anguish. Missing parents, siblings, or other members of the family can adversely affect their educational performance and social behavior⁸⁷.

5.2 Recommendation

Criminal offenses should be tried by the criminal justice system; they should not be punished outside of the due process of law by security forces. In the case of the serious human rights violation, the government should take action right away. Victims should be immediately brought before the court by the responsible law enforcement agency in whose custody they are held. All people should be given equal protection of the law by the state, and donor agencies should ensure

⁸⁷ “Enforced Disappearances: Questions and Answers” (*Amnesty International* August 10, 2021) <https://www.amnesty.org/en/documents/ior51/010/2011/zh> accessed January 5, 2023

that no person is kidnapped or tortured for merely his political identity. There needs to be a push for Bangladesh to stop enforced disappearances and show its commitment by ratifying the International Convention for the Protection of All Persons from Enforced Disappearance immediately and by producing and implementing its domestic legislation in line with the convention's provisions. Taking steps to respect, protect and fulfill the rights of people not to be subjected to enforced disappearance is how states can put an end to enforced disappearance. Also, states need to deal with impunity and make sure the bad guys are brought to justice⁸⁸. Accordingly, in order to carry out its mandate to assist States in meeting their obligations under the Declaration⁸⁹ of Human Rights and in its report, the Working Group makes specific recommendations for preventing and punishing enforced disappearances, as well as ensuring adequate reparations, where necessary. The recommendations consider the transnational nature of migrants' disappearances, as well as obstacles families face in seeking truth and justice.

The International Convention for the Protection of All Persons from Enforced Disappearance should be ratified by Bangladesh. Furthermore, Bangladesh should accept that the Committee on Enforced Disappearances has the authority to hear complaints from individuals and state parties under Articles 31 and 32. In addition, it should make sure the Convention is implemented into national law. While making any decision about Bangladesh, the international community needs to take human rights violations and disappearances into account⁹⁰.

⁸⁸ “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> accessed on January 5, 2023

⁸⁹ OHCHR, “Enforced or Involuntary Disappearances: Commission on Human Rights Resolution: 2004/40”, 19 April 2004, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/E-CN.4-RES-2004-40.pdf> accessed on January 5, 2023

⁹⁰ Md Raisul Islam Sourav, 'Enforced Disappearance: An Undefined Crime in Bangladesh' [2015] Vol.7(4) International Journal of Business, Economics and Law, p112

5.3 Conclusion

As migrants disappear voluntarily or involuntarily, it is becoming an increasingly common occurrence, and the international community has not yet dealt with them effectively. Several themes have been included in the Working Group on Enforced or Involuntary Disappearances (WGEID) study, which was presented at the United Nations Human Rights Council in September 2017, which will undoubtedly be of interest to states as well as civil society, such as associations that support migrants and families of missing people⁹¹.

It is important to understand that forced disappearance is a continuous crime, and it cannot be resolved until the disappearance itself is resolved, that is, until the victim is located, or when the State provides a satisfactory explanation as to what has happened to the victim. As a matter of fact, in addition to government officials who are directly or indirectly involved in the enforced disappearance of migrants, abductions that are carried out by private actors can also be attributed to the State if the government officials have authorized or agreed to them a posteriori, even after many years have passed⁹². The states should also ensure that the rights of families of missing migrants are implemented more effectively. This is because distance, administrative complications, and language barriers hinder their pursuit of truth and justice. The crime of forced disappearance of migrants is transnational, which makes inter-State cooperation in areas like prevention, investigation, and punishment, as well as reparation processes, crucial⁹³.

⁹¹ UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration, 28 July 2017, A/HRC/36/39/Add.2, <https://www.refworld.org/docid/59bfb3aa4.html> accessed 7 January 2023

⁹² WGEID, “General Comment on Enforced Disappearance as a Continuous Crime”, www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf accessed on January 7, 2023

⁹³ “Protection of Migrants from Enforced Disappearance: A Human Rights Perspective” https://internationalreview.icrc.org/sites/default/files/irrc_99_905_7.pdf accessed January 8, 2023

Bibliography

Books

1. Andreas von Arnould, Kerstin von der Decken, Mart Susi, “The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric” (Cambridge University Press 04 January 2020)
2. Herbert W. Briggs, “The British Year Book of International Law” (Oxford University Press 1994)
3. María Clara Galvis Patiño, “New Rights in the International Convention for the Protection of All Persons from Enforced Disappearance” (Cambridge University Press 04 January 2020)
4. Tullio Scovazzi and Gabriella Citroni, “The Struggle against Enforced Disappearance and the 2007 United Nations Convention” (Martinus Nijhoff Publisher 2007)
5. Ratner, Abrams & Bischoff, Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy, 3rd ed. (OUP 2009)
6. Cassese, International Criminal Law, 2nd edition (OUP 2003)
7. Meron, The Humanization of Humanitarian Law (Brill 2000)
8. Mascarenhas, Anthony; The Rape of Bangladesh, India: Vikas Publications

Legislation

1. The Penal Code Act, 1860
2. The Code of Criminal Procedure Act, 1898
3. The Constitution of The People’s Republic of Bangladesh Act, 1972
4. The Prevention of Oppression against Women and Children Act, 2000 (Bangladesh)

Case Laws

1. Bazorkina v. Russia, (Appl. no.69481/01, 27.07.2006)
2. Edriss El Hassy v. The Libyan Arab Jamahiriya (No. CCPR/C/91/D/1422/2005)
3. The Sandoval Case (Case No. 517 of 2004, the Supreme Court of Chile)
4. Velasquez Rodriguez vs Honduras (Inter-Am.Ct.H.R. Ser. C No. 4 1988)

Newspaper

1. Naadir Junaid, “Dreams devoured: The tragic disappearance of Zahir Raihan” The Daily Prothom Alo, January 30, 2021 <https://www.thedailystar.net/opinion/news/dreams-devoured-the-tragic-disappearance-zahir-raihan-2036093> (accessed on December 10, 2022)
2. Kajalie Shehreen Islam, “The Disappearance of Kalpana Chakma,” Star Weekend Magazine 7 (25), June 20, 2008 <https://www.thedailystar.net/magazine/2008/06/03/hr.htm> (accessed on December 10, 2022)
3. “1971: Martyred Intellectuals’ Day in Bangladesh,” (The Daily Star, “Profiles of martyred intellectuals) (December 14, 2009), available at: <http://www.executedtoday.com/2009/12/14/1971-martyred-intellectuals-day-in-bangladesh/> (accessed on December 10, 2022)
4. Tamanna Khan; “An ominous Trend,” The Star 14 (763), February 03, 2012, <http://www.thedailystar.net/magazine/2012/02/01/cover.htm> (accessed on December 28, 2022)

Journal

1. Van Schaack, “Crimen sine Lege: Judicial Lawmaking at the Intersection of Law and Morals”, 97 Georgetown Law Journal (2008), p. 97 & 119 <https://core.ac.uk/download/pdf/149264394.pdf> accessed November 7, 2022
2. Mateo Corrales Hoyos, “Addressing the Crimes of Torture and Enforced Disappearances” (*Global Politics Review* May 19, 2019) <https://ideas.repec.org/a/gpr/journal/v5y2019i1-2p5-62.html> accessed November 7, 2022
3. Md. Raisul Islam Sourav, “Enforced Disappearance: An Undefined Crime in Bangladesh.” <https://www.researchgate.net/publication/281897723> *Enforced Disappearance An Undefined Crime in Bangladesh* accessed November 7, 2022
4. Sourav MRI, “Enforced Disappearance: An Undefined Crime in Bangladesh” (April 30, 2016) <http://dspace.daffodilvarsity.edu.bd:8080/handle/20.500.11948/1453> accessed November 16, 2022

5. Berman & Clark, State Terrorism: Disappearances, in 13 Rutgers Law Journal (1982), pp. 531 <https://scholarship.libraries.rutgers.edu/esploro/outputs/journalArticle/State-terrorism-disappearances/991031611548904646> accessed November 16, 2022
6. Md Raisul Islam Sourav, 'Enforced Disappearance: An Undefined Crime in Bangladesh' [2015] Vol.7(4) International Journal of Business, Economics and Law
7. Arfan Ahmed, "Laws Relating to Arrest without a Warrant in Bangladesh, India and Pakistan: A Comparative Analysis" (*Southeast University Journal of Arts and Social Sciences*) https://www.seu.edu.bd/seujass/downloads/vol_03_issue_01_Jun_2020/SEUJASS-Vol03Issue01-11.pdf accessed on December 26, 2022
8. Dr. Mohammad Shahabuddin, "The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance" (March 2013) http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/348ec5eb_22f8_4754_bb62_6a0d15ba1513/Study%20Report%20ICCPR.pdf accessed on December 28, 2022

Articles

1. "International Day of the Victims of Enforced Disappearances" (*United Nations*) <https://www.un.org/en/observances/victims-enforced-disappearance> accessed November 6, 2022
2. Article 1, "International Convention for the Protection of All Persons from" <https://www.ohchr.org/sites/default/files/disappearance-convention.pdf> accessed November 6, 2022
3. "International Convention for the Protection of All Persons from Enforced Disappearance" (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced> accessed November 13, 2022
4. "Human Rights Situations That Require the Council's Attention" (*United Nations*) <https://digitallibrary.un.org/record/3879518> accessed November 16, 2022
5. "International Convention for the Protection of All Persons from Enforced Disappearance" (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced> accessed November 16, 2022

6. “International Covenant on Civil and Political Rights” (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> accessed November 16, 2022
7. United Nations, General Assembly resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (16th December 2005), available at <http://undocs.org/A/RES/60/147> accessed on November 16, 2022
8. The possibility of rehabilitation was initially foreseen in the (GA Resolution A/RES/60/147) https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf accessed on November 17, 2022
9. “What Would You Do If State Authorities Made Your Loved One Disappear?” (*Amnesty International* November 23, 2022) <https://www.amnesty.org/en/what-we-do/enforced-disappearances> accessed on November 17, 2022
10. UN General Assembly resolution 47/133 of (18 December 1992) https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_47_133.pdf accessed November 17, 2022
11. “Inter-American Convention on Forced Disappearance of Persons” <http://humanrightscommitments.ca/wp-content/uploads/2019/04/Inter-American-Convention-on-Forced-Disappearance-of-Persons.pdf> accessed on November 25, 2022
12. “Working Group on Enforced or Involuntary Disappearances” (*International Justice Resource Center*, September 19, 2017) <https://ijrcenter.org/un-special-procedures/working-group-on-enforced-or-involuntary-disappearances/> accessed November 25, 2022
13. “Individual Communications” (*OHCHR*) <https://www.ohchr.org/en/treaty-bodies/individual-communications> accessed November 29, 2022
14. “Enforced Disappearance, Torture and Arbitrary Detention” <https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/enforced-disappearance-torture-and-arbitrary-detention/> accessed on November 29, 2022
15. “Universal Declaration of Human Rights” (*United Nations*) <http://www.un.org/en/documents/udhr> accessed December 1, 2022

16. Lafontaine, Fannie; “No Amnesty or Statute of Limitation for Enforced Disappearances: The Sandoval Case before the Supreme Court of Chile,” *Journal of International Criminal Justice*, Vol. 3, Issue 2, 2005, pp. 469-484 <https://academic.oup.com/jicj/article/3/2/469/854266> accessed on December 1, 2022
17. “Rome Statute International Criminal” <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> accessed December 20, 2022
18. Lauterpacht, The Law of Nations and the Punishment of War Crimes, in 21 *British Yearbook of International Law* (1944), p. 58. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/byrint21&div=9&id=&page> accessed on December 25, 2022
19. Article 19 “International Covenant on Civil and Political Rights” (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> accessed on December 25, 2022
20. FIDH and Odhikar, “Bangladesh: Criminal justice through the prism of capital punishment and the fight against terrorism,” October 2010, p. 36. <https://odhikar.org/bangladesh-criminal-justice-through-the-prism-of-capital-punishment-and-the-fight-against-terrorism/> accessed on January 2, 2023
21. “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> accessed on January 5, 2023
22. OHCHR, “Enforced or Involuntary Disappearances: Commission on Human Rights Resolution: 2004/40”, 19 April 2004, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/E-CN.4-RES-2004-40.pdf> accessed on January 5, 2023
23. UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration, 28 July 2017, A/HRC/36/39/Add.2, <https://www.refworld.org/docid/59bfb3aa4.html> accessed 7 January 2023
24. WGEID, “General Comment on Enforced Disappearance as a Continuous Crime”, www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf accessed on January 7, 2023

25. “Protection of Migrants from Enforced Disappearance: A Human Rights Perspective” https://internationalreview.icrc.org/sites/default/files/irrc_99_905_7.pdf accessed January 8, 2023

Websites

1. “Legal Aid and Human Rights Organization - Ain O Salish Kendra (Ask)” <https://www.askbd.org/ask/wp-content/uploads/2014/08/Human-Rights-Violation-Report-2013.pdf> accessed November 6, 2022
2. Dr. Ali Riaz, “Where Are They?” <https://cgs-bd.com/cms/media/documents/3167569e-c0ea-438b-a821-2d8309733cfe.pdf> accessed November 7, 2022
3. “What Is Enforced Disappearance?” (Hafiza Merkezi) <https://hakikatadalethafiza.org/en/what-is-enforced-disappearance> accessed November 13, 2022
4. Rule 98 of the International Committee of the Red Cross (ICRC) https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule98 accessed on December 5, 2022
5. No instrument on Rule 98 is no found. Available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_bd accessed on December 5, 2022
6. “Enforced Disappearances: Questions and Answers” (*Amnesty International* August 10, 2021) <https://www.amnesty.org/en/documents/ior51/010/2011/zh> accessed January 5, 2023
7. Odhikar Annual Human Rights Reports from 2009 to 2012 <https://odhikar.org/human-rights-report-2012-odhikar-report-on-bangladesh/> accessed on December 10, 2022
8. “Section 54 and 167 of CRPC: Some Recommendations” (*BLAST's mission is to make the legal system accessible to the poor and the marginalized.*) <https://www.blast.org.bd/issues/criminaljustice/269> accessed on December 24, 2022
9. “Section 54 of the Cr. P. C. and Abusing the Law.” (*The Lawyers & Jurists* July 6, 2011) <https://www.lawyersnjurists.com/article/section-54-of-the-cr-p-c-and-abusing-the-law> accessed on January 1, 2023
10. “About Odhikar” (*Protecting human rights in Bangladesh*) <https://odhikar.org/about-us/about-odhikar> accessed on January 2, 2023