

Torture Responses in Bangladesh: The Way Forward

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Abstract: *Bangladesh is one of the state parties of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 popularly known as UN Convention against Torture. In accomplishment of her international obligations under this Convention for effective prevention of torture in normative and institutional segments, she is in headway with constant responses against torture. These responses necessitate commendation on numerous explicit techniques entail to vanquish these hard edges. The aim of this article, however, is to assist the concerned authorities of the government to have a draft outline on the overall viable ways out from the numerous snags encountered in custodial torture practices prevalent in Bangladesh.*

Keywords: Bangladesh, torture response and prevention, UN Convention against Torture, Torture and Custodial Death (Prevention) Act 2013, Law enforcement agencies and justice system, victim and witness protection, separation of powers.

1. Introduction

Custodial torture stemming from arbitrary arrest and remand, a global problem, has always been a serious concern for all in Bangladesh. In anti-torture efforts, under the UN Convention against Torture 1984,¹ states are playing cardinal roles and have responsibilities to comply with this Convention. In accordance with this compliance, the government in Bangladesh has already declared ‘zero tolerance’ against torture ‘in any form’ and ‘under any circumstance’. The movement for justice and accountability regarding torture is progressing in Bangladesh though the integer is not so high. Many matters are brought before Courts; culprits are facing trials, disciplinary actions and being punished.² Along with these, special

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¹ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

² The first Judgment and order of conviction and sentence under the Torture and Custodial Death (Prevention) Act, 2013 was pronounced on 9 September 2020, taking long six years after the victim was tortured to death in 2014. Mr. K M Emrul Kayesh the learned Judge of the Court of Metropolitan Sessions, Dhaka, pronounced the judgment. The then Sub Inspector Jahidur Rahman Jahid along with two other police officials, Assistant Sub Inspectors of Police Rashedul and Kamruzzaman Pintu were sentenced to imprisonment for life. The court further imposed fine of Tk. 1 lac each, in default, to suffer imprisonment for 6 months more. The other two accused of the case (Sumon and Rashed) were sentenced to imprisonment for seven years and the court

requirements of inputs covering both fields of norms and facts are needed from grass roots levels regarding torture and ill-treatment. In this regard, this article focuses what more Bangladesh as a State, could do to prevent torture effectively and maximize the impact of contemporary and forthcoming prevention activities within nation.

2. Torture Responses in Bangladesh

At present, Bangladesh *en bloc* with its international obligations under the United Nations Convention against Torture is measuring anti-torture regime within the country. Her compliances as a state party of the specified Convention are many. Among others, prohibition of torture as a norm of *jus cogens*, compliances in enacting and implementing legislations, review of policies, procedures and practices tagging on international standards in order to improve ‘the quality of access to justice for the victims of torture’³ are major concerns of the government. The country focuses prohibition of torture both in the normative and institutional areas. In the normative area, following her international obligations torture is finally criminalized in Bangladesh by the new Act named ‘Torture and Custodial Death (Prevention) Act, 2013’.⁴ Efforts like court’s attachment of various concerned government officials and Regulatory Impact Assessment Project known as RIA project launched for assessing future impacts of laws regarding torture are in line.⁵ Legislators and policy makers have started planning for a comprehensive strategy that coordinates all the loopholes between needs and services.⁶ Continuing processes of policy development and evaluating progresses for what the country should strive to in accordance with international standards regarding torture are currently the ultimate devotion of the country.⁷

further imposed fine of Tk. 20 thousand each in default to suffer imprisonment for 6 months more. See Lawyers Club Bangladesh.com, ‘*Hefazote Mrittu (Nibaron) Ain e Prothom Ray: Tin Police er Zaboijibon*’ (9 September 2020) <http://lawyersclubbangladesh.com/2020/09/09/?ndvRtZ-g_Zz-AvBt#-cO_/amp> accessed 9 September 2020. The court also ordered the three main convicts to pay monetary compensation of taka 2 lakh each for the victims’ family. See the Daily Star (online), Editorial, ‘A monumental verdict for human rights and dignity’ (11 September 2020) <<https://www.thedailystar.net/editorial/news/monumental-verdict-human-rights-and-dignity-1959297>> accessed 8 October 2020.

³ Human Rights Watch, 'Bangladesh: Heed UN Recommendations on Torture' (29 July 2019) <<https://www.hrw.org/news/2019/07/29/bangladesh-heed-un-recommendations-torture>> accessed 16 September 2019.

⁴ Odhikar, 'Torture' (2019) <<http://odhikar.org/torture/>> accessed 16 September 2019.

⁵ Raushan Ara, *Normative and Institutional Responses to Torture in Bangladesh* (PhD thesis, University of Dhaka, 2015).

⁶ OHCHR, 'Committee Against Torture examines the situation in Bangladesh' (July 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24866&LangID=E>> accessed 18 September 2019.

⁷ Raushan (n 5).

In relation to institutional sectors, responses are as regards investigation, interrogation, legal safeguards, victims and witnesses' protections and various reform programs of implementing strata. Enforcing corresponding duties of the State against abusive administrative indurations is also commendable.⁸ Government's blunt ignorance of the security forces request to exclude them from the scope of the Torture and Custodial Death (Prevention) Act 2013, clearly demonstrates that the government of Bangladesh is serious about eradicating torture. Various initiatives to resolve backlog of cases, strengthen judicial independence, reducing interferences of the government in judicial matters to zero, capacity building of law enforcement agencies, encouraging training institutes to reflect provisions of the Istanbul Protocol (*Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*), building new prisons to reduce prison overcrowding and making those of correction centers are projects among others that the authority likes to initiate.⁹ Assurances as to abuses of human persons ensuing specified standards are at first in line of priority of agendas of the government to provide. And for the first time, the country has decided to approve 'review procedure of the Committee against Torture' under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984¹⁰ which is commendable.

3. Verbatim Responses Regarding Torture

Genial responses in relation to torture in Bangladesh even if they rank at first-rates, the real depiction shows something else. Factual responses regarding torture in Bangladesh demonstrate documentation of widespread torture and other ill-treatment in custody by various security forces¹¹ in the names of 'self-defense', 'crossfire' or 'violent protests' are first in line.¹² With custody of every accused person assumptions of torture is fastened.¹³ In human rights violations by numerous law enforcement agencies, about half of all complaints alarmed torture accusations.¹⁴ Lack of effective investigation of allegations of torture and official statistics regarding convictions for torture append an impression

⁸ *ibid.*

⁹ OHCHR (n 6).

¹⁰ Human Rights Watch (n 3).

¹¹ OHCHR (n 6). Humayun Kabir Bhuiyan, 'Review of Bangladesh: UN Committee against Torture observations on Aug 9' (1st August 2019) <<https://www.dhakatribune.com/bangladesh/foreign-affairs/2019/08/01/review-of-bangladesh-un-committee-against-torture-observations-on-aug-9>> accessed 16 September 2019.

¹² Human Rights Watch (n 3).

¹³ Odhikar (n 4).

¹⁴ National Human Rights Commission Bangladesh, 'Annual Report 2015' (December 2015) <nhrc.portal.gov.bd/files/annual_reports/Annual_Report_English-2015> accessed 17 September 2019.

of impunity¹⁵ and sometimes zero accountability of the law enforcing agencies in Bangladesh.¹⁶ Repeated appeals of police forces to government for amending anti-torture law to be less prohibitive, also call obviously ending torture practices into question. However, in the normative area, with certain difficulties, Court's directives¹⁷ were implemented before passing the new law on torture i.e. the Torture and Custodial Death (Prevention) Act, 2013. Also various training programs were initiated to overcome those hurdles allied with implementation.¹⁸ But lamentably, regarding the special law on torture as specified, 160 cases of torture have been documented, regrettably, with a single completion of one case.¹⁹ Also in the middle of January 2013 and May 2024, Ain O Salish Kendra (ASK) has disclosed 'torture by law enforcement agencies resulting 138 deaths' and about 932 deaths in jail custody was informed through media.²⁰

However, in the institutional sectors,²¹ among other constructive responses, reforms in traditional colonial policing have already started though 'technical implementation of torture' exists in here and the probabilities of complete ban of it are very low. Among judicial officers, particularly the Judges of the Supreme Court are in the opinion of absolute prohibition of torture and devising bold stands against it.²² Nonetheless, situation is something different in the lower judiciary for various procedural difficulties and lack of functional judicial independence.²³ Here, focuses are for desirability of harsh treatment in certain cases and cannot

¹⁵ Odhikar, 'Civil Society Joint Alternative Report on Bangladesh Submitted to the Committee against Torture' (22 July-9 August 2019) <<http://odhikar.org/civil-society-joint-alternative-report-on-bangladesh-submitted-to-the-committee-against-torture/>> accessed 17 September 2019.

¹⁶ Bhuiyan (n 6).

¹⁷ *Bangladesh and others v BLAST and others* [particularly known as 'Section 54 Guidelines Case', or 'Rubel Killing Case' or 'Guidelines on Arrest and Remand Case'] 69 DLR (AD) (2017) 63.

¹⁸ OHCHR (n 6).

¹⁹ Human Rights Watch (n 3); The Daily Star (n 2).

²⁰ AMNESTY International, 'Bangladesh End impunity for torture and uphold victims' right to reparation' (26th June 2024) <<https://www.amnesty.org/en/latest/news/2024/06/bangladesh-end-impunity-for-torture-and-uphold-victims-right-to-reparation/>> accessed 6 October 2024.

²¹ Bangladesh as a State with all her three organs i.e. the Legislature, the Judiciary and the Executive is under international obligation under the UN Convention against Torture to eradicate torture. The term 'institutional sector' refers activities of all these three organs. NGOs are left apart since they have no international obligations though they are doing their jobs in their organizational capacities.

²² Raushan (n 5).

²³ US Embassy Dhaka, 'Bangladesh 2018 Human Rights Report' (11 March 2019) <<https://bd.usembassy.gov/wp-content/uploads/sites/70/Human-Rights-Report.pdf>> accessed 18 September 2019.

reach up to the mark to join this struggle against torture.²⁴ Moreover, there are government initiatives of considering loopholes and trying to make it up with various reform schemes like increasing the salary of judges, legislation regarding the appointment of judges, lessening executive meddling to nil etc.²⁵ But attempts to substitute responsibilities to various divisions of Ministries of the government and supervising aggrieved persons to take the lead on this struggle against torture rather than on the implementing strata in certain zones are nothing but assembling implementation part a hard thing to perform. Thus, factual responses of torture in Bangladesh are just in the beginning stage for anti-torture regime. Numerous actions are still required to be completed to fill various gaps between laws and practices.

4. The Way Forward: Amelioration of Anti-Torture Regime

States are under an obligation both under the treaty and in customary international laws not only to safeguard human rights but also to undertake measures in order to ‘ensure’²⁶ and ‘secure’²⁷ rights of individuals within the nation. Sanctioning responses of torture represent a change in the capacity of the State to control and punish those who are entangled in it. These led the state to take multiple initiatives affording comprehensive protections of human rights in various forms.²⁸ In protecting human rights, nevertheless, law enforcement agencies in Bangladesh are under serious allegations of custodial torture and ill-treatment that subsist in investigation and interrogation²⁹ making the victims and witnesses vulnerable designed for protection system. Distinctively, this follows an urgency of thorough schemes of government regarding reform of laws, safe enforcement and justice system. Hence, all the following recommended stairs like schemes for law enforcing agencies as well as systems, investigation and interrogation, victims and witnesses’ protections, comprehensive approaches of government to torture prevention and reform of laws and justice system will assist Bangladesh’s practices in upgrading her obligations regarding torture to international standards:

4.1 Schemes for Law Enforcement Agencies and Systems

²⁴ Raushan (n 5).

²⁵ OHCHR (n 6).

²⁶ International Covenant on Civil and Political Rights 1966, article 2(1); American Convention on Human Rights 1969, article 1.

²⁷ European Convention on Human Rights 1950, article 1; according to Article 1 of the American Convention on Human Rights 1969 the ‘undertaking is to give effect to the rights’.

²⁸ See the Inter-American Court of Human Rights in the *Velasquez Rodriguez Case*, Judgment of July 29 1988, Inter-Am. Ct.H.R. (Ser. C) No. 4 (1988), para 170.

²⁹ Odhikar (n 4).

Reforms regarding various schemes of the law enforcement agencies and systems are at first in line of priority of agendas of the government. Among the law enforcers there is an existing perception regarding torture that it is necessary for certain types of grave and sensitive offences, is the major slipup done by them in Bangladesh³⁰ since starting from the supreme law³¹ up to the special law on torture³² there is ‘complete and specific’ ban on torture. However, the rationale among others like lack of technological, logistic and training support centering enhanced treatment in interrogation can in no way justify torture practices. In view of the fact that many of torture activities happen in police custody before the formal custody actually took place. It is not laws but the ‘perception’ about torture and ‘procedural technicalities’ regarding torture practices that are making it absolute in nature in Bangladesh. Also ensuing ‘superior order’ sometimes is used as an excuse to commit torture by the law enforcers which can in no way be showed the door. Subordinate officials are under a duty to ‘disobey’ orders from their superiors to ‘apply any enhanced technique’ in interrogation. It is none from the outsiders but the law enforcing authorities from their core, need to fix the strategies of halting these sorts of abuses, so that, any one, before committing any torture in the name of harsh treatment will think twice. However, torture also endures from a mindset where ‘promotions and performance evaluations’ are in majority times based on conviction rates or percentage of cases solved. This psychological torture in the name of assessments over our law enforcers done by the criminal justice system put them lead to use enhanced techniques in interrogations on the accused resulting victimization of those suspects.

Hence, recommendations for law enforcement agencies in Bangladesh are among others that they, constantly in the performance of their duties, have to ‘respect and protect in real sense human dignity and uphold human rights of all, as, they bear faithful allegiance to the Constitution that upholds the rights of citizens guaranteed by it.’ Also they need to keep ‘welfare’ of the people in mind, always be ‘sympathetic and considerate’ towards them. They shall enforce laws ‘firmly and impartially, without fear, favor, malice or vindictiveness’. The law enforcers’ need to consider the ‘limitations’ of their powers and functions ‘always’ and use those forces ‘only to the extent’ required for the performance of their duties and ‘no further’. However, with these schemes it also needs to bear in mind that officials of the law enforcement agencies being humans deserve all the human rights according to their standards and obviously they should provide with all facilities that other public officials generally enjoy.

³⁰ U.S. Embassy Dhaka (n 22).

³¹ Constitution of the People’s Republic of Bangladesh 1972.

³² Torture and Custodial Death (Prevention) Act 2013.

It is important here to note that reforms should be prioritized within law enforcement through initiating ‘annual review of actions’ in order to understand the reality and progress of various reform initiatives. Among different strategies, there may be a ‘National Action Plan against Torture’ which will help to generate progresses in combating torture at law enforcing agencies and improving conditions of detention in their cells. Separate priority areas regarding torture may be included with in this plan in consultation with governmental and independent institutions, civil society and the general public. There will be pertinent ‘action points’ relating to identified thematic areas in priority concerning implementation. Also focuses will be on specified “goals, objectives, activities, responsible agencies, time frame and performance indicator” as done by the Government of Sri Lanka and many other countries. This action plan may be formulated either particularly or within the national action plan for the promotion and protection of human rights for certain specified years.³³

Also, there may be ‘creation of hotlines’ for the public to seek advice in pursuing ‘claims of torture’. This can be done through establishing ‘special Centers for Victims of Torture’ as Bangladesh is now doing for women and children through ‘National Helpline Center for Violence against Women and Children’ to afford instant services to victims and connects to appropriate agencies.³⁴ However, offices in the name of ‘The Center for Victims of Torture’ fetching world’s largest independent, non-governmental torture healing organizations are established within the Washington D.C., Atlanta, Ethiopia, Jordan, Kenya and Uganda providing among others similar help to the victims of torture.³⁵

Moreover, a ‘Peer Review system’³⁶ that is used for the sensitization of the police, may be started. In this system after the victim has been questioned by a police detective, a second detective can inquire the victim about how he was dealt with by the first one. These responses may be used as a basis for further training and taming the police treatment of civilians. Also there may be a ‘service oriented approach’ in the law enforcement agencies by assigning a staff at every level of law enforcement. This particular staff will serve a liaison to crime victims and

³³ Ministry of Foreign Affairs Sri Lanka, ‘National Action Plan for the Protection and Promotion of Human Rights 2017-21’ (November 2017) <<http://www.mfa.gov.lk/index.php/en/home/national-action-plan-2017-2021>> accessed 11 September 2019.

³⁴ National Helpline Center, ‘National Helpline Center for Violence against Women and Children’ (June 2012) <http://nhc.gov.bd/index.php?option=com_content&view=article&id=8> accessed 11 September 2019.

³⁵ Center for Victims of Torture, ‘Our Story’ (2019) <<https://www.cvt.org/who-we-are/contact-us>> accessed 11 September 2019.

³⁶ Christian A. Meissner and Allison D. Redlich, ‘Techniques and Controversies in the Interrogation of Suspects: The Artful Practice versus the Scientific Study’ in J. Skeem, K. Douglas, and S. Lilienfeld (eds), *Psychological Science in the Courtroom: Controversies and Consensus* (Guilford Press 2009)1, 11.

their services with a view to enrich and develop the delivery of police-based services to victims of torture and also for others.

However, generally, in criminal investigation among others, interviews and interrogations of suspects are conducted in the sphere of intelligence gathering. The prime concern is to extract precise and incidentally useful information from another suspect. In the last decade, uses of coercive and enhanced interrogation techniques in investigations have received wide criticism and considerable attention in the media. These techniques violate international laws and are ineffective in eliciting accurate information.³⁷ Because of producing false confessions which may lead to wrongful convictions, these kinds of interviews and interrogation methods are being called into questions. Using harsh or enhanced interrogation techniques in investigations have become an international problem and been documented in almost every continent of the world³⁸ including Bangladesh. Certain European countries have banned using ‘confirmatory questions and deception’ in the interrogation of suspects. Law enforcement agencies of various countries like ‘the United States, Canada, and many Asian nations’ are trained in ‘accusatorial methods’ (psychologically-based interrogative methods) in investigations.³⁹ However, countries like ‘the United Kingdom, Norway, New Zealand, and Australia have amended their interrogation practices to include information-gathering in their methods of interrogation’.⁴⁰ Various interrogation

³⁷ Maria Hartwig, Christian A. Meissner and Matthew D. Semel, ‘Human Intelligence Interviewing and Interrogation: Assessing the Challenges of Developing an Ethical, Evidence-Based Approach’ in Ray Bull (eds), *Investigative Interviewing* (Springer 2014) 209, 210.

³⁸ Christian A. Meissner and Allison D. Redlich; Stephen W. Michael, and Jacqueline R. Evans; Catherine R. Camilletti and Sujeeta Bhatt and Susan Brandon, ‘Accusatorial and information-gathering interrogation methods and their effects on true and false confessions: a meta-analytic review’ (2014) 10 *Journal of Experimental Criminology* 459, 460.

³⁹ Under the influence of article 6 para. 1 of the European Convention on Human Rights (ECHR), 1950.

⁴⁰ Christian A. Meissner (n 37) 460-461.

method usages like formal (e.g., Reid Technique⁴¹, PEACE,⁴² HUMINT⁴³), informal and self-reported techniques are recorded in diverse nations. Officers are also trained in variety of different techniques starting from comparatively gentle ‘pre-interrogation strategies (e.g., building rapport, observing body language or speech patterns) to more psychologically coercive ones (e.g., blaming the victim, discouraging denials etc.),’⁴⁴ which Bangladesh can effortlessly follow in her course of investigation of cases.

Also, another approach that the Canada’s national police force focuses is a ‘gentler, less accusatory approach’ in interrogating suspects. This new approach encourages investigators to be an open minded person, no presumption of guilt and put emphasis on information gathering rather than obtaining a confession.⁴⁵ Another technique known as ‘the HIG’ (the High-Value Detainee Interrogation Group) technique focuses on listening the suspect a lot and very little to talk. Police departments in ‘Dallas, Philadelphia and certainly in Los Angeles’ are trying to introduce this technique in their interrogation of suspects. This practice aims to provide the suspect an opportunity to ‘say so much’ that will later on ‘contradicting verifiable information’ given by him. This system does not look like an interrogation. Instead, with full recording of everything that is not apparent, it is ‘much more a comfortable setting’ of interrogators and suspects.⁴⁶ There is also the ‘Kinesic Interview known as the study of Nonverbal Communication’ method that considers suspect’s behavior to assess deception or to verify most sensitive

⁴¹ The Reid Technique, pioneered in the U.S. having two components. The first one is a ‘non-accusatory’ interrogation involving ‘behavior-provoking’ questions and the second one is appraisal of suspect’s ‘body language’ for lie detecting. If investigators are positive in lie detecting, they will go for interrogation techniques which are ‘more accusatory’. For details see, Douglas Quan, ‘RCMP adopts gentler grilling of suspects’ (30 July 2015) <<https://thestarphoenix.com/news/local-news/rcmp-adopts-gentler-grilling-of-suspects>> accessed 5 October 2020.

⁴² The PEACE model clarified as ‘Preparation and Planning, Engage and Explain, Account, Closure and Evaluate’. See, Terry Gross, ‘*Beyond Good Cop/Bad Cop: A Look at Real-Life Interrogations*’ (5 December 2013) <<https://www.npr.org/2013/12/05/248968150/beyond-good-cop-bad-cop-a-look-at-real-life-interrogations>> accessed 8 September 2019. This model developed in Britain ‘encourages more of a dialogue between investigator and suspect’. See Douglas Quan (n 40). It also focuses on ‘fact finding with an emphasis on the use of open-ended questions’ instead of obtaining a confession. Investigators here are expressly barred from “deceiving suspects”. See Christian A. Meissner (n 37) 462-463. For details see, H. M. D. Cleary and T. C. Warner, ‘Police training in interviewing and interrogation methods: A comparison of techniques used with adult and juvenile suspects’ (2016) 40 (3) Law and Human Behavior 270.

⁴³ Maria, Christian A. and Matthew (n 36) 211.

⁴⁴ H. M. D. Cleary and T. C. Warner (n 41) 270.

⁴⁵ Douglas Quan (n 40).

⁴⁶ National Public Radio (NPR), ‘In New Age of Interrogations, Police Focus on Building Rapport’ (May 23, 2016) <<https://www.npr.org/2016/05/23/479207853/in-new-age-of-interrogations-police-focus-on-building-rapport>> accessed 6 September 2019.

areas relating to the suspect. So it needs further attention through verbal inquiry'.⁴⁷ Four fundamental stages of this interview specify as orientation, narration, cross-examination, and resolution are recorded.⁴⁸ Also interrogation method known as 'the Strategic Use of Evidence (SUE)' technique particularly 'the SUE approach' is anchored in the assumption that 'liars have different counter-interrogation strategies than truth tellers'. They differ, in particular, in terms of 'information management strategies' where 'available background information' is used strategically to emphasize liars' 'avoidance and escape tactics'.⁴⁹

But despite all these 'pragmatic progresses' in identifying various interrogation techniques, very little is known about how, when, to whom and up to which extent law enforcing officials should use these interrogation methods all over the world.⁵⁰ For Bangladesh, there should be a 'clear interrogation methodology' in order to conduct interviews specifying the required above mentioned strategies. All cases of torture and ill-treatment have to be investigated thoroughly in an impartial manner. As purpose of investigation is to attain accurate and reliable information that may help to ascertain the truth, it can only be fulfilled by allowing adequate training on modern and scientific methods of investigation to concerned officers of the law enforcement. In the course of training, prime concern should be on absolute prohibition of torture. More efficacious factual and legal training programs among the specified branches of the government have to be coordinated. Furthermore, 'good, authoritative and academic research' to create an 'accurate, non-coercive interrogation process'⁵¹ is a prime requisite for Bangladesh to fight against torture in point of fact.

However, in police custody where detainees are vulnerable to ill-treatments, all of them have to be treated 'in accordance with law' and shall be provided with 'adequate security and rightful safeguards'. If possible, 'electronic recording of police interviews' of detainees should be kept. In case of interrogation of detainees, there have to be 'Specified Official Carters' where mandatory examinations by a medical practitioner of the 'detainee's choice', if possible, upon and leaving the detention center will be provided. About granting remand, the concerned authority should consider that remand is 'not the rule but an exception' and it has to be 'justified first'. Since, no forms of torture whatever may be the degree are legally allowed in Bangladesh⁵², there will be no technical using of 1st and 2nd

⁴⁷ Stan B. Walters, *Principles of Kinesic Interview and Interrogation* (Boca Raton, Florida: CRC Press, 2nd edn, 2003) 209.

⁴⁸ *ibid*, 25-29.

⁴⁹ Maria, Christian A. and Matthew (n 36) 220-221.

⁵⁰ H. M. D. Cleary and T. C. Warner (n 41).

⁵¹ National Public Radio (NPR) (n 45).

⁵² *Bangladesh and others vs. BLAST and others* [popularly known as 'Section 54 Guidelines Case',

degree methods where visible marks of torture are not seen, even if, it is necessary. Also excessive reliance on confessional statements as main source of evidence instead of various other techniques of evidence collection should be avoided and judicial enquiry done by the police as corroborative evidence should also be taken into account by the concerned authority to make the struggle against torture in Bangladesh more effective.

4.2 Schemes for Victim and Witness Protection

Schemes for victim and witness protection as exist now in Bangladesh advocate for inclusion of measures to minimize difficulties in accessing justice, in order to protect privacy, whenever it is necessary, and to ensure victims' along with their families and witnesses' safeties from intimidation and reprisals. The Law Commission of our country earlier projected a report on victims and witnesses protection which is under consideration of the government.⁵³ However, among various other defies faced by complainants, their families and witnesses, primacy should be placed on awareness of legal safeguards against torture, an independent complaint mechanism to go before, special concerns over places of detention. Along with these, functional separation of powers of the allied organs are also be required. Therefore, victims should know about their safeguards against torture, how to complain to impartial authority wherever it is necessary, need to have the idea about places of detention and effective coordination of specified organs of the state with actual implementation posit an inclusive scheme for victims and witnesses protection which are providing thusly:

4.2.1 Awareness Building on Legal Safeguards

Awareness building on legal safeguards may help to reduce possibilities of abuses of powers by perpetrators of torture since it remains one of the major causes of violation of human rights including prohibition of torture in Bangladesh. In order to aware people on legal safeguards, it entails a 'complete database' to provide concrete information on 'acceptable interrogation methods and all available remedies on arbitrary arrest and torture'. For this, coordinated approaches of the three Organs of the State to promote wider dissemination of pertinent materials through appropriate media, including on-lines targeted at all levels of society are mandatory. Also torture survivors have to be properly informed and guided by professionals. Academic research on the 'evaluation of the knowledge of allied staffs'⁵⁴ regarding existing strategies on torture prevention and related issues may

or 'Rubel Killing Case' or 'Guidelines on Arrest and Remand Case'] 69 DLR (AD) (2017) 63.

⁵³ Committee against Torture, 'Initial report submitted by Bangladesh under article 19 of the Convention, due in 1999 para. 82, U.N. Doc. CAT/C/BGD/1' (23 July 2019) <https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BGD/CAT_C_BGD_1_5838_E.pdf> accessed 5 October 2020.

⁵⁴ Convention against Torture Initiative (CTI), *State Strategies to Prevent and Respond to Torture*

be done in order to ensure the relevancy of those policies and practices to the current national context.

4.2.2 Public Complaints Authority

Domestic Complaint Authority to prevent torture mainly lies among other obligations of the state under the UN Convention against Torture at the domestic levels. Objective of the creation of this Domestic Complaint Authority should be ‘perfection in professionalism’. These authorities can be maintained either by setting up of new mechanisms or strengthening the existing ones. On this astute of setting up new mechanism, it is necessary to establish credible system like an ‘Independent Probe Commission’ for the police which can provide backups for facing the dilemma in relation with torture. On February 2021, a writ petition was filed nearly by 100 Supreme Court lawyers praying for ‘Independent Police Complaints Investigation Commission’⁵⁵. The petitioners contended that when law enforcers conduct inquiries of allegations against their colleagues, there is no leeway that the probes can be done fairly and impartially, and hence the demand⁵⁶. This probe commission has to be aligned with international criteria and be formed with functional independence, required aptitudes, proficient knowledge and also apt resources. This Commission will be an autonomous agency, made up of civilian personnel and have the power to compel co-operation from law enforcers’ regarding these. Also, it will exert closer scrutiny on interrogation, remand procedure and complaints against law enforcing officials along with power to take action ‘independently’. Individuals who ‘ordered’ abuses of human persons and who ‘failed to prevent abuses or punish the perpetrators’ will be also in the same boat and punish accordingly. There has to be public record of all these abuses and actions taken against those perpetrators. However, instances of India, Australia, the United Kingdom⁵⁷, and Danish Parliament⁵⁸ regarding these

and Other Ill-treatment or Punishment (CTI/UNCAT Implementation Tool 1, 2017) 7.

⁵⁵ The Business Standard, ‘Allegations against cops: Writ seeks independent probe commission’ (28 February 2021) <<https://www.tbsnews.net/bangladesh/court/allegations-against-cops-writ-seeks-independent-probe-commission-208888>> accessed 6 October 2024.

⁵⁶ Muhammad Nurul Huda, ‘The case for an independent Police Complaints Investigation Commission’ (4 March 2021) <<https://www.thedailystar.net/opinion/straight-line/news/the-case-independent-police-complaints-investigation-commission-2054389>> accessed 6 October 2024.

⁵⁷ Police Complaints Authorities in India created in 2006 following the Supreme Court’s decision in the Prakash Singh case (*Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1). See for details, Diya Nag, and Devika Prasad, ‘Introduction’ in Navaz Kotwal (ed), *Police Complaints Authorities: Reform Resisted* (Commonwealth Human Rights Initiative, 2011)1, 8, 58.

⁵⁸ The Danish Parliament established an independent police complaint authority known as the ‘Danish Independent Police Complaint Authority (DIPCA)’ in 2012 after a wide debate on ‘complaints over police officers whether are dealing with in an independent and effective way or not’. See Diya and Devika (n 53).

may be followed by Bangladesh considerably. It has to be taken into account that complaint mechanisms like these will help in down beating the culture of impunity and also boost public confidence⁵⁹ on law enforcement agencies in Bangladesh. Conversely, about existing mechanisms, establishment of National Human Rights Commission (NHRC) in Bangladesh as the main national human rights preventive mechanism corroborates Government's compliances to take tough and independent stands against abuses of human persons and abide by international human rights norms. In order to play a stronger role in respect of investigations of acts of torture, however, jurisdictions of NHRC with all its activities needed to expand instantly. It has to be an exalted authority that embraces powers to issue binding orders to public officials. And within the NHRC, there has to be a 'Reparation and Reconciliation Committee' where torture victims can claim reparations and other forms of assistances, if needed.

4.2.3 Unannounced Visits to Places of Detention

Along with providing reparations and other forms of assistances for victims of unjust imprisonment or detention, reforms of prisons, the main detention centers' in Bangladesh, require pressing attention of the government and are now turn out to be a necessity. In view of that a Ministerial Committee for jail reform in 2002 was set up.⁶⁰ Thirteen meetings of this Committee were held in between 2002 and 2006 following specific recommendations to live up to the best international standards. Conversely, lacking of appropriate implementation and follow up, these memos may remain hollow. In 2017, top prison officials from 13 countries of the Asia-Pacific region visited the Kashimpur Central Jail in Gazipur with special permission of the government. They exchanged views on security measures, various facilities, modern technology and correctional activities for overall development of security and prison management.⁶¹ Inspections by 'visiting justices',⁶² other bodies or groups like the Special Rapporteur on Prisons, non-governmental organizations and human rights groups have to be allowed for the better and safe protections of detainees.

Interestingly, in case of independent prison visits, government did not permit visits by 'independent' human rights monitors. However, regular visits and

⁵⁹ Peter Vedel Kessing, 'Police Oversight Mechanisms Note' (2018) <https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrs/2018/police_complaint_mechanisms_dih2018.pdf> accessed 12 September 2019.

⁶⁰ Mohammed Tipu Sultan, 'Rights of Prisoners' (2015) <http://www.askbd.org/web/?page_id=504> accessed 15 September 2019.

⁶¹ theindependent, UNB, 'Top prison officials from 13 countries visit Kashimpur Jail' (20 May 2017) <<http://www.theindependentbd.com/arcprint/details/95383/2017-05-20>> accessed 14 September 2019.

⁶² Uganda Legal Information Institute, 'Prisons Act 2006' (2006) <<https://ulii.org/ug/legislation/act/2015/2006-12>> accessed 15 September 2019.

inspections are done by the Jail Superintendent, the Jailor, the Deputy Inspector General of Prisons and the Inspector General of Prisons. District Judge of the concerned jail visits the jail per month⁶³ and submits the report on monitoring to the Ministry of Law, Justice and Parliamentary Affairs. Sometimes with the permission of the government, Committees of prominent private citizens are appointed in each prison who locally monitor prisons monthly, but did not release their findings.⁶⁴ These reports are presumed to be confidential, just for the concerned authorities and not for the public. The perceptions for non-publicity of these documents are that all of these are based on particular issues dealing with specific situations. Monitoring reports focus various actions needed to be taken by the concerned authorities ‘internally’. There is also a perception that all these documents if circulated to the public may be ‘misinterpreted’ and ‘prejudicial’ to the ‘safety or interest’ of the State. These are not for the public to take measures but for the concerned Ministry to work out on those issues ‘internally’ and the concerned Ministry is all the time doing it ‘accordingly’.⁶⁵

But with all these annotations it needs to be realized that after each prison visit, it is required that ‘steps taken’ on the basis of those reports and may not be ‘the reports’ to be made to the public by the concerned authority so as to ensure fairness and transparency of the monitoring system. Also to prevent torture in places of detention, independent authorities should make ‘unannounced visits’ with an eye to monitor detention disorders and treatment of detained individuals. That team should adopt a pro-active approach to ‘identify risks and assists the authorities’ to create an environment where these forms of abuses are unlikely to occur and report publicly on their findings. However, this job can also be performed by ‘the Ombudsman⁶⁶ or the National Human Rights Commission’ which providentially Bangladesh is started doing from the year of 2012 to 2019.⁶⁷

4.2.4 Separation of Powers

After focusing awareness building on legal safeguards, public complaints authority, unannounced visits to places of detention, separation of power is on the par of recommendations for victims’ and witnesses’ protections. It is noteworthy that true independence of the judicial organs of the state entitles and requires respect for rights of parties and assures fair conduct of judicial proceedings.

⁶³ Committee against Torture (n 51) para 75.

⁶⁴ U.S. Embassy Dhaka (n 22).

⁶⁵ Raushan (n 5).

⁶⁶ U.S. Embassy Dhaka (n 22).

⁶⁷ It is important here to note that jurisdiction of the Bangladesh National Human Rights Commission (BNHRC) has extended to calling explanation from law enforcers and other public authorities, and visiting prisons and correctional centres. Committee against Torture (n 51) para 75.

Thereupon, it is imperative to have separation of powers of various State Organs i.e. the Executive, Judiciary and the Legislature. State also needs to provide adequate resources to enable this separation as it should be. In case of Higher Judiciary, it must be pointed out that other than dependency in certain financial matters it is having full functional independence in Bangladesh. And it should be cognizant that only financial dependency does not make the Judiciary controlled by the Executive. Various indirect influences which are prevailing can be ignored in point of fact if the concerned authorities want. It is not the organization but the personnel of that concerned organization who need to disregard and taking valorous steps against any type of influence making it insignificant enough for control. With regard to lower judiciary, functional separation of powers is noticeably in disarray.⁶⁸ Impunity, handling of political remand, harassment regarding various benefits etc.⁶⁹ are major fortifications for applying anti-remand policies in their judgments. Thus, on allegations of torture pro-active stances of the lower judiciaries of our country have to be taken.

4.3 Comprehensive Approaches of Government to Torture Prevention

Immense abuses of human persons like torture demand measures beyond existing standards and it is exactly the time for the Government to have a comprehensive approach to torture prevention. This persuades to develop new policies and practices along with existing ones which meaningfully address the past and the present by providing moral and financial supports for prevention activities. There should not be licit excuses in implementing international obligations regarding torture. Systematic planning with assurance of effective realization of powers when assess together can make laws on torture more practical. Hence, allied legislative and judicial measures underscore special call for meticulous and instantaneous implementation of these commitments. In order to knob the widespread corruption⁷⁰ steadily there has to be combined efforts of all the three Organs of the State i.e. the Legislature, the Judiciary and the Executive. If one is within corrupt practices, the other cannot be projected to remain fair and transparent. One's abetment here becomes incentive of others. All these allurements undisputedly need to be over now.

4.4 Reform of Laws and Justice System

Among all the propositions, reform of laws and justice system is the most indispensable one to be put in agendas for implementation. Various known

⁶⁸ Supreme Court of Bangladesh and United Nations Development Program, *A challenge for Change: Court Processes, Problems and Solutions* (Dhaka, 2015) 22.

⁶⁹ US Embassy Dhaka (n 22).

⁷⁰ *ibid.*

constraints⁷¹ to the court system in Bangladesh put screws on the system itself and generates challenges for general public in accessing justice.⁷² Present criminal justice system and traditional colonial policing are very much inefficient and favoring torture of the accused and need reforms in various sectors. This system should provide credible and human rights friendly alternative methods like forensic and other scientific techniques to be used in law enforcement and crime prevention. Coordinated attempts and systematic approaches regarding reform of laws and justice system by all the three Organs of the State will help in reducing victimization in torture.

5. Conclusion

Continued and unabated nature of torture and ill-treatment in Bangladesh reveals that there are certain justifications for torture veiled in the legal system itself. Each new period of time breeds new techniques of torture which is extremely unfortunate and intolerable. The responses of torture in Bangladesh are not in the topnotch for complete ban of it. A perfect legal framework with international protection standards has now a need of the time. Pragmatic and human rights friendly alternative methods in investigation, interrogation, case management and access to enforceable remedies in an affordable manner may make laws on torture more practical. Bangladesh has to come forward from her traditional enforcement of laws and goes for standard international enforcement practices. Mere trying is not any more enough. Specifying snags, making those apparent to identify, recommending explicitly what to do, implementing those in a very pin point and required ways without any excuse or justification, sketching future prevention strategies up to specified phases are the ways forward for torture retorts in Bangladesh.

⁷¹ Among others 'grim state of court congestion and case backlogs' are prevalent problems faced by the justice system as a whole. Supreme Court of Bangladesh and United Nations Development Program (n 66) 1.

⁷² Jakhongir Khaydarov, 'A challenge for Change: Court Processes, Problems and Solutions' (June 2015) <www.bd.undp.org/content/dam/bangladesh/docs/Projects/JUST> accessed 15 September 2019.