

EXTRAJUDICIAL KILLING IN BANGLADESH: A MURDER OF HUMAN RIGHTS

A. Z. M. Arman Habib

Faculty of Legal Studies, South Asian University, Akbar Bhawan, Satya Marg,
Chanakyapuri, New Delhi-110021, India
Corresponding author: : armanhabiblaw@gmail.com

Available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>
ISSN 1923-6654 (print) ISSN 1923-6662 (online).
Ontario International Development Agency, Canada. © Authors et al

Abstract: Bangladesh's record for human rights has deteriorated since 2004 after the introduction of the Rapid Action Battalion (RAB), an elite force added to the existing contingent of the law enforcing agencies. Every day in the getting up or in the fast reading of daily newspapers we watch the issue or occurrence was occurred in any place of Bangladesh that is killing by RAB or police of terror which is known to us as extra judicial killing. It is the duty of the welfare state to secure democracy, rule of law, press freedom and human rights. But it is matter of sorrow that law enforcing agency violate the human right with the knowledge of government of Bangladesh. From the year of 2004 has been continuously going on extra judicial killings by state there. Especially, Rapid Action Battalion (RAB) is the main state killers in the name of so-called 'crossfire' or 'encounter' or 'gunfight' in Bangladesh. But this cannot be allowed, because every person has some fundamental rights. All of the human rights organizations and concern association criticize this extra judicial killing. Extrajudicial killing is an offence which cannot be condoned by any peace-loving people.

The people of Bangladesh have 23 fundamental rights as enshrined in the Constitution. The fundamental rights are prescribed in the Bangladesh Constitution Article 26 to 47A. Article 31 and 32 of the Constitution of Bangladesh is intended to protect the fundamental rights. It guarantees the right to life and personal liberty and it is applicable to both citizens of Bangladesh and foreign nationals. But, in practice, the government of Bangladesh apparently fails not ensure the right to life or to comply with the Universal Declaration on Human Rights and the Constitution of Bangladesh. Extrajudicial killing has been an ongoing problem in Bangladesh. It's both a violation of Bangladesh's constitution and of the UN's Universal Declaration of Human Rights. But these types of killings still occur frequently in Bangladesh. Despite being a State Party to the International Covenant on Civil and Political Rights (ICCPR). According to Article 2 and 6 of the ICCPR, the Bangladeshi authorities have the obligation to ensure the right to life of the country's people and must provide prompt and effective remedies in cases where any violations takes place. Bangladesh also has the obligation to introduce legislation that is in conformity with the ICCPR, but continues to fail in this regard.

This research work seeks to precisely understand the extent of human rights violation caused by the different instructions in Bangladesh. This research substantiates significantly to the existing popular literature in the field of human rights. The paper emphasizes that extra-judicial killing is an infringement of the citizens' rights to life and state violation of International Human Rights Charter of which Bangladesh is a signatory. In this paper, an attempt has been made, mainly, to examine and assess the position and status of human rights (right to life) and extent of contradiction of criminal justice in Bangladesh in view of Bangladesh constitution and other related instruments when extrajudicial killing occurs repeatedly. Also deals question relating to protection of life and extent of its infringements by extrajudicial killing. The relevant cases have, therefore, been discussed and analyzed.

Keywords: Due process of law, Extra-judicial killing, Human rights, Presumption of innocence, Right to life

Introduction

Life is the most precious thing and nothing can be more fundamental than preservation of life (Huda, 1991). Hence, deprivation of life can follow only when it is needed for the security of the state or the security of the ordered society where individuals can freely enjoy life and liberty (Islam M. , 2012). Therefore, right to life is one of the basic fundamental rights recognized by every legal system. The constitution of Peoples' Republic of Bangladesh is not an exception to this generic international norm. 'Right to life' is ensured under Art.31 & Art.32 of Bangladesh Constitution signifying its fruitfulness expanding its wider to widest meaning through different chemistry. But the matter is that, there is frequent deprivation of life and personal liberty by way of extrajudicial killing in Bangladesh. When a person dies in the police custody or died by cross-fire of Rapid Action Battalion (RAB)¹ in Bangladesh, the question arise in our mind does it necessary for the state to take the life for ensuring the safety and security of the society? Or it is necessary to oppress the opposition party by the government by armed force. The United Nation's concept of human rights embraces this natural law concept of rights, rights to which human beings have been entitled since time immemorial and to which they will continue to be entitled as long as humanity survives. Thus, both the Universal Declaration of Human Rights and the two Covenants of 1966 the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights- assert in the first paragraphs of their Preambles that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." (Nations, 1960)

More recently, in specifying the guiding concepts for future human rights work within the United Nation's system, the General Assembly listed among those concepts the natural law idea that "human rights and fundamental freedoms of the human person and of peoples are inalienable." (Nations, Declaration on the Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, 1970). The right to life is the fundamental human right because it is a prior condition for realization of all other human rights. The failure to effectively investigate an extra-judicial killing violates the right to life. Effective investigation of an extra-judicial killing is an inseparable part of a state's duty to protect the right to life.

Audi Alteram Partem (No man shall be condemned unheard) is a basic principle of natural justice that means no one is to be condemned, punished, or deprived of his/her life or property in any judicial proceeding, unless he/she has had an opportunity of being heard. The principles of natural justice have been violated repeatedly by law-enforcement agencies of Bangladesh through so-called 'cross-fires'. On paper, a cross- fire is "the firing of guns from two or more different directions at the same time and passing through the same area." In practice, it has taken the shape of extra-judicial killings of alleged grievous offenders by law-enforcement agencies in the country. There are other terms like 'encounter', 'shoot-out' and 'gunfight' which is all terms synonymous with extra-judicial killings. It is used often by the government to remain in power while denying the opponents a chance to be heard or condemn the actions of the government. The tendency to embrace extra-judicial killings as a necessary evil has resulted in a steadily increasing mistrust of the legal and judicial system (Ahmed, 2010). This article explores and speculates about the illegal killing by the state mechanism or others, which is inconsistent with the supreme law of the land as well as the universal rights of the accused in international human rights covenants.

Concept of Human Rights

The words "human and rights" when used collectively, mean legal claims relating to man or mankind and such universal rights of human beings grew in mankind from ancient time (Hoque, 1997). These rights are so inherent in human persons that cannot live without them. In fact, men born with these rights which cannot be separated from them by any law or constitutions (Khan, 1995). It is therefore no surprise that till date there exists no universally accepted definition of human rights. Three distinguished theorists- Maurice Cranston of the London School of Economics, the late Hedley Bull of Oxford University, and **Louis Henkin** of Columbia Law School- have all advanced noteworthy but ambiguous definitions. Cranston has maintained, "A human right by definition is a

¹ On June 2, 2003, the Cabinet Committee on Law and Order decided to replace RAT with RAB-the Rapid Action Battalion. Eight months later, in March 2004, the government formally created RAB. The government presented RAB as a composite force comprising elite members from the military (army, air force and navy), the police, and members of Bangladesh's various law enforcement groups. Members were seconded from their parent organizations, to which they returned after serving time with the new force. RAB's operations are based on the Armed Police Battalions (Amendment) Act 2003, (Act No. XXVIII of 2003) passed by parliament in July 2003, amending the Armed Police Battalions Ordinance, 1979. The new law placed RAB under the command of the inspector general of the police and, by extension, the minister of home affairs.

universal moral right, something which all men everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is a human." (Cranston, 1973). **Hedley Bull** defined the term somewhat differently: "Human rights are rights attaching to human beings as such, rather than to this or that class of human beings. They are thought to be enjoyed by all human beings, to be enjoyed by human beings only and to be enjoyed by them equally." (Bull, 1979). Finally, **Louis Henkin** observed:

"Human rights are claims which every individual has or should have, upon the society in which he/she lives. To call them human suggests that they are universal: they are due of every human being in every human society. They do not differ with geography or history, culture or ideology, political or economic system, or state of development. They do not depend on gender or race, class or status. To call them 'rights' implies that they are claims 'as of right', not merely appeals to grace or charity, or brotherhood, or love; they need not be earned or deserved. They are more than aspirations, or assertions of 'the good', but claims of entitlements and corresponding obligation in some political order under some applicable law, if only in a moral order under a moral law." (Henkin, 1981).

Above definitions indicate certain universal core values of human rights:

These rights cannot be totally separated from edicts of morality; these entitlements are inherent in every human person merely for the reason that she/he is a human; and that realization of these claims depend on the positive law of the state. It follows therefore, that the emergence of the principle of respect for basic human rights and freedoms of man and the emergence of other norms and standards of international law relating to human rights does not mean that these rights are regulated by modern international law directly and have ceased to be an internal affair of the states.

What are Human Rights?

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status (Charter, 1945). We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

The Universal Declaration of Human Rights²:

Article 3.

Everyone has the right to life, liberty and security of person.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Fundamental Human Rights in Bangladesh: The Constitutional Provisions:

The Constitution of Bangladesh provides the fundamental rights³ of the citizens in the third chapter. Article 26 proclaims:

(1) All existing law inconsistent with the provisions of this part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.

(2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.

The constitution of Peoples Republic of Bangladesh guarantees the equality of all citizens before law (Article: 27), which is in essence the corner stone of a democratic polity and lays the basis for realizing fundamental human

² Universal Declaration of Human Rights' 1948, *Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948*

³ In *Jibendra Kishor v. The Province of East Pakistan*, the Supreme Court Pakistan held, "The very concept of a fundamental right is that being a right guaranteed by the constitution cannot be taken away by the law, and it is not only technically inartistic but a fraud on the citizens for the makers of a constitution to say that a right is fundamental but that it may be taken away by the law" The same view was reaffirmed by Pakistan Supreme Court in *State Vs. Dosso*.

rights. It rejects any kind of discrimination in terms of religion, race, caste, sex or place of birth. Women are given equal status with men in all spheres of the State and of public life. Articles: 31, 32 and 33 describe that citizens are entitled to enjoy the safeguards as to arrest and detention, protection of the law and treated in accordance with law and not deprived of life or personal liberty except in accordance with law, Article: 35 ensures fair trial in criminal prosecution⁴. Articles: 36, 37, 38, 39, 40, 41 illustrate the provision of freedom of movement, freedom of assembly, freedom of assembly, freedom of thought and conscience, and of speech, freedom of profession or occupation and freedom of religion. However, some restrictions may be imposed in conferring the rights. Above all the fundamental rights described in Bangladesh Constitution resemble very effectively the principles inscribed in the UN Universal Declaration of Human Rights and provide a legal basis for citizens for a free and fair environment in the national polity (Hussain Mohammad Ershd v. Bangladesh, 2001).⁵

Concept of Extrajudicial Killing?

Before discussing any matter regarding extra judicial killing we have to precisely understand the meaning of extra judicial killing. Though there is no legal definition of an extrajudicial killing, if a death is caused by a law enforcement official without following the legal rules or due judicial process, it can be considered extrajudicial.

That which is done, given, or affected outside the course of regular judicial proceedings. Not founded upon, or unconnected with, the action of a court of law, as in extrajudicial evidence or an extrajudicial oath (The free dictionary).

An Extrajudicial Killing is the killing of a person by governmental authorities without the sanction of any judicial proceeding or legal process. Extrajudicial punishments are by their nature unlawful, since they bypass the due process of the legal jurisdiction in which they occur. Extrajudicial killings often target leading political, trade union, dissident, religious, and social figures and may be carried out by the state government or other state authorities like the armed forces and police. Killings committed outside the judicial process by or with the consent of public officials, other than as necessary measures of law enforcement to protect life or as acts of armed conflict carried out in conformity with the rules of international humanitarian law (Rodley, 2009).

Extrajudicial killing is defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples (Sinaltrainal v. Coca-Cola Co., 2009). Now, since the formation of the elite Rapid Action Battalion (RAB) in March 2004, such killings are again on the rise and are being categorized under a new vocabulary of "crossfire," "extrajudicial killings," "encounters," etc. The term also includes illegal executions or killings by law-enforcing agencies or death in custody. It is also said that death, which are not executed by the order of the court in accordance with the laws, are designated as extra-judicial killing (Rashid, 2005).

Historical Background of Extrajudicial Killing in Bangladesh before Formation of RAB

The extrajudicial killing is not a new concept in present time. It has a dark history from the birth of Bangladesh many people's died by extrajudicial killing. Some extrajudicial killing makes a dark history in the history of Bangladesh. Right after the independence, we find many members of Jasad and Purba Banglar Sharbohara Party⁶ had been killed in the hands of the Jatiyo Rakkhi Bahini.⁷ In 1972 the Bangladesh government formed the Jatiyo Rakkhi Bahini (National Defense Force) and given it the status of an elite force⁸. It worked parallel to the regular army intended to recover arms from civilians and to insulate the regime against military coups and other armed challenges to its authority. By creating Rakkhi Bahini, Lal Bahini, Sheccha Shebok Bahini unleashed an unbearable reign of terror killing 40000 nationalists and patriotic people without any trial (Bureau of Democracy, Human Rights, and Labor, 2008).

⁴ A man should not be punished prior to conviction.

⁵ In the case the court held that, Universal declaration of human rights or Convents unless incorporated in domestic law are not enforceable in national courts. But national courts may draw upon those principles if domestic laws are not inconsistent with those.

⁶ Purba Banglar Sarbahara Party (Bengali for 'Proletarian Party of East Bengal') is a communist party in Bangladesh. The party played a role in the independence struggle of the country. In the early 1970s it engaged in armed struggle supporting the new Bangladeshi state. Since then its political fortunes have dwindled, having suffered from several waves of internal divisions. The group remains active, and still carries out violent attacks against its opponents.

⁷ Jatiyo Rakkhi Bahini (English- National Defence Force) was an elite para-military force formed on the 8th instant of February, 1972 by the government led by Bangabandhu Sheikh Mujibur Rahman by an order commonly known as 'Jatiyo Rakkhi Bahini Act, 1972' after the liberation war of Bangladesh. It was an auxiliary force of police which turned into a private army loyal only to Bangabandhu Sheikh Mujibur Rahman.

⁸ Jatiya rakkhi bahini Act [President's order no. 21 of 1972, as amended by act XI of 1974]

The four national leaders and Liberation War heroes, who were brutally murdered inside the Dhaka Central Jail in 1975, The four national leaders, who led the country's independence war when Bangabandhu Sheikh Mujibur Rahman was detained by Pakistani junta, were sent to jail after the gruesome killing of Father of the Nation along with most of his family members on August 15, 1975. The four celebrated sons of the soil-Syed Nazrul Islam, Tajuddin Ahmed, A H M Quamruzzaman and Captain Mansur Ali-- were shot dead following repeated bayonet charges on the fateful day, less than three months after the August 15 massacre (Jail Killing Case, 2009).

In late 2002 the government of Bangladesh issued an executive order that launched a drive to arrest “wanted criminals” and recover “illegal arms”. The order was aimed at curtailing a rapid rise in cases of murder, extortion, kidnapping, and crimes against women by warring gangs that were allegedly linked to members of both the major political parties. Codenamed Operation Clean Heart, it comprised of army, police, village defence force, and border security personnel (Ashrafuzzaman, 2006).

Operation Clean Heart, an anti-crime operation that ran nationwide from October 2002 to January 2003, led to the death of approximately sixty people, the maiming of around three thousand individuals, and the arrest of more than forty-five thousand (Bulletin, 2003). On 9 January 2003 the day Operation Clean Heart was wound up the Government of Bangladesh promulgated an ordinance indemnifying the armed forces and the assisting police forces from any actions consequential upon the actions under Operation Clean Heart, including deaths and search and seizure of property (Operation Clean Heart: Bangladesh’s Dirty War, 2003). The ordinance precludes any move to seek justice in courts for human rights violations during the countrywide clampdown on crime. It was placed before Parliament on 27 January 2003 and on 24 February 2003 it passed an indemnity law in accordance with Article 46 of the constitution.⁹

Human Rights and Bangladesh Scenario

“Where there is a rule of law, resultantly the people hold confidence in the ability of state institutions to provide justice and security,” (Chaudhry, 26 June 2011).

It is true that the State shall be bound to maintain Human Rights over the State. But it does not maintain strictly by any one of the country in the world. Gross violations of human rights can be found in third world states, many or most of which are ruled by military and family dictatorships or pseudo-democratic, autocratic regimes, and some under foreign occupation. There is hardly any respect for democratic practices, mutual tolerance and equal rights of others with different color, belief, culture or ethnicity. The leaders of these societies/countries are mostly corrupt and morally bankrupt and possessed with unlimited greed for power and money. They lack transparency and accountability in their actions and governance. This is true in many countries including Bangladesh.

The worst forms of human rights violations such as unlawful torture and killings, abduction, rape and other violent crimes happened during the war of liberation in 1971 (perpetrated mostly by the Pakistani army but also by some Bengali elements, estimated 1 million deaths) (Banglapedia). Lack of proper democracy and propensity for authoritarianism (during periods of both civil and military regimes) resulted in human rights abuses in varying degrees at different times. Unfortunately, no regime in power since 1972 has ever acknowledged its responsibility in this regard, and very little has been done to stop these practices. In recent years, the human rights situation in Bangladesh has deteriorated to an alarming stage. The government of Bangladesh has been violating the Constitution and Universal Declaration of Human Rights since 2004. According to Art 35(5) of the constitution of Bangladesh and Art.5 of the Universal Declaration of Human Rights, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” And according to Art.31 of the constitution of Bangladesh, “Everyone has the right to life, liberty and security of person.” For instance in case of Liaquat Hossain v. Pakistan (PLDPa) it was held by the court that-implicit in art-31 and 32 is the right to access to justice as a man cannot be said to have been dealt with in accordance with law unless he has a reasonable opportunity to approach the court in vindication of his right or grievance. But, in practice, Bangladesh does not ensure the right to life and has not complied with the Universal Declaration of Human Rights and the constitution of Bangladesh. A few human rights organizations in home and abroad have long been asking the government to stop the killings, terming them “extrajudicial.” Moreover, the High Court of Bangladesh, on June 29, 2009, asked the government to explain why killing people without a trial, in the form of extrajudicial killings, is not being declared as illegal, and why measures

⁹ The Joint Drive Indemnity Ordinance 2003 gave immunity from prosecution to all concerned personnel and officials for involvement in “any casualty, damage to life and property, violation of rights, physical or mental damage” throughout the 86-Day Tragedy.

are not being taken against the perpetrators (ASK, BLAST and others v. Bangladesh and others [‘Extra-Judicial Killing’ Case], 2009). After this ruling, we still haven’t seen anything happen.

Extra-Judicial Killing Casualties on Yearly Basis 2001-2013 (Odhikar, 2013):

Extrajudicial killings by the law enforcing agencies continued in 2013. The table below shows that extrajudicial killings by law enforcing agency from 2001 to 2013.

Table- 1

Year	RAB	Police	RAB-Police	Army	BGB Former BDR	Police BGB Former BDR	Total
2013	38	175	0	0	11	32	256
2012	40	18	2	-	2	-	62
2011	43	31	4	-	-	-	78
2010	68	43	9	-	1	-	121
2009	41	75	25	3	5	-	149
2008	68	59	15	-	2	-	144
2007	94	64	3	7	1	-	169
2006	192	144	1	-	6	-	343
2005	111	258	-	-	-	-	369
2004	77	133	-	1	6	3	220
2003	-	57	-	2	4	-	63
2002	-	33	-	39	4	-	76
2001	-	33	-	-	-	9	42
Total	772	1038	59	52	42		2092

“Crossfire” by the (RAB) Exploring the Extent of Human Rights Violation in Bangladesh

The Rapid Action Battalion (RAB) was established in 2004 to stop spiraling crime and alarming rise of the terrorism in Bangladesh. Since 2004, the RAB has flaunted its violent behavior as a way to intimidate and scare people (Bangladesh, 2010). At least 772 people were killed by RAB between its inception and 2013 (Report, 2013). They are responsible for widespread torture and killing the suspects in custody. The youngest victim was 14 years old, the oldest 65, and all were male (Report, 2013). The government of Bangladesh has defended RAB killings by saying the victims were “wanted criminals” or “top terrors” who died when they resisted arrest or were caught in “crossfire” between the force and criminal gangs. The government justifies the killings by using the term “crossfire,” which it refers to as gunfights between any alleged criminal group or “hardened” criminals and the RAB or police. The term “death in an encounter” is used in other countries to mean the same thing, but the term “crossfire” is preferred by law enforcement agencies in Bangladesh. The sinister connotation associated with the word demonstrates the utter powerlessness of the people facing extrajudicial killings that are taking place in Bangladesh (Islam, Extra-Judicial Killings in Bangladesh: Cross-fires or Violations of Human Rights?, 2010).

How Extrajudicial Killing Contradicts Criminal Justice?

“Any error of law can make the judge unaccountable in this world and the world hereafter,” (Chaudhry, 26 June 2011)

The fundamental purpose of criminal law and criminal justice system is to control crime, punish the offenders, prevent crimes, protect innocents, and to maintain a fair degree of cohesion and stability in society. While criminal law is broadly seen as a tool of social control, criminal justice system is an institutional framework to enforce criminal laws (Faruque, 2007). Without trial a criminal or a person cannot be convicted, whether he guilty or not. ‘Crossfire’ is an extra-judicial measure as it is in flagrant violation of national and international laws. Article 31 of the Constitution of Bangladesh states: “To enjoy the protection of 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 detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.” In addition, Article 32 states, “No person shall be deprived of life or personal liberty save in accordance with law.” Because of the seriousness of the deprivation of

life and personal liberty, the Constitution states this specific provision even though deprivation of life and personal liberty can be assumed to be covered under Article 31. No right is as basic and fundamental as the right to life and personal liberty and the exercise of all other rights is dependent on the existence of this unalienable right. The core essence of Articles 31 and 32 is also the right to access to justice and fair trial, which is denied outright in the face of extra-judicial recourse.

Despite this right being enshrined in the country's supreme law, it is being violated on a scale that requires the attention of the government and the international community, notably the Human Rights Council, which has to date failed to address the situation of rights in Bangladesh in any credible way. In cases of violations, there are provisions for the lodging of complaints with the police under Section 154 of the Code of Criminal Procedure, 1898, which states that:

“Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.”

However, when the police themselves, or other branches of law-enforcement, are the alleged perpetrators of abuses, such avenues for complaints are fully obstructed. This is the case in particular with the gravest abuses, notably extra-judicial killings. Typically, regarding extra-judicial killings, the police at the first hurriedly register a complaint of unnatural death. Such complaints are registered under Section 174 of the Code of Criminal Procedure-1898 as an “accidental or suicidal death” instead of a “homicidal death.” The same provision also empowers an “Executive Magistrate” to inquire into the incident. In all cases, the law-enforcement agents and the magistrates conspire to disguise the extra-judicial killings, notably by branding them as “crossfire” or “encounter” killings (Report H. R., 2009).

As a member of the UN, Bangladesh is signatory to many international human rights instruments like the Universal Declaration on Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). Article 3 of the UDHR states that, “Everyone has the right to life, liberty and security of person” whereas Article 10 states, “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” ICCPR carries similar provisions in Articles 6 and 14 to protect a person's rights to life and fair trial and to be presumed innocent until proved guilty according to the law. But Bangladesh government does not maintain those provisions.

Extrajudicial Killing, Violation of Presumption of Innocence:

The idea that people accused of criminal offences should be presumed innocent until proven guilty beyond all reasonable doubt is a core tenet of criminal law doctrine (Report H. R., 2013). One of the fundamental principles of criminal law in any legal system is that accused is presumed innocent unless proved guilty beyond reasonable doubt after litigation has been conducted in a competent court under due process of law, which, inter alia, includes, accuser's right of defense. Art. 14.2 of International Covenant on Civil and Political Rights, 1966, which Bangladesh acceded to in 2000, states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Presumption of innocence is the vital right of the accused because he possesses some sort of dignity and honour as a human being and never ever he wants to lose it (Hossain, 2010). The principle of presumption of innocence implies two elements: a rule regulating the location and standard of the burden of proof and secondly a policy directive that the subject of a criminal investigation must be treated as innocent at all stages of criminal proceedings irrespective of the probable outcome of the trial (Schwikkard, 1998). The phenomenal rise of extra-judicial killing of ‘criminals’ as a populist device to solve ‘law and order’ problem by law-enforcing agencies like ‘operation clean-heart’ or cross-fire in last few years not only violate many cardinal principles of criminal justice including presumption of innocence and the right to be defended, but also remains a unrequited form of violation of the rights of a citizen. In fact, “cross fire” indicates a desperate attempt to keep crimes under control and points out serious failing of our criminal justice system (Alam, 2005).

Extrajudicial Killing Violates the Right to Life and Right to Protection of Law in Light of Due Process of Law

The Holly Quran declares human life as sacrosanct. Allah said-

*“Do not take life which Allah made sacred, except just cause. If anyone slew a person unless it be a murder or for spreading mischief in the land, it would be as if he slew the whole people; And if anyone saved a life it would be as if he saved the life of whole people.”*¹⁰

Like Article 31 of the Constitutions of Bangladesh, Article 21 of the Constitutions of India provides that there shall not be any deprivation of life¹¹ or personal liberty except according to procedure established by Law. The American Constitution also prescribes prohibition on all deprivation of life, Laverty or property without due process of law.¹² The accused may know his allegations against him who may have reasonable opportunity to define himself (Islam M. , 2012). Article: 3 of Universal Declaration of Human Rights states, “Everyone has the right to life.¹³” The International Covenant on Civil and political rights states vividly the right to life.¹⁴

Due Process of Law is a basic principle in the American legal system that requires fairness in the governments dealing with persons. The term due process of law appears in the 5th and 14th amendments to the Constitution of the united States. These amendments forbid federal, state, and local governments from depriving a person of “life, liberty, or property without due process of law “.The supreme court of the united states has never clearly define these words and has applied them to a number of widely different situations. The idea of due process of law dates from the English Magna Carta of 1215. One article of this document promises that no man shall be deprived of life, liberty, or property except by the lawful judgment of his peers or by the law of land. Article 27 and Article 31 of the Constitutions of Bangladesh recognized the Due Process of Law.

The concept of due process has two aspects—procedural and substantive. The procedural due process makes it necessary that one whom it is sought to deprive of any right or liberty must be given notice of proceedings against him, must be given opportunity to defend himself (Islam M. , 2012).

The due process of law includes the follwing requirements:

- The law must be administered fairly
- A person must be informed of the charges against him and must be given a fair hearing.
- The person bringing the charges must not be allowed to judge the case.
- Criminal laws must be clearly worded so that they give adequate warning of the action prohibited.

Here we see that, according to the Due Process of Law extrajudicial killing not only violates the Right to Life and Right to Protection of Law but also contradicts the criminal justice system of a country.

Why extrajudicial killing seems to be a Murder of Human Rights, rather than violation Human Rights:

“It will be suicidal for the nation and the society to allow the law enforcement agencies to decide who should be killed on criminal charges. Extra-judicial killing must be stopped. Bring anyone to justice if accused of criminal charges, but no further killing in crossfire, please.” (Nazrul Islam Chowdhury, 2010).

Each case of encounter killing causes a fresh dent to democracy and the rule of law (Islam M. , 2010). The existing legal framework, as enshrined in the Constitution, does not allow encounter killing. Such a concept cannot co-exist with constitutionalism, rule of law and the principles of democracy (Islam M. , 2010). Decades after the independence of the country, it is unfortunate that many people in Bangladesh today still experience violations of their human rights that includes custodial torture, extra-judicial killing and various other abuses of authority and power (Islam M. , 2010). On the one hand, the government has guaranteed (the UN) a ‘Zero tolerance’ to extra-judicial killings, but on the other hand, it grants blatant impunity to the personnel of security forces who violates these rights (Islam M. , 2010). Every case of murder at the hands of the law enforcement agencies is an act of crime committed by the state and it is a negation of the principles of natural justice. Encounter killing or whatever euphemistic term we attribute to these murders, is a denial of justice to a suspect. It is a violation of the fundamental

¹⁰ The Holy Al-Quran 17:33, 5:55

¹¹ Life within the meaning of art-31 means something more than mere animal existence, *Munn v People of Illinois*, 94 us 113 (per field J) as cited in Mahmudul Islam, *Constitutional Law of Bangladesh*, Mulick Brothers, Dhaka, 2012. p.167.

¹² Fifth Amendment of American Constitution 1777.

¹³ Right to Life means “Right to necessary condition of life.” Francis Coralie Vs. Union of Delhi, AIR 1981 SC

¹⁴ The International Covenant on Civil and political rights, 1966, Article 6.

right and denial of the fundamental right to life. So by this sense we can say that extrajudicial killing seems to be a Murder of Human Rights, rather than violation Human Rights.

Arguments in favor of Extrajudicial Killing

The policy makers who give the power of crossfire to the elite forces most of the times pleaded that the weaknesses and lapses of the existing criminal justice system in the country could not be overcome overnight, and that, given the socio-political reality in the country, god-father backed and under-world oriented crimes would not be easy to deal with in any short-term duration. According to them crossfire is an easy process to suppress the criminals. But they do not think about the general people, what will happen when general people died under such crossfire. They are ready to give excuses that they acted in lawful self-defense, or suspect 'x' and 'y' were the victims of crossfire or the victims were the results of some en-counter or engagement or exchange of fire with armed goons. Immediate results are some relief in the community, for some hardened criminals fall in the line of fire. Another argument in favor of extrajudicial killing is that the criminal is so dangerous for the nation that security of the citizens and the state are in grave situation. The policy makers also claim that incidents of "crossfire" deaths are the result of RAB officers acting in self-defense. The government justifies the killings by using the term "crossfire," which it refers to as gunfights between any alleged criminal group or "hardened" criminals and the RAB or police. The most harmful and dangerous effect of these cross-firings is the hardening of the public mindset that tends to see such killings as an acceptable form of justice and a speedier alternative to the current judicial system.

Conclusion

Dr. Mizanur Rahman, Chairman of the National Human Rights Commission of Bangladesh on 9th February 2011 while addressing the inaugural ceremony of a seminar on Universal Periodic Review (UPR) follow-up and implementation organized by the Ministry of Foreign Affairs of Bangladesh and the Commonwealth Secretariat Expressed that, "Any extrajudicial killing is a sad thing and this is not tolerable." The most harmful and dangerous effect of these cross-firings is the hardening of the public mindset that tends to see such killings as an acceptable form of justice and a speedier alternative to the current judicial system. Following the Supreme Court's *suo moto* intervention and the NHRC's recommendation for the formation of an independent probe commission to investigate the extra-judicial killings, the government should have taken action without failure or delay, In order to establish the rule of law, the country immediately requires equal access to be provided to citizens to effective complaint mechanisms without any fear or manipulation. Criminal investigations should be efficient, impartial and independent from the regular police. The prosecution needs to be independent and permanent instead of the current practice of politicised recruitments followed by dismissals depending on which political party is in power. Judges occupying the judiciary's various branches need to exhibit competence and judicial skills and be supported with adequate resources. The deeply-entrenched system of corruption in the policing system must be rooted out as a priority. It is extremely damaging to the maintenance of law and order and requires significant reforms to be carried out. The importance of ensuring freedom of expression by allowing the media to express their opinions without any intimidation or threats of attacks, including the threat of being subjected to the fabrication of cases against them is a key component in the protection of human rights.

This paper try to emphasize that, whether a person is guilty in the eye of law but it is not fair that he will be punished without any justice. We cannot accept the ancient rule that is "**Blood for Blood.**" This paper is directly against the terrorism but as humankind a terror has right to take protection before the law and the law will be decided whether he is guilty or not. If he guilty he will be punished in accordance with law but not before trial. So in this sense the extrajudicial killings not only violate the human rights but also it is murder of human rights. So it is high time to say "**No more Extrajudicial Killing.**"

References

- [1] Ahmed, R. (2010, April 8). Representing 'Crossfire'; politics, art and photography. Dhaka, Bangladesh: New Age.
- [2] Alam, D. M. (2005, May 21). Cross-Examination of Crossfire. Dhaka, Bangladesh: The Daily Star.
- [3] Ashrafuzzaman, M. (2006, August). Laws without order & courts of no relief in Bangladesh. 5. Hong Kong: Asian Human Rights Commission. Retrieved October 22, 2014, from <http://www.humanrights.asia/issues>
- [4] ASK, BLAST and others v. Bangladesh and others ['Extra-Judicial Killing' Case], Writ Petition No. 4152 of 2009 (High Court Division 2009).
- [5] Bangladesh, S. O. (2010). *Outgoing NHRC chief recommends independent probe of the extrajudicial killings.* Retrieved October 23, 2014, from <http://www.savedbd.com/news>

- [6] *Banglapedia*. (n.d.). Retrieved October 23, 2014, from [www. Banglapedia.search.com.bd](http://www.Banglapedia.search.com.bd)
- [7] Bull, H. (1979). *Human Rights and World Politics*, in: R. Pettman (ed), "Moral Claims in World Affairs".
- [8] Bulletin, A. (2003). Dhaka: Ain o Sailash Kendra .
- [9] (2008). *Bureau of Democracy, Human Rights, and Labor*. Country Reports on Human Rights Practices,. Retrieved October 22, 2014, from <http://www.state.gov/g/drl/hrrpt/2008/sca/119132.htm>.
- [10] Charter, T. U. (1945).
- [11] Chaudhry, J. I. (26 June 2011). Key note address of seminar on criminal justice dispensation prosecution and investigation. Karach. Retrieved October 22, 2014, from <http://www.sja.gos.pk/JAS/seminar/speeches/keynote%20address%20cjp%20day%202.pdf>
- [12] Cranston, M. (1973). *What are Human Rights?*
- [13] Faruque, D. A. (2007, November). Goals and Purposes of Criminal Justice System in Bangladesh. *Bangladesh Journal of law, Special Issue*, 1.
- [14] Henkin, L. (1981). *Here and There*. Colum. L. Rev.
- [15] Hoque, M. (1997). *Human Rights to Liberty: Before and Now*. (H. R. Law, Ed.) Dhaka.
- [16] Hossain, M. S. (2010, July–December). Extra-Judicial Killing: Rights of the Accused under the Criminal Law of Islam and Contemporary Law. *ASA University Review*, 4 (2), 169-179 at 177.
- [17] Huda, S. (1991, June). 'Death Penalty – The Continuing Controversy. *Dhaka University Studies*, 2, p.139.
- [18] Hussain Mohammad Ershd v. Bangladesh, 2001 BLD (AD) 69 (2001).
- [19] Islam, M. (2010, January 18). Retrieved October 23, 2014, from <http://alaiwah.wordpress.com/2010/01/18/bangladesh-when-will-extrajudicial-killings-stop/>
- [20] Islam, M. (2012). *Constitutional Law of Bangladesh*. Dhaka: Mulick Brothers.
- [21] Islam, M. T. (2010). *Amarblog*. Retrieved October 23, 2014, from http://ahmedkhan89.blogspot.in/2012_05_01_archive.html
- [22] Islam, M. T. (2010). *Amarblog*. Retrieved October 23, 2014, from http://ahmedkhan89.blogspot.in/2012_05_01_archive.html
- [23] Jail Killing Case (High Court Division 2009).
- [24] Khan, H. U. (1995). *Democracy and Human Rights and Rule of law*. Dhaka: Humanist and Ethical Association of Bangladesh.
- [25] Mohajan, H. K. (2013). Human Rights in Bangladesh: Stresses on the Period of 2009 to 2012. *KASBIT Business Journal*, 6, 38-64.
- [26] Nations, U. (1960). *Declaration on the Granting of Independence to Colonial Countries and Peoples*.
- [27] Nations, U. (1970). *Declaration on the Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations*. UN.
- [28] Nazrul Islam Chowdhury, J. B. (2010, November 12). The Daily Star.
- [29] *Newage*. (2009). Retrieved October 23, 2014, from [newagebd: http://www.newagebd.com/2009/nov/23/nat.html](http://www.newagebd.com/2009/nov/23/nat.html)
- [30] Odhikar. (2013). *Total Extrajudicial killings from 2001-2013*. Odhikar Publication. Retrieved October 23, 2014, from <http://odhikar.org/wp-content/>
- [31] Operation Clean Heart: Bangladesh's Dirty War. (2003, February 15). Dhaka, Bangladesh: Human Rights Features . Retrieved October 22, 2014, from www.hrdc.net/sahrdc.
- [32] Rashid, B. H. (2005, June 18). Extra-judicial killings some issues . Dhaka, Bangladesh: The daily Star.
- [33] Report, H. R. (2009). *The State of Human Rights in Ten Asian Nations*. Asian Human Rights Commission (AHRC).
- [34] Report, H. R. (2013). *Continued Human Rights Abuses by Bangladesh's Rapid Action Battalion*. Human Rights Watch. Retrieved October 23, 2014, from <http://www.hrw.org/en>
- [35] Rodley, N. S. (2009). *The Treatment of Prisoners under International Law*. 252. Oxford: Oxford University Press.
- [36] Schwikkard, P. J. (1998). The Presumption of innocence: what is it? *South African Journal of Criminal Justice*, 11, 403.
- [37] *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. Fla. 2009) (2009).
- [38] *The Daily Star*. (2009, November 17). Retrieved October 24, 2014, from <http://www.thedailystar.net/>
- [39] *The free dictionary*. (n.d.). Retrieved October 20, 2014, from [http:// www. Legal-dictionary](http://www.Legal-dictionary).

About the author

A. Z. M. Arman Habib, LL.M. (1st Semester), Faculty of Legal Studies, South Asian University. Room No# 716, Akbar Bhawan, Satya Marg, Chanakyapuri, New Delhi-110021, India. E-mail: armanhabiblaw@gmail.com
Mobile No: 00917532080558.

