

Role of Police relating to Safe Custody in Bangladesh: A Study from Human Rights Perspective

Dr. Md. Nahidul Islam¹

Md. Abu Nayem Miazi²

Abstract

This paper essentially provides a very clear understanding of the function of the police by highlighting specific domestic laws, a number of pertinent international instruments, as well as the fundamental human rights standard of safe custody in relation to human rights. The paper attempts an effort to conduct a documentary analysis of the role of police in relation to safe custody and human rights in Bangladesh's criminal justice system. Finally, the purpose of this paper is to highlight the real-world situation and activities of the police in advancing democracy in a developing country like Bangladesh.

Keywords: Role of Police, Safe Custody, Human Rights, Bangladesh

Introduction

The Code of Criminal Procedure, 1898 does not define the term "Safe Custody." "Safe" indicates that the detainee's confinement is free from all forms of torture that are cruel and degrading to human dignity. The word "Custody" implies that a person has been denied his right to freedom of movement and taken into confinement.

In general, law enforcement agencies detain criminals or people they suspect of being involved in crimes so that they can be dealt with legally. Victims who do not have a home are occasionally taken into custody for their safety. In order to ensure the addict's safety as well as the safety of the addict's family members and society at large, parents or guardians of drug-dependent sons or dependents now often produce them to the police for detention.

Human treatment, which is a fundamental human right for those who are in custody, may not be withheld from them. In the interests of justice and fair play, the rule of law guarantees a set of minimal rights for those who have been accused and provides the necessary procedural safeguards for those rights. It includes, among other things, the following:

¹Associate Professor, Department of Law & Justice, North East University Bangladesh

²Assistant Professor, Department of Law, Green University of Bangladesh

- Protection against arbitrary arrests
- Protection against arbitrary searches of an accuser's premises
- Right to be produced before a Magistrate within 24 hours of arrest
- Right to consult a legal practitioner of his own choice on arrest and get free legal aid
- Right to go on bail in appropriate case and speedy trial
- Right not be subjected to double jeopardy
- Right not to be compelled to witness against himself
- Right not to be punished under a retroactive penal statute
- Right to have the benefit of the presumption of innocence till his guilt proved
- Right to get copies of documents and statements of witnesses on which the prosecution wants to build up its case
- Right to insist that evidence be recorded in his presence
- Right to adduce defense witnesses
- Right to have notice of the charge
- Right to cross-examine witnesses produced by the prosecution
- Right to get an opportunity for explaining away evidence during the trial
- Right to prefer an appeal against conviction and sentence or refusal of bail
- Right of a child offender to be tried by Juvenile Court.

According to the viewpoint mentioned above, the goal of criminal justice is to protect society, but in doing so, it also seeks to safeguard and advance human rights, including those of those who have been charged. Police are primarily responsible for protecting the rights of the innocent. They bear a heavy burden of responsibility for protecting those innocent people who are not subject to erroneous accusations.

Therefore, every branch of government in a democracy is answerable to the people. This was more applicable to the police than to other groups because they stand for the rule of law and organized society. In accordance with our laws and the Constitution, decency of state and behavior has even been guaranteed by providing a number of fundamental human rights to the accused. However, these rights cannot be preserved unless this nation has an honest, non-brutalized police force with members who are committed to acting fairly and within the bounds of the law.

At this point, it is apparent that the use of the third-degree method in case investigation by a portion of the police force is the biggest single factor that has damaged public perception of the police in recent years. This practice resulted in several deaths while in custody and as a result received harsh public criticism. However, it is regrettable that a police officer who uses third-degree methods not

only brutalizes himself but also lowers himself to the status of a criminal.

Torture used to extract a confession is more abhorrent and harsh than the naive act of a common criminal because it comes from an educated person who is responsible for upholding the law and the constitution.

Law does not, however, approve of an investigator disguising himself as another criminal in order to solve a crime. An investigator is expected to solve the mysteries surrounding a heinous crime.

The following domestic laws and international instruments, listed in order from 1.1 to 1.3 below, only briefly touch on the legal framework relating to safe custody and human rights:-

1.1 Vagrancy Act, 1943

Vagrancy generally refers to the condition of being homeless or a vagrant. Vagrancy is the offense committed by people who are able to work but have no apparent means of habitation or support. State laws and local ordinances that punish vagrancy frequently also include penalties for loitering, associating with convicted felons, prostitution, and intoxication.

As a result, 29 Sections of the aforementioned Act are devoted to discussing the provisions relating to vagrancy, including their definition, methods, homes for receiving centers and vagrants, penalties, and other activities. The carelessness and incorrect application of some laws by law enforcement, specifically the police, while a person is in their custody under the pretense of safe custody.

1.2 Police Act, 1861

After the Police Act of 1861, the Police Regulations of Bengal, which were introduced in 1927 periodically underwent various changes and modifications. The self-contained goals and objectives of these regulations are mainly a collection of departmental directives for the police officers' guidance. It goes without saying that the Police Act of 1861 and the Code of Criminal Procedure of 1898 are intertwined with PRB.

Even the rights of those who have been accused are sacred in a democratic society. In fact, our laws-constitutional, evidentiary, and procedural—have elaborate provisions for protecting the accused's human rights in order to ensure that he receives the benefits of a fair trial and maintains his dignity as a person. Every person who is taken into custody has their freedom taken away. They should be protected from abuse by taking precautions. Women and children, for example, are

particularly vulnerable groups of detainees. Detainees held by the police typically haven't been found guilty of any crimes. Such detainees ought to be treated with humanity by the police, who should also assume their innocence.

The police have a responsibility to keep everyone in their custody safe. The Officer-in-Charge (OC) shall be personally liable for the safe custody of all prisoners brought to the police station, according to PRB Regulation 328. Before allowing a prisoner into the facility, the guard must carefully inspect the prisoner's person and, if necessary, enlist the aid of a local independent witness to determine whether the accused was injured at the time of admission. The Regulation also states that the officer-in-charge (OC) must ensure that only absolutely necessary clothing is brought into the lockup and that there are no weapons, items, or other items inside the lockup or close by that could aid in an escape attempt or suicide. The purpose of this regulation is to defend police officers against accusations of torturing suspects based on injuries sustained before the suspect was placed in custody. When injuries are discovered prior to the prisoner's admission to lockup, allegations that torture has been inflicted on the prisoner in custody can often be disproven by having the prisoner examined in front of witnesses. The injured petitioner is sent for a medical examination to determine the age of the injury if a witness is not available or does not wish to attest to the examination. This should be noted in the General Diary (GD).

The Code of Criminal Procedure doesn't mention "Safe Custody" in any way. It appears that occasionally detainees are taken into custody even though they have not been charged or are suspected of having been charged because they are vital witnesses or victims of crimes who cannot be left alone. Female inmates are kept in the jail's female lockup if they are involved.

If there are no female inmates in the lockup, the juvenile detainee is kept there. It is essential that the arresting authority send copies of all documents, including the memo of arrest, to the closest magistrate within twelve hours of making the arrest due to allegations of custodial death, one of the worst crimes in a civilized society governed by the rule of law.

1.3 Reformatory Schools

In this sense, reformatory schools serve as juvenile offenders' correctional facilities. These facilities offer long-term training programs for young offenders who have committed their first offense and who are amenable to changing their behavior.

In addition to offering high-quality medical care, the institute has sufficient

casework and treatment program arrangements, including general and literacy education, industrial and craft work, moral education, religious instruction and guidance, recreational facilities, etc.

The casework department of the training facility manages the inmates while taking into account their emotional and psychological stress and issues. The inmates are immediately categorized based on their age, sex, level of intelligence, criminal history, level of formal education, family background, trades, aptitudes, deviation from commitment, etc. The caseworker then begins handling the case using social casework and group counseling techniques. A daily report regarding the inmate's behavior and improvement is accordingly recorded in the relevant case file while the probation officer and case worker are handling the inmate's case.

The Superintendent, probation officers, caseworkers, house parents, teachers, and wardens make up the treatment team; they travel with the inmates in a group setting.

Inmates who behave aggressively or violently receive a special kind of care as well.

Weekly meetings and other extracurricular activities are also conducted with the goal of fostering cooperation, responsibility, and a sense of community.

After their release, the inmates who successfully complete the training and gain marketable skills have no trouble finding employment.

The reformatory schools' provision of correctional services has proven effective. Currently, there is a reformatory school at Tongi in the Gazipur District that can accommodate 200 inmates. Five more such institutions are planned to be established by the Bangladeshi government, two of which will only be open to women and the others to men in each division.

The prevention of juvenile delinquency is a crucial component of crime prevention in society, it should be noted. Young people can develop non-criminogenic attitudes by engaging in legal, socially beneficial activities and adopting a humanistic perspective on society and life.

In accordance with the CRC (Children's Rights Council) Provisions:

Article 1 (Definition of a child) provides:

"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child,

the majority is attained earlier.”

Article 3(Best interests of the child) provides:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, the number, and suitability of their staff, as well as competent supervision.

Article 12 (The child’s opinion) provides:

1. States Parties shall assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 27(Standard of living) provides:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing, and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State

different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 33(Drug abuse) provides:

“States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

Article 37(d) [Torture and deprivation of liberty] provides:

States Parties shall ensure that:

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40(2)(b)(ii) [Administration of juvenile justice] provides:

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;

2. Domestic Provisions

Section 45 of the Children Act 2013, provides that the police officer who arrests a child shall inform the child’s parents or, in their absence, their foster carer, legal guardian or member of the extended family, the Probation Officer, and, where necessary, the nearest Board, failing which she is to file an explanatory report in the court stating the reasons for not complying with the said provision, on the first date of producing the concerned child before the court. And where the Constitution of Bangladesh under Article 35(5) provides Protection with regard to trial and punishment in this regard. The use of "safe custody" or "protective custody" for women and children is a particularly pressing issue in Bangladesh. Up to 1,029 children were reportedly detained in 65 jails across Bangladesh in 2000, according to a report

by a human rights organization there. These children were typically the victims of crimes or other circumstances that left them with nowhere to go. The following justifications for "safe custody" have been confirmed by the Special Rapporteur on violence against women, its causes, and consequences:

- a. Girls marrying outside their religious community or against their parents' will;
- b. Victims of rape;
- c. Women and female children rescued from brothels;
- d. Victims of domestic violence;
- e. Victims of trafficking;
- f. Children with intellectual disabilities and
- g. Lost children.

Additionally, those with little education and the poor are particularly likely to be placed in "safe custody"; examples include young boys whose families' poverty has forced them into homelessness. Children are subjected to circumstances that are anything but safe once they are placed in "safe custody." Prisons are well known for being overcrowded and for having inadequate clothing, food, and medical care. Recreational activities and educational opportunities are not included.

According to the Bangladesh National Women's Lawyers Association (BNWLA), inmates held in "safe custody" are essentially treated like criminals or prisoners awaiting trial because they are not separated from the rest of the inmates and share cells with convicted felons. As a result, they frequently endure additional abuse in prison from both adult inmates and prison guards, including physical and sexual assault.

Due to infrastructure shortcomings, the protections available to children who break the law are frequently not implemented. For instance, despite the fact that there are 44 positions specifically designated for probation officers, fewer than half of them have been filled, and District Social Welfare officers serve in the capacity of probation officers.

In fact, there is no reliable data on the number of children detained in pre-trial detention or held in overnight police custody (this only applies to boys as our girls are not allowed to be kept in overnight police cells). Bangladesh has a National Taskforce for Releasing Children from Jails, and it is said that recently there have been fewer kids detained there. In Bangladesh, there were still 205 children under the age of 18 who were being detained in prisons in 2009, 98 of whom were under the age of 16.

More recently, the number of minors detained in jails has decreased to below 10 as a result of a High Court Division ruling.

In a recent case, it was discovered that three children were wrongfully housed in a district jail's women's and children's wings under the magistrate's pretense that it was a "place of safety."

Both the police and the courts have the authority to place children in remand homes under section 20 of the Children Act of 1974. (The power of the police to do this is limited up to the time when the child is produced before a court, which must be within 24 hours of arrest). Section 49 gives police and courts the authority to place unenlarged children out on bail in remand facilities or "places of safety." The courts have the authority to sentence kids to Child Development Centers (CDCs) as well as place them there for pretrial detention.

There are currently three centers operating across the country that are overseen by the Development of Social Services Division of the Ministry of Social Welfare. The girls' center is located in Konabari, Gazipur, and the boys' centers are split between Tongi, Gazipur, and Pulerhaat, Jessore. Children may also be detained if they are witnesses or victims, they are either kept in "safe custody" or sent to facilities because they are "uncontrollable."

So, the above-mentioned number of children detained in police and pre-trial detention and the evidence that is currently available to support it.

According to UNICEF, "children are frequently sexually abused during arrest and interrogation, and physical abuse, force, and torture are frequently used. Detained children who are under the legal age of majority may be housed with adult inmates, subjecting them to abuse, violence, and unfavorable social attitudes."

In response to "ill-treatment of children in custody by police, the length of police detention, and the absence of Juvenile Court," the Committee on the Rights of the Child (CRC) has expressed its concern. The Committee has also voiced its concern regarding legislation that permits juveniles 16 and older to be tried and sentenced as adults (including the death penalty).

Over 500 children who had contact with the law or were at risk of doing so were interviewed for the study of the situation of children in conflict with the law that the police commissioned in 2008. The study came to the conclusion that "Once in police custody, the children face grave situations and are frequently treated harshly." Even though the latter is against police regulations, tying the children up

with ropes and handcuffing them is a common practice. The police frequently physically and verbally abuse the kids as they search for evidence of crimes and track down criminals.' They also discovered that children in CDCs are frequently not separated based on their age, whether they are in custody pending trial or conviction, whether they are in trouble with the law or in need of protection.

These are the pieces of evidence, as previously mentioned, that explain the abuse of children detained by the police and in pre-trial detention.

In fact, fewer kids are exposed to violence in these settings by keeping them out of pre-trial detention in the first place. In Bangladesh, it appears that the court's pre-trial options are limited to two: bail with remand in jail or a "place of safety."

Although there is legislation and policy in place, police do not properly implement bail provisions, and the availability of bail does not encourage the use of child detention other than as a last resort.

It is to be noted that International standards. Encourage the police to specialize in dealing with child offenders, and after an arrest, a child should be directed to the appropriate specialized officer as soon as practical. In Bangladesh, there are some instances of specialized child police units or police officers being established, such as those that UNICEF is testing in the districts of Cox's Bazar and Jessore. Additionally, every district must have child-friendly police, according to an official order from the Bangladesh Police. There are reportedly mandatory provisions in this regard in the draft Children Act of 2013 legislation. However, a lack of human and financial resources hinders their capacity to be efficient or effectively perform their roles, such as figuring out a child's age or locating family members. The Committee on the Rights of the Child observed a rise in the amount of training given to judges, magistrates, and other law enforcement officials who deal with juvenile justice.

After briefly outlining the provisions for safe custody and human rights found in various pertinent domestic laws and international instruments, I will conclude by saying that if we analyze real-world behavior and the current situation in light of these provisions, we may find numerous instances of law enforcement and the judiciary in Bangladesh violating the spirit of the aforementioned laws. Here is a brief summary of the most-discussed case on safe custody in light of pertinent references:

On April 10, 2009, at around 9:00 p.m., a news item that caught the attention of the High Court of Justice was broadcast on Channel I. According to section 14(1)

of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and section 17 of the Children Act, 1974, it was reported that a young girl named S. was allegedly sexually assaulted by her neighbor and a distant relative [identity withheld]. After receiving care from a neighborhood clinic, the girl's parents took her to the Osmani Medical College Hospital in Sylhet for better care. On March 27, 2009, they then took her to the Osmani Nagar Police Station to file a First Information Report (F.I.R.). The girl was taken by police to the court of the learned magistrate after the case was filed, who then ordered that she be kept in safe custody at the Safe Home in Bagbari, Sylhet, which is run by the Department of Social Welfare. In her native Bengali dialect, the girl's tearful mother said the following to the reporter:

“দুঃক্ল ফাইয়া গেছি বিচারের লাগি, আমি আত তুলিছি এখনকু আমার বাচ্চাৰে আরোখ কাষ্ট্ৰুডিত হারাইয়া খুইরাখছইন গুণ্ডগুণ্ডগুণ্ড মা ছাড়া বাইচ্ছা ঘুমায়না। ইগুন আইন আফনারা করলায় (দুঃখ পেয়ে বিচারের জন্য গেলাম। আমি হাত তুলেছি। এখন আমার বাচ্চাকে অন কাষ্ট্ৰুডিতে ঢুকাইয়াছেন গুণ্ডগুণ্ডগুণ্ড মা ছাড়া বাচ্চা ঘুমায়না গুণ্ডগুণ্ডগুণ্ড এ কোন আইন আপনারা বানালেন।)”

In fact, the victim whose rights were violated throughout various stages of the law and order situation under the guise of so-called Safe Custody was the helpless mother of the child whose word was cited above.

Summary of the Case

Background

A 7-year-old girl was allegedly sexually assaulted by a distant relative and her neighbor. The girl was taken to the Magistrate Court by the police after they documented her case. The girl must be kept in a secure home under the supervision of the Department of Social Welfare, the Magistrate ruled. The girl's parents were not allowed entry to the secure residence. The High Court, which learned about the situation from a news report, issued a "Suo Motu Rule" to the government, ordering the Secretary, Ministry of Law, Justice & Parliamentary Affairs, and other responsible departments to justify keeping the girl in a safe home.

Issue and resolution

Victims' separation from their parents and placement in state care. The Magistrate's decision to order the girl's continued detention in state custody was found to have been unlawful by the court. The Court also issued several recommendations, including the creation of child-specific courts in each district, specialized training for law enforcement and other criminal justice system personnel who deal with children (including instruction for attorneys and judges on the CRC and other

international instruments), and new laws enacting Bangladesh's obligations under international treaties and covenants (such as the CRC).

Court reasoning

A measure of last resort, state custody of a child victim is granted under Section 58 of the then-current Children Act, 1974 (the "1974 Act"). If the victim's parent or legal guardian is able to provide the child with the necessary care, supervision, and protection, custody should be granted to them. The two options listed under Section 58 of the 1974 Act—committing the child to a licensed institute or home or placing them in the care of a relative or other suitable person—are not necessary where such a parent or guardian is present. Additionally, the Magistrate's order was against the CRC, which the judiciary is required to uphold to the extent that its provisions do not conflict with Bangladeshi domestic law, and was not made in the child's best interests.

Excerpts Citing CRC and other Relevant Human Rights Instruments

“We find that the neglect of the Bangladesh Government to implement the provisions of the CRC has led to numerous anomalies in our judicial system when dealing with cases where an offender and/or the victim are children....

We would, therefore, strongly recommend that immediate steps must be taken by the Government to enact laws or amend the existing law in order to ensure the implementation of all the provisions of the CRC, which are beneficial to children, and also to minimize the anomalous situations which arise when dealing with children. In particular, in order to avoid further complications in the proper application of the existing laws, prompt action must be taken to ensure that the definition of ‘child’ is uniformly fixed in all statutes as anyone below the age of 18 years [Art.1 CRC]; the date relevant for considering the age of the accused is the date of commission of the offense, which is fundamental to the concept of protection of children who are not fully mature and do not appreciate the consequence of their actions [explained in detail in the Roushan Mondal case]; in all matters where a child is an accused, victim or witness, the best interests of the child shall be a primary consideration [Art.3 CRC]; that a child’s views shall be considered by the Court [Art.12 CRC]; in ALL cases where a child is accused of commission of any offense under the Penal Code or under any special law he is to be tried by a Juvenile Court or any other appropriate Court or Tribunal in accordance with the provisions of the Children Act and Children Rules [discussed in Roushan Mondal]; the use of children for the purpose of carrying drugs or arms or in any other activity

which exposes them to physical and moral danger or any harm must be made a criminal offense to be tried under the Children Act [Art.33 CRC].

.....

[O]ne Court in each district must be designated as being a Court dedicated to hearing cases involving child offenders so that children's cases can be heard and disposed of on a priority basis [Art.37 (d) CRC]. Legal Aid must be made available in all matters involving children so that no child remains unrepresented [Art.40 (2)(b)(ii)CRC]. Make Probation Officers available on-call round the clock in all parts of the country to enable proper and effective implementation of section 50 of the Children Act. Similarly, places of safety must be set up, at least one in every district, and local health clinics must be empowered for the purpose of medical examination of victims so that the need to detain victims in custody will be considerably reduced....

We are dismayed that today Bangladesh is still lagging far behind in caring for its children. Because of our failure to implement the beneficial provisions of the CRC, the plight of our children has not improved to any measurable extent. The fact that we are lagging behind is only too apparent from the persistent recommendation of the Committee of CRC for Bangladesh to incorporate and implement the provisions of the international instrument.....

In the facts of the instant case, had the best interests of the child been considered then the learned Senior Judicial Magistrate, Sylhet should have realized that the best interests of a seven-year-old girl demands (emphasis added) that she be allowed to remain with her parents. The learned Magistrate, if he had any sense of common humanity in his dealings with a child and if he had applied a humane attitude, then he would have searched out the girl's parents in order to ascertain that they are fit and capable of retaining her custody... When it is apparent that the girl was crying to be with her mother, that clearly is an expression of the view of the child to be with her mother, and in compliance with Article 12 of the CRC the learned Magistrate should have given effect to it... There is nothing on record to suggest that the learned Magistrate at all considered the views of the child which shows abject ignorance of the international provisions, which are meant to be for the welfare and wellbeing of children. Moreover, the tearing away of a seven-year-old female child from the bosom of her mother can be nothing other than cruel and inhuman treatment which is contrary to Article 27 of the CRC as well as Article 35(5) of our Constitution. The learned Magistrate has clearly acted in contravention of the provisions of law, the Constitution, and the CRC, to which Bangladesh is a signatory."

CRIN (Children's Rights Information Network) Comments

This choice, in the opinion of CRIN (Children's Rights Information Network), is in line with the CRC. States should generally try their hardest to keep kids with their families whenever possible. Children should be given a voice in proceedings that affect them, such as decisions regarding custody, and the Court should always take the child's opinions into account when determining what may be in the child's best interests. A significant amount of legal reform, in the opinion of CRIN, is also required to bring laws, policies, and practices into compliance with the CRC. For this reason, CRIN supports the recommendations made in this decision for the Government of Bangladesh to better uphold children's rights.

In addition, the Children Act of 2013 stipulates that a juvenile court may order custody of a child. Section 19 of the Suppression of Immoral Traffic Act of 1933 defines "Safe Custody." "Any person to whose custody a girl is committed by an order made under Section-14 shall, while the order is in force, have the like control over the girl as if he were her parent and shall be responsible for her maintenance and protection and the girl shall continue in his custody notwithstanding that she is claimed by her parent or any other person," the law states.

A court will typically order that a woman who has been raped or who elopes be kept in safe custody. As a result, the woman is imprisoned and effectively kept as a detainee there. Despite being a witness, all of her freedoms are restricted, and she effectively becomes a prisoner. This violates her constitutionally protected fundamental rights.

3. International Human Rights Law in relation to the Safe Custody Provisions

There are certain provisions and its real practices relating to the safe custody under International Human Rights Law that are mentioned here below:

3.1 Protection of Jveniles

3.1.1 Human Rights Standards

All the protections for human rights available to adults are to be extended to children. In addition, the following rules shall be applied to children:

- Children must be treated in a way that upholds their sense of worth and dignity, makes it easier for them to reintegrate into society, serves their best interests, and takes into account their developmental needs.
- Torture, excessively cruel, inhumane, or degrading treatment or punishment, corporal punishment, or life in prison without the possibility of parole are all prohibited for children.

- Children should only be detained or imprisoned in the most extreme circumstances and for the shortest amount of time possible.
- Children and adult detainees must be separated.
- Family members must visit and write to children who are in custody.
- There must be a set minimum age for criminal responsibility.
- Alternatives to institutional care and non-judicial processes must be offered.
- The privacy of the child shall be respected, and complete, secure, and confidential records shall be maintained.
- When necessary, only after all other forms of child control have been tried and failed, and only for the shortest amount of time, physical restraints and force against children should be used. Weapons are not permitted inside institutions for young people.
- Children should be disciplined in a way that upholds their dignity and instills in them a sense of justice, self-respect, and respect for human rights. Juvenile officials must be specially trained and suitably qualified for the job. Inspectors must be allowed to visit juvenile facilities on a regular basis as well as unexpectedly. Any arrest, detention, transfer, illness, injury, or death must be reported to parents.

3.2 Human Rights Practice

3.2.1 All Police Officials

- Enroll in specialized instruction on the humane and efficient handling of young offenders. Participate in educational initiatives for kids to aid in the reduction of juvenile crime and victimization.
- Learn as much as you can about the kids and their parents in your duty area. Be aware of the presence of children in such locations or in contact with such adults, as well as of the places and adults that pose a risk for criminal activity.
- Investigate and alert parents and school authorities if kids are seen leaving school during class hours.
- Investigate right away any indications of child abuse or neglect in the children's residences, neighborhoods, or police facilities.
- Meet frequently with social workers and doctors to go over work-related children's issues.
- Return juvenile offenders to parents or social services for less serious crimes.
- All documentation relating to children should be kept in a secure location.
- Any information suggesting a colleague is not qualified to work with children should be reported to superiors.

3.2.2 Command and supervisory officials

- Encourage the use of a range of arrangements as substitutes for the institutional treatment of kids, such as care, guidance, and supervision orders; counseling;

probation; foster care; educational and career training programs; and other appropriate and proportionate measures.

- Keep thorough, secure records on every juvenile detained, including their name, the circumstances surrounding their commitment, the date and time of their admission, transfer, and release, the notifications made to their parents, any physical or mental health issues, and the personnel responsible for their care.
- Establish protocols for how juvenile inmates can contact the institution's director, judicial authorities, and social service providers directly with complaints and other communications.
- Aid in the creation and implementation of community initiatives aimed at reducing juvenile crime.
- Identify, hire, and train specialists who are qualified to deal with juvenile offenders.
- Ensure that policies for the treatment of juvenile offenders are periodically reviewed and revised, working with social service organizations, medical professionals, the judicial system, and community representatives. Create accelerated processes for presenting juveniles in custody to the court when judicial action is necessary.
- Cooperate closely with organizations that deal with juvenile justice, child protection, health, and social services.
- Create plans for providing ongoing assistance to kids who are in particularly vulnerable situations, such as those involving extreme poverty, homelessness, abusive households, or high crime areas.
- Create a special juvenile unit if at all possible to address incidents of juvenile victimization and crime with expertise.
- Give specific instructions regarding the private handling of juvenile records.
- Closely supervise staff assigned to deal with juveniles, and investigate and redress any incidents of abuse, mistreatment, or exploitation of children.

3.3 The Human Rights of Women

3.3.1 Human Rights Standards

- All human rights, including those related to politics, the economy, society, culture, and the rule of law, should be enjoyed and protected by women on an equal basis.
- Among these rights are those to life, equality, liberty, and security of the person; equal protection under the law; freedom from discrimination; the highest attainable standard of mental and physical health; just and favorable working conditions; and freedom from torture and other cruel, inhuman, or degrading treatment or punishment.
- In addition to dowry violence, marital rape, harmful traditional practices,

non-spousal rape and violence, sexual harassment, forced prostitution, trafficking in women, and exploitation-related violence, violence against women can also take the form of physical, sexual, or psychological abuse.

- All forms of violence against women violate, limit, or eliminate the ability of women to exercise their fundamental rights and freedoms.
- The Police must take all reasonable precautions to stop, look into, and apprehend any acts of violence against women, whether they are committed by the public or by private individuals, in the home, in the neighborhood, or in official institutions.
- The Police are required to take strict official action to stop the victimization of women and to make sure that there is no repeat victimization due to police negligence or gender-insensitive enforcement methods.
- Even when it happens within the family, violence against women must be treated as a crime.
- Women who are detained or arrested must not experience discrimination and must be shielded from all forms of abuse or exploitation.
- Female officers and staff must supervise and search female detainees.
- Female detainees must be held apart from male detainees.
- Special facilities in jails and prisons must be made available to expectant mothers and nursing mothers.
- Law enforcement organizations are not allowed to discriminate against women in terms of hiring, training, assignments, promotions, pay, or other administrative and career-related decisions.
- In order to ensure fair community representation and the protection of the rights of female suspects, arrestees, and detainees, law enforcement agencies must hire a sufficient number of women.

3.4 Human Rights Practice

3.4.1 All Police Officials

- Respond quickly to domestic violence and sexual assault calls, let victims know about available medical, social, psychological, and material support and offer transportation to a safe location. Treat domestic violence crimes as legally equivalent to other assaults.
- Look into domestic violence in detail and with professionalism. Speak with the victims, witnesses, neighbors, and medical experts.
- Prepare thorough reports of instances of domestic violence, follow up diligently with victims and superiors, compare reports to records of earlier incidents, and take all necessary precautions to prevent a recurrence.
- Offer to go with a victim of domestic violence to her home after medical, administrative, and other procedures are finished so that she can move her belongings to a safe location.

- Enroll in training to hone your abilities in supporting and defending domestic abuse victims.
- When handling domestic violence cases, work closely with medical professionals and social service organizations. Make sure a female officer is present at all times when dealing with female offenders or female victims of crime.
- Whenever possible, show complete deference to female coworkers.
- Separate the male and female prisoners. A female officer must always oversee and search female detainees.
- Avoid and discourage gender-insensitive jokes and conversations with your male coworkers, if you're male.
- Initiate improvements yourself, seek feedback from your female coworkers on any gender-specific policies, practices, behavior, or attitudes, and assist them in their efforts.

3.4.2 Command and supervisory officials

- Make clear standing rules about quick, effective responses to domestic violence calls and the legal comparability of domestic violence to other types of assault, and enforce them.
- Officials should receive regular training on how to combat violence against women.
- Create a specialized police unit to respond to domestic violence calls, and think about including social workers in these units alongside the police.
- Establish close communication and cooperative strategies with healthcare providers, social service providers, neighborhood "safe houses," and pertinent community organizations.
- Assign female police officers to assist female criminal victims.
- To eliminate any gender bias, review the hiring, training, and promotion policies.
- Separate female from male detainees and assign female officers to all searches and detainee supervision.
- Establish special detention facilities for women who are pregnant or nursing.
- Adopt policies that forbid discrimination against officers due to maternity or pregnancy. Open channels of communication should be established for female officers to use when making complaints or suggestions about issues of gender bias.
- To lower the likelihood of violent crimes against women, increase patrols and preventive measures in high-crime areas, including foot patrols and community involvement in crime prevention.

4. Violation of Human Rights in Safe Custody

Human rights violations as of right now, safe custody is a recognized legal procedure thanks to the Nari-O Shishu Nirjatan Daman (Bishes) Bidhan-2002. According to Section 31 of this law, if the court determines that the plaintiff woman or child needs safe custody during any ongoing trial, the Tribunal may order for their safe custody to be given to any other trustworthy individual or trustworthy organization, as well as to a suitable location determined by the government as safe custody. The issue of granting safe custody is now at hand. There is no provision for the plaintiff or victim to express their opinion regarding safe custody; instead, the Tribunal has the sole authority to rule on safe custody in his or her individual capacity. Therefore, this section of the Ordinance violates human rights, which allow for the expression of one's right to free speech.

The Constitution of Bangladesh states in Article 31 that "Every person may avail the right to have the lawful protection and behavior in accordance with law and no one can be barred without promulgating any special provision in law to franchise his or her life, independence, goodwill, and wealth."

Article 32 states that "No one can be denied his or her own freedom and life without the promulgation of the law."

"Being a citizen of the country, every person should avail the right to easy access, easy living from the country, unconditional return to the country, setting any establishment for living at any place in the country and living there, according to Article 36 of the Constitution. And, in order to prevent him/her from doing so, special laws in the public interest must be enacted."

However, in practice, having such provisions in the holy constitution means that people are imprisoned in the name of safe custody, which is a complete violation of articles 31 and 32 of the Constitution. In the name of security, victims are sometimes sent to jail for safe custody, where they do not have the freedom to move as they wish. That is a direct violation of Article 36 of the Constitution. We can mention here that such a provision is only legal in the PRC. However, it is worth noting that there is a clear instruction in the special ordinance that a person should be sent to such safe custody that the government has specifically declared as safe custody. As a result, the victims can be sent to non-jail locations for safe custody. It is debatable whether the court is violating fundamental rights on its own. In the case of Sunil Batra vs. Delhi Administration, the Honourable Judge stated, "The organization that acts like that to impose imprisonment on anyone for defying his/her franchise may need to rectify himself first."

Such activities are prohibited by international laws governing the protection of human rights. Bangladesh, as a signatory to the United Nations' Human Rights Declaration of December 10, 1948, must comply. Section 9 of the Human Rights Declaration states unequivocally, "No one can be confined in any custody without his/her prior permission."

The tribunal's sole authority to issue an order for jail living in the name of safe custody is a complete violation of human rights.

Safe custody for minors, on the other hand, is a complete violation of Sections 37 and 39 of the Declaration of the Rights of the Child. In these sections, it is stated that "no child shall be a victim of any conviction or inhuman, dishonorable, or brutal act, nor shall any child be barred from exercising his/her right to live in a free environment. The arrest, imprisonment, and conviction of a child must be legal, and such a practice may serve as the last panacea and be completed as quickly as possible. Every confined child is entitled to normal and honorable behavior, and his or her needs should be assessed in relation to his or her age. Every imprisoned person should be kept separate from convicted adults, every neglected child deserves the right to re-establish in society, and authorities must take such measures to do so in the future."

Children in our nation are protected in this way, but those who are unlucky enough to have safe custody frequently do not receive these rights. However, Bangladesh is a strong supporter of this declaration as one of the original 22 signatories. This declaration became effective on September 2nd, 1991, in Bangladesh.

5. Recommendations

Law enforcement officials have a duty to uphold the law at all times, protect everyone from harm, and serve the community in accordance with the high standard of responsibility demanded by their line of work. Law enforcement personnel are not permitted to engage in any corrupt behavior. They must vehemently oppose and stop all such actions. Law enforcement officers must uphold and respect everyone's human rights as well as respect and protect their dignity. Each law enforcement organization must be responsive to the community as a whole, represent it, and be accountable to it.

Any unlawful discrimination must not be present in the police agencies' hiring, assigning, promoting, or recruitment practices. Records on investigations,

arrests, detention, the use of force and weapons, victim assistance, and all other aspects of police activity must be kept in a clear, thorough, and accurate manner. On all issues involving police activity affecting human rights, training and precise guidelines shall be made available.

Police departments must train their officers on how to use a variety of tools for the selective use of force. Superior officials must be notified of and given a chance to review any instances of the use of force or firearms. If a superior official knew or should have known about abuses but did nothing, they will be held accountable for the actions of the police under their command. Officials who reject illegal orders from superiors will be granted immunity. Information that is confidential must be handled carefully.

All potential police officers must possess the necessary mental and physical attributes. Every police officer must be subject to regular, efficient reporting and review processes. All police are to be subject to continuous and effective reporting and review procedures. In addition to all of these, the following actions and strategies should have been taken by law enforcement agencies in a democratic nation like Bangladesh:

1. At the outset, need to create a voluntary code of ethics for law enforcement personnel.
2. By amending the Code of Criminal Procedure, every court in the nation should have the ability to order safe custody.
3. To arrange for finding out the victim's wishes regarding safe custody.
4. Every district supported by the government may construct special safe custody.
5. A careful investigation should be conducted before granting such permission, and arrangements for regular observation should be made in this regard if any non-government organization expressed its intention to provide safe custody.
6. Issue directives that are clear and mandatory regarding the upholding of human rights in all facets of police work.
7. A careful investigation should be conducted before granting such permission, and arrangements for regular observation should be made in this regard if any non-government organization expressed its intention to provide safe custody.
8. A careful investigation should be conducted before granting such permission, and arrangements for regular observation should be made in this regard if any non-government organization expressed its intention to provide safe custody.
9. Spread the word about the improper use of safe custody.
10. To create a strong police network for finding the appropriate guardians of safe custodians.
11. All officials should receive initial and ongoing in-service training, with a focus

on the aspects of police work related to human rights that are covered in this manual.

12. Create thorough hiring procedures and ongoing evaluations of every officer to determine whether they are of the right character to perform law enforcement duties.
13. Create and uphold strict regulations for reporting and record-keeping.
14. Create a system that is easily accessible for the receipt of community member complaints, and thoroughly investigate and address each one.
15. Create a strategy, including fair and nondiscriminatory hiring and management practices, to ensure that the police force is representative of the entire community.
16. To build techniques, technical policing skills, and capacity for proper and effective law enforcement, seek out technical assistance from international and bilateral programs.
17. Create and publicize a suitable range of sanctions for police infractions, ranging from suspension, pay reduction, and termination to criminal prosecution for serious infractions.
18. Control, storage, and distribution of weapons and ammunition should be strictly regulated and conduct routine, unannounced spot checks on police stations, substations, and detention centers.
19. Should also to be checked the weapons and ammunition that police officers are carrying to make sure they adhere to the law.
20. Establish close working connections with courts, prosecutors, medical facilities, social service providers, emergency services, the media, and neighborhood organizations.
21. Create specialized units to improve police response to situations involving juveniles, victims, large crowds, prisons for women, border control, etc.

Finally, it can be said that in a democratic country like Bangladesh, it is not enough to merely implement the aforementioned measures; the victims and the general populace must also be made aware of the law and its procedures.

6. Conclusion

Bangladesh is a democratic and developing country where the majority of the people are still uneducated and subsistence farmers. Therefore, considering the creation of an effective management system relating to Safe Custody rather than instances of egregious legal violations is much more unexpected. Finally, it is observed and is to be noted through certain cases mentioned in this study that the real scenario and power practices regarding the role of police relating to Safe Custody

dy and the concept of Human Rights have not been ensured and followed accordingly by the law enforcers (police) and so many unexpected and unlawful practices committed rampantly beyond its imagination, especially against the children and women have been kept while in the police custody in the name of safe custody.

References:

Md. NurulAlam et al., 1st ed., *Human Rights Training Manual for Bangladesh Police* (Dhaka: Institutional Development of Human Rights in Bangladesh (IDHRB), 2001), 53.

Ibid.

Ibid.

Ibid.

Md. NurulAlam et al., 1st ed., *Human Rights Training Manual for Bangladesh Police* (Dhaka: Institutional Development of Human Rights in Bangladesh (IDHRB), 2001), 53.

“Vagrancy Law and Legal definition” USLegal. Inc., accessed January 20, 2022, https://www.google.com/search?ei=zG5jWuDaEIGJggesz4CABQ&q=vagrancy+laws&oq=vagrancy+&gs_l=psy-ab.1.2.0.i67k1j0l4j0i67k1j0l4.128877.129435.0.133143.3.3.0.0.0.543.901.3-1j0j1.2.0....0...1c.1.64.psy-ab..1.2.896....0.k8tHw2QrWcM.

Md. Nurul Alam et al., 1st ed., *Human Rights Training Manual for Bangladesh Police* (Dhaka: Institutional Development of Human Rights in Bangladesh (IDHRB), 2001), 53.

Ibid., 53-54.

Md. Nurul Alam et al., 1st ed., *Human Rights Training Manual for Bangladesh Police* (Dhaka: Institutional Development of Human Rights in Bangladesh (IDHRB), 2001), 53-54.

Ibid.

Ibid., 55.

Ibid.

Md. Nurul Alam et al., 1st ed., *Human Rights Training Manual for Bangladesh Police* (Dhaka: Institutional Development of Human Rights in Bangladesh (IDHRB), 2001), 53-54.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid., 55.

Ibid.

“A review of laws and policies to prevent and remedy violence against children in

police and pre-trial detention in Bangladesh,” Penal Reform and Bangladesh Legal Aid and Services Trust (2013): 8, <http://www.blast.org>.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

“A review of laws and policies to prevent and remedy violence against children in police and pre-trial detention in Bangladesh,” Penal Reform and Bangladesh Legal Aid and Services Trust (2013): 13, <http://www.blast.org>.

“State vs Secretary,” Ministry of Home Affairs, 19 BLT (Suo Motu Rule No. 15 of 2010) 376.

“State vs Secretary,” Ministry of Home Affairs, 16MLR (Suo Motu Rule No. 1 of 2010) 254, quoted in Justice M. Imam Ali, “Towards a Justice Delivery System for Children in Bangladesh,” UNICEF (2010), <http://www.blast.org>.

Justice Md. Imman Ali, “Towards a Justice Delivery System for Children in Bangladesh,” UNICEF (2010) 228. <http://www.blast.org>.

“Jahanara Begum alias Jotsna Rani Saha v State and Snandra Nath Saha”, 15 DLR (1963) 39, <http://www.blast.org>.

The Children Act, 1974, Section 33.

“A review of laws and policies to prevent and remedy violence against children in police and pre-trial detention in Bangladesh,” Penal Reform and Bangladesh Legal Aid and Services Trust (2013): 13, <http://www.blast.org>.

Ibid.,14.

Ibid.

Ibid.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985, Rule 12.1; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990, Guideline 58.

Justice Md. Imman Ali, “Towards a Justice Delivery System for Children in Bangladesh,” UNICEF, 2010. <http://www.blast.org>.

UN Committee on the Rights of the Child (CRC), Concluding Observations: Bangladesh, 26 June 2009, CRC /C/BGD/CO/4, <http://www.blast.org>.

Justice Md. Imman Ali, “State v. Secretary”, Ministry of Law, Justice & Parliamentary Affairs and Others, Suo Motu Rule No.5621 of 2009, High Court Division, Bangladesh (3 Sept. 2009), accessed March 18, 2022, <https://www.crin.org/en/library/legal-database/state-v-secretary-ministry-law-justice-parliamentary-affairs-and-ors>.

Ibid.

Ibid.

Justice Md. Imman Ali, “State v. Secretary”, Ministry of Law, Justice & Parliamenta

ry Affairs and Others, Suo Motu Rule No.5621 of 2009, High Court Division, Bangladesh (3 Sept. 2009), accessed March 18, 2022, <https://www.crin.org/en/library/legal-database/state-v-secretary-ministry-law-justice-parliamentary-affairs-and-ors>.

Ibid.

Justice Md. Imman Ali, "State v. Secretary", Ministry of Law, Justice & Parliamentary Affairs and Others, Suo Motu Rule No.5621 of 2009, High Court Division, Bangladesh (3 Sept. 2009), accessed March 18, 2022, <https://www.crin.org/en/library/legal-database/state-v-secretary-ministry-law-justice-parliamentary-affairs-and-ors>.

Ibid.

<https://www.ohchr.org/sites/default/files/Documents/Publications/training5Add3en.pdf>, accessed October 7, 2022.

Nari-O Shishu Nirjatan Daman (Bishes) Bidhan- 2002(Sec. No. 8).

Constitution of the People's Republic of Bangladesh, Government of the People Republic of Bangladesh, Ministry of Law and Justice.

Ibid.

Ibid.

ASK Bulletin, Fayajuddin, September Issue, 1998, 7.

Human Rights Declaration of United Nations.

Ibid.

https://www.academia.edu/11723355/Safe_custody_DOC, accessed October 8, 2022.

Manual of Human Rights Law, Edited by Tuhin Malik, 366-367.

Ibid.

Ministry of Social Welfare, Government of the People's Republic of Bangladesh and UNICEF, Declaration Child Rights.

Ibid.