

"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH



LAW EXCERPTS

Responsive law enforcement

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LAW enforcement is an integral component of the justice delivery system. They are entrusted with providing services to all citizens and making their lives safe and secure. According to the Constitution of Bangladesh, all citizens are equal before the law and as part of their fundamental rights are entitled to equal protection (Article 27, 31 Constitution of Bangladesh). This constitutional responsibility to protect the people is in the hands of the police and other related forces. The second national poverty reduction strategy specifies the transformation of the law enforcement agencies' roles and makes clear that the government is focused on pro-people services.

Law enforcement agencies in Bangladesh are always working to fulfill their obligation to provide protective services to all citizens and make Bangladesh a better and safer place to live and work. The police have been implementing reforms and providing better services in order to improve to ensure greater safety and security, and uphold the rule of law. As an important part of modernizing the police and their services, new technologies are to be incorporated. The government realizes that the incidence and severity of crime has climbed too high, and that certain measures need to be taken to immediately address the problem starting with strengthening law enforcement agencies.

There are four key problems in the law enforcement system that needs to be addressed: a) skills of law enforcement agency employees in ICT use; b) agencies do not appear legitimate, safe, and useful in the eyes of the public; c) reliable, high speed network connectivity and d) so called 'cyber crimes' are

becoming more common and threaten safe access to Internet based services, exchanges of information and data.

Compared to many other agencies within the government, the police have made significant progress in the last five years. The Bangladesh police have initiated an IT (cyber) crime investigation facility along with other ICT based interventions. It uses biometrics, a technology that identifies people using physical characteristics such as fingerprints or retinal scans. Fingerprints have been used to identify people for a long time. Until recently they were taken by covering the fingertips with ink and pressing down on paper - now they are scanned electronically. CID already has its project on automated fingerprint identification system (AFIS). With this system, finger prints recovered from crime scenes can be checked and verified within the criminal database in a fraction of a second.

DNA analysis is another technique that has become very important for identifying both victims and criminals. Some of the police units like SB, CID, and DMP are using off-the-shelves software like Analyst Note Book for analyzing data and generating visual representation. The Modernization of DMP Control Room project initiated tetra digital tracking communication system with CCTVs and an automated vehicle location system to respond quickly in times of emergency. This project also set up digital display boards in Dhaka to inform citizens about the traffic situation.

The Criminal Intelligence Analysis Unit (CIAU) is digitally documenting case information in relation to trafficking, murder, forgery and terrorism. An electro static document analyzer (ESDA) enables the police force to analyze handwriting. Sharing the BRTA database



of the highway police through mobile phones can reduce vehicle theft, forgery of driving licenses or vehicle registration. This technology may also help police narrow their searches of suspects in a more effective manner.

The police are in great need of secured and dependable connectivity to share and exchange data both vertically and horizontally. The positive impact of a project that put computers into the police stations of 15 districts may now be extended to include all areas. All district, metropolitan, range and training institutes may be under a Wide Area Network. In Metropolitan Police Areas WIMAX based WAN may be established whereas in all highway/ range stations and posts may be connected through VPN. The connectivity that links all DCs and UNOs may be extended for Police usage to join all 64 SP office and 600 police stations. Though already in place, software is not yet functional due to an absence of connectivity.

Special emphasis should be given to the ICT literacy of officers who

have direct interface with citizens to deliver various services that can be automated through ICTs. Police may be crucial to helping develop the ICT skills of officers at various ranks that are working in the field. First and foremost, the police may train and prepare 3000 officers who may be taking active role in implementing the vision for 2010. As a second priority, some constables and all officers from ASI upward may be gradually provided with basic IT literacy.

Manual record keeping and management of information dramatically slows down the emergency response process. And maintaining the system through the manual collection of information from police stations is cumbersome and time consuming. To learn about any filed complaint's progress or the status of a passport application takes the valuable time and resources of citizens. ICTs can play a significant role here. A system should be put in place to log and update records of complaints along with the details of all investigative

officers that are involved. Pleaders may then be able to view the progress of the complaint and all stages of the process either on line or by a telephone call or SMS.

Custody records for prisoners held in police stations can be used to help prepare court cases.

Passport verification reports can easily be generated using SMS.

Citizens' access to the pending status of under-investigation and under-trial cases using SMS may be another service improvement. This may make the process easy and client friendly. A criminal justice intranet network can allow the police and other organizations to communicate and share documents securely.

The successful implementation of these office tools may add to the managerial and administrative efficiency of the department and in turn may benefit the public service delivery of the department and ensure the best use of tax-payers money. The Police force may use palm prints in addition to fingerprints to identify people and facial recognition systems are becoming increasingly important as more evidence is collected on CCTV cameras. Automatic Number Plate Recognition (ANPR) cameras can tell police officers within seconds whether a vehicle has been stolen or is known to be involved in crimes. By sharing BRTA data over mobile phones, the highway police can use ICTs to reduce vehicle theft, and the forgery of driving licenses and vehicle registration.

Crime data management systems (CDMS) may be installed in all districts and divisional head quarters. In collaboration with the Ministry of Foreign Affairs (MoFA) and the Special Branch (SB), the government is planning to collect the visa information of visitors online using a virtual private network (VPN). This may be tagged with online visa

application options. Radio connectivity among SB, Shahjalal International Airport and the central passport office may all contribute to the airport document analysis centre (DAC) which monitors immigrants' movement.

Citizens' access to police services, starting with access to police stations to lodge complaints regarding violation of rights, may be strengthened. The present limitations of quality services and emergency responses from the agencies must be resolved. ICTs may play a significant role in meeting these challenges. One of the most effective ways to start resolving these issues is by increasing the use of mobile phone based services such as help lines with online options of filing and getting help in case of an emergency. Those using these services may receive updated information through a website and when required, by telephone call or SMS, empowering them with the knowledge of what the police process is.

Through the Access to Police Information (A2PI), victims of crimes may be updated with the status of their case through SMS. To provide better access to police services, the government has introduced an online General Diary (GD) under the "Citizens' Help Request" page. The diary provides a space for people to alert police about lost passports or certificates, give routine information about tenants, or reports on the movement of police suspects. Police Headquarters are also going to introduce online provisions that may provide legal assistance to expatriates. To implement these priorities into effective applications, an effective inter-agency coordination plan may be developed with clearly designated responsibilities.

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(...from previous issue)

In order to reduce the occurrences of torture and other degrading treatment, on 7 April 2003, the High Court Division of the Supreme Court of Bangladesh ordered the Government to amend the law relating to interrogation of people remanded in custody. The court also directed that glass-partitioned rooms in jails be constructed for interrogation purposes and until such rooms are constructed, arrestees are to be interrogated at the jail gate in the presence of relatives and lawyers. The decision came in the 2003 case of the Bangladesh Legal Aid and Services Trust (BLAST) and Others Vs. Bangladesh and Others, where several human rights and legal aid, non government organisations filed a writ petition in the High Court challenging the abuse of police powers to arrest without warrant under Section 54 of the Code of Criminal Procedure, 1898 and the abuse of powers regarding taking the accused into remand (police custody) under Section 167 of the Code. The petitioners referred to recent incidents of gross abuse of power, including allegations of custodial death, torture and inhuman treatment, in remand after arrest under Section 54 of the Code of 1898. To date, several years since the judgment, no such glass-partitioned rooms have yet been constructed and torture and other degrading forms of treatment are still meted out to an accused in remand. The petitioners argued that these provisions allowed for arbitrary exercise of power and that the Court should enunciate safeguards to prevent or curtail police abuse of powers and arbitrary actions by Magistrates, which constitute violations to several fundamental rights guaranteed under Articles 27, 31, 32, 33 and 35 of the Constitution of the People's Republic of Bangladesh.

The High Court laid down a set of fifteen guidelines with regard to exercise of powers of arrest and remand, including the following:

- No Police officer shall arrest anyone under Section 54 [of the Code of Criminal Procedure 1898] for the purpose of detention under Section 3 of the Special Powers Act, 1974
- The concerned officer shall record reasons for marks of injury, if any, on the person arrested and take him/her to nearest hospital or government doctor
- The person arrested shall be furnished with reasons of arrest within three hours of bringing him/her to the Police Station
- The person concerned must be allowed to consult a lawyer of choice or meet nearest relations
- Where the Magistrate orders detention of the person, the Officer shall interrogate the accused in a room in a jail until a room with glass wall or grille on one side within sight of lawyer or relations is constructed
- In any application for taking accused in custody for interrogation, reasons should be mentioned as recommended
- The Magistrate while authorizing detention in police custody shall follow the recommendations laid down in the judgment
- The police officer arresting under Section 54, or the Investigating Officer taking a person to custody or the jailor must inform the nearest Magistrate about the death of any person in custody in compliance with these recommendations.

International Obligations

The UN Convention against Torture and other Cruel, Inhuman and Degrading

Treatment (UNCAT) was ratified by the Bangladesh government in October 1998. Unfortunately, successive Bangladeshi governments have done little to prevent or prosecute acts amounting to 'torture' perpetrated by law enforcement agencies in the country, despite the Constitutional safeguard. There is, therefore, no question of compensating victims or their families or protecting witnesses to the crime. According to the internationally recognised definition of 'torture', law enforcement officers in Bangladesh 'public officials'

'circumstances' or 'order from a superior officer or a public authority' can justify or be invoked as a justification of torture. The previous paragraphs in this paper plainly show that Bangladesh is not complying with this provision of the Convention. Instances of torture and deaths in custody occurred during the State of Emergency as well; and it has been recorded that police and other law enforcement officers have stated that they are carrying out remand and physical abuse according to the dictates of their 'superiors'.

Article 4 of the Convention provides that each State Party 'shall ensure that all acts of torture are offences under its criminal law.'

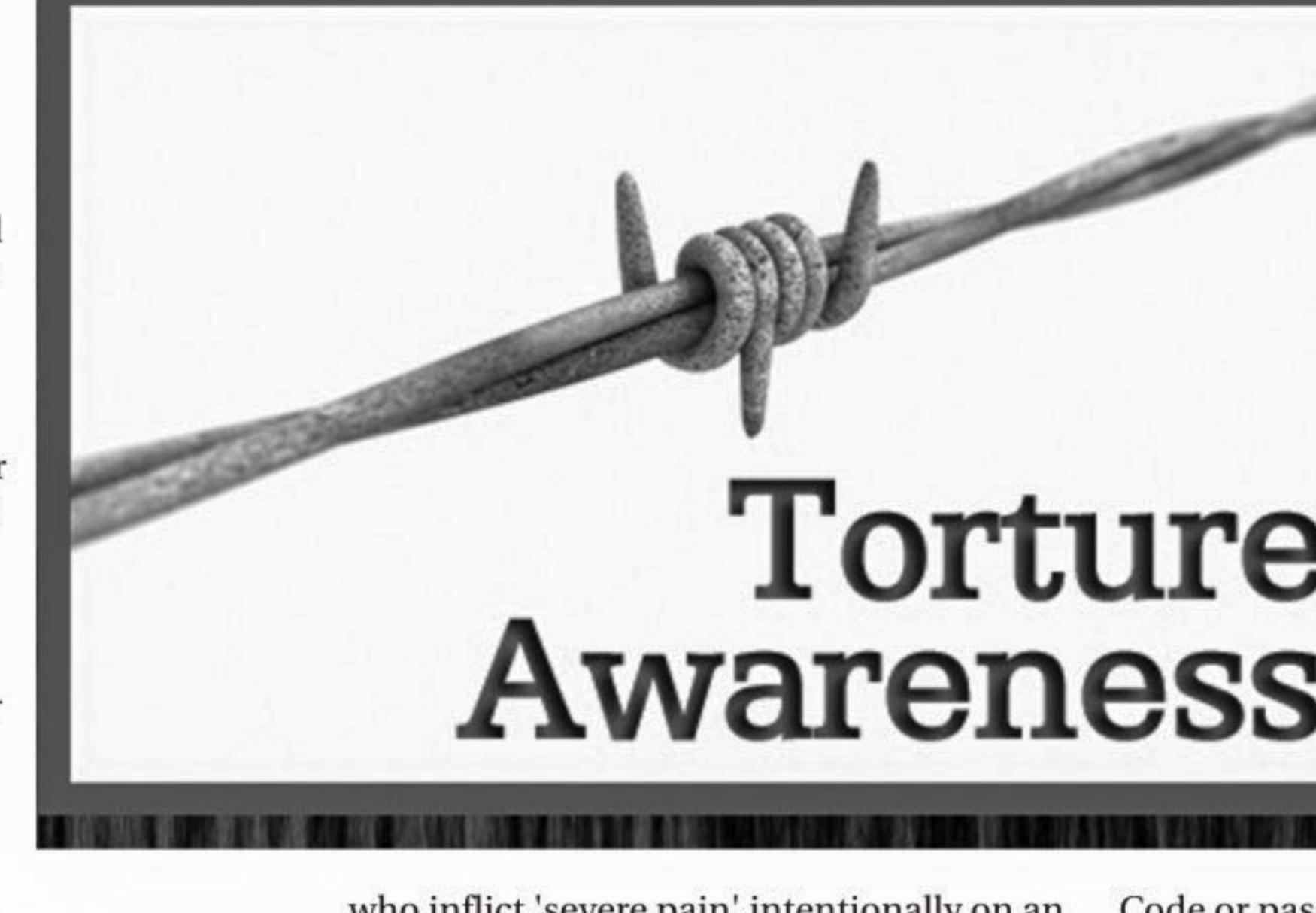
The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.'

Unfortunately, in the criminal laws in Bangladesh, the term 'torture' is not mentioned anywhere and only relevant sections of 'hurt' and 'grievous hurt' in the Penal Code 1890 can be applied where necessary.

Institution of a special section on 'torture' in the

Code or passing a specific Act making 'Torture' illegal and defining it and its application would probably have more impact than the current penal provisions.

Article 11 of the Convention states that each State Party must systematically review interrogation rules, instructions, methods and practices and the arrangements present for custody and the treatment of arrested and detained persons, 'with a view to preventing any cases of torture'. Article 15 provides that the State Party must ensure



who inflict 'severe pain' intentionally on an accused person or suspect to obtain from him a confession or acknowledgement of the commission of an offence can be said to be torturing such accused person or suspect.

Article 2 (1) of the Convention states that 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The following sub-clauses state that no 'exceptional cir-

that any statement that has been made as a result of torture is not invoked as evidence in court, except against the perpetrator of the torture as evidence of the torture. In Bangladesh, the measures to prevent torture as given by the High Court Division in the matter of Blast Vs. Bangladesh, were published in 2003. To date, none have been implemented in the police stations or places of custody and detainees and suspects are still questioned at the jail gate or 'interrogated' in 'remand'. Furthermore, despite the fact the guidelines for recording confessional statements are provided for the Magistrate in the prescribed forms, Magistrates are still sending people to remand and recording 'confessions' even when it is obvious that the statement-provider has been physically abused in a manner amounting to 'torture'.

Bangladesh became a member of the Human Rights Council in 2006. In its election bid for membership to the UN Human Rights Council, Bangladesh made voluntary pledges on the promotion and protection of human rights, in which it promised to "continue to cooperate with the special procedures and mechanisms of the Council with a view to further improve its human rights situations." Bangladesh was re-elected as a member of the Human Rights Council on 12 May 2009. As a member of the Human Rights Council for a second term, the government of Bangladesh has an opportunity to break from the practices of the past and make substantial progress concerning the protection of human rights and its cooperation with the UN human rights system. However, this is not a question of development or resources only, but one of political will as well. Bangladesh must recognise the urgent necessity to transcend beyond simple ratification of instruments, and face-saving, ineffective measures at the national level. It must commit to tangible cooperation with the Human Rights Council and its mechanisms and the implementation of its obligations under international law at the national level.

(To be continued...)

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