

Reflections on the Possibility of Humanizing the Criminal Justice System in Bangladesh: Implementing Rights of the Accused

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Abstract

Fair trial is indispensable to Rule of law. Without full freedom of an individual in a society or without assurance of deserved rights of a person during pre trial, trial and post trial, the implementation of the concepts of free trial, transparency and justice is unimaginable. Political power race or interference and administrative domination often darkens the goal of criminal justice system and specially rights of the accused are violated in spite of this issue being addressed in the Constitution or other laws of Bangladesh. The flaws in the legal system make option for the violation of the rights and these violations are further indulged by political or administrative corruption. This writing intends to observe closely the drawbacks for which the legal provisions in Bangladesh can not come true regarding rights of the accused. If we think of a harmonized society with equal justice and fair trial, an effective solution for establishing rights of the accused in full sense with a view to humanize the criminal justice system of Bangladesh has no alternative.

Introduction

Every society primitive or modern has its own system of punishing the wrong doers and rewarding the persons doing commendable work. What was wrong or offense in a particular society might not

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be so in another society. Of course certain conducts are universally considered as wrong in every society.

The system of punishing the wrong-doers or offenders has undergone tremendous change and the modern criminal justice system has been evolved out of the ancient system through trials and errors. Before the modern criminal justice system was evolved the offenders were treated as if they were not human beings and the process of deciding guilt as well as punishment awarded to them was cruel and inhuman. Even if a person was falsely charged with an offense it was often impossible for him or her to save themselves from the ordeal destined to an accused. A person charged with committing an offense was presumed to be guilty and not an innocent person before he was found guilty by the Court.

From the past experience, the English people for the first time could realize that such a system of criminal justice was not fair and just. So they evolved the modern criminal justice system which is based on the presumption of innocence of the accused till found guilty by a court of law. This English common law system for the first time recognized the accused as a human being and the prosecutor was saddled with the responsibility of establishing the charge of guilt against the accused who is presumed to be innocent till found guilty by the Court. Though the accused has no responsibility to adduce evidence in support of his innocence has every right to challenge the veracity of prosecution evidence. That is why English common law system is also termed as adversarial and not as accusatorial one based on Roman Law prevalent in the continental countries of Europe and many other countries of the world.

Of course under the impact of the United Nation's Universal Declaration of Human Rights continental system has

also undergone much change and the rights of the accused to be treated fairly have been recognized in that system also.¹

In a democratic society every individual has certain rights provided by the Constitution. Everyone is regarded as a citizen and individual liberty is their vital instrument for exercising such rights. But they have a shared responsibility to work with the others to continue to move towards fundamental values and self governance. The interest of crime control demands that wide power be conferred upon the state to invoke the criminal justice system against an individual. But, a democratic social order can not totally disregard the interest of the individual liberty that is why, conceding coercive power to the state, ways and means are provided to prevent the arbitrary and capricious use of these powers. It is with this balancing view that almost every mature legal system begins with an assumption of innocence till the contrary is proved. This principle is in consonance with article 14(2.3) of the International Covenant on Civil and Political Rights 1966 (ICCPR), which says that “Everyone charged with a criminal offence shall have the right to be presume innocent until proved guilty according to law.”²

But even after all such provisions in laws for rights of the accused, in reality, the outcome is not up to satisfactory level in Bangladesh. This write up tends to analyse the facts of how the laws in this regard are violated and how can rights of the accused in our Bangladesh be better ensured so that our Criminal Justice system may be more humanized.

¹ Paul, Gopal Chandra., *Rights and Privileges of Accused Person*, 1st Edition (Mrs. S R Paul: 2003, Dhaka), at: [http:// www. Asiatic society.org.bd/journals/Golden_jubilee_vol/](http://www.AsIatic_society.org.bd/journals/Golden_jubilee_vol/)

² Gallant, Kenneth S., ‘Protection of Human Rights in International Criminal Tribunals’ (1997) *National Law School Journal*, p. 20.

Criminal Justice System

It is generally known that through criminal justice system, violation of rights and laws are prosecuted and tried according to the statutes of the state. Penal laws, which form the core of legitimacy and functionality of criminal justice system, may be an essential part of this point to consider. The Criminal laws, provide descriptions (in the sense of identifying and defining crimes) and also provides penalties for socially unacceptable norms.

For this purpose, criminal law is generally divided into substantive and procedural law. It may be submitted that substantive law embodies a reflection on the imagined social order that the community desires to achieve. It specifies, or stipulates the types of conduct that are tantamount to crime and hence, punishable by the state. Precisely, substantive law answers the question: what is illegal? Besides, procedural law sets forth the rules that govern enforcement, adjudication, and corrections of the criminal justice system. Thus, it answers the question: how is the law enforced?

Criminal justice system, in its form and method, has different shades and colors in common law and civil law countries. The differences in many aspects of detailed rules, but in the method and procedure of criminal trial, the two systems lay down remarkable contrasts. In the Civil law countries the procedure of criminal trial is known as “inquisitorial” while in common law countries it is known as accusatorial or adversarial.³

The criminal trial process in Bangladesh is essentially adversarial or accusatorial in nature meaning that the whole process is a contest between two parties. The makeup of criminal trial is such

³ Khanna, S. L., *Comparative Law(A General & Comparative Study of Common Law & Civil Law System)*, 3rd Edition (Central Law Agency: 1996, Allahabad) p. 208.

that one of these two parties is the state on the one hand and the person accused of crime concerned on the other hand. In the process, the judge takes a passive role. The trial itself is not an investigation into events or allegation but rather a hearing to decide within a complex set of rules, whether the accused is proved to be guilty of the particular offences with which the prosecution have charged him. As a general guideline, a person accused of a crime is presumed to be innocent until the prosecution proves his guilt beyond every reasonable doubt. If there is a little doubt in proving the elements of the offence concerned, the accused will be set free.⁴

Why Criminal Justice System to be Humanized

“Right to fair trial” is one of our constitutional guarantees. It means that an accused person can be arrested, tried and punished only in accordance with procedures prescribed by law which is known as due process. One of the principles of criminal justice is that nobody may be compelled through the use of threat, promise or inducement in criminal cases, or, a accused may be compelled to become a witness against himself. On the other hand, there is little scope of cooperation in a criminal case on the part of an accused in proving a case against him as human psychology usually prevents one from admitting his/ her guilt, rather, it motivates him to resort to all possible ways for avoiding conviction. As a result, it is always an uphill task for the prosecution to unearth a crime. Further, the prosecution (often) being the witness in support of a case has the burden to rebut the defense arguments and prove the case beyond all reasonable doubts. It may be consistently argued that this task frequently becomes more difficult on account of scarcity of resources,

⁴ Halim, Md. Abdul., *The Legal System of Bangladesh*, 1st Edition (CCB Foundation: 2004, Dhaka) pp. 144- 45.

shortage of manpower in the prosecution office, political interruption, and most importantly due to corruption.⁵

Many social critics and legal reformers are concerned about these fallacies in the administration of criminal justice in Bangladesh. Many of them often refer to the organization and administration of justice as “nonsystematic”, because the police, the courts and the correctional process have no common goals, cooperative attitudes, or centralized management. They claim that courts are at the brink of disaster. Backlogs are colossal, workloads are always increasing, and the entire design is misshapen and understaffed. Moreover it is often argued that the administration of justice has underscored the notions of due process and accused person’s rights to such an exaggerated degree that criminals are all equally and easily released to continue preying on law abiding citizens.⁶

Public demand for effective law enforcement has often led to the enactment of repressive laws. In much of the new legislation punitive measures have increased, but no attention has been paid to minute detail such as flaws in procedures for investigation, prosecution and forensic testing. This has often led to cases’ being dismissed which has, in turn, become a license for criminality. Several new laws have been enacted over the past decade, and in each, punitive measures have apparently escalated. Nevertheless, the brutality or frequency of criminal activity has not abated. Lawyers claimed that loopholes in investigative and prosecution procedures have allowed for abuse. In fact, some of these laws have succeeded merely in harassing citizens, rather than in

⁵ Manjur, Kader., ‘Plea Bargain: An Overview of the Practices of Alternative Criminal Trial and its Prospect in the Criminal Justice Administration of Bangladesh’ (2007) *Dhaka University Law Journal*, p. 131.

⁶ Hoque, Kazi Ebadul., ‘Plea Bargaining and Criminal Workload’ (2003) *Bangladesh Journal of Law*, p. 84.

restoring public confidence. There are a number of protective laws, beginning from the Constitution itself, to safeguard citizens from arbitrary arrest, torture and inhuman or, degrading treatment, or, punishment with minimum implementation.⁷

Plausibly, we may infer from the description above that reforms appear to be imperative in the criminal justice system in Bangladesh. The question, it may be submitted that, is to achieve a proper balance between the provisions of criminal law and the preservation of liberty of the individuals. We must not forget that laws are for men and not the vice versa. If legal system is detrimental to personal liberty or someone's lawful demand then such a system may lose its credibility and efficacy. So keeping in mind, these objectives of the criminal justice system, we should reform the whole system in order to make it more humanized sacrificing the efficiency of it.

Accused and Rights of the Accused

There is no definition of the term "accused person" in the Code of Criminal Procedure.⁸ But, there are sufficient indications to understand this term. A person against whom a complaint of committing any offense has been made before cognizance is taken by the Magistrate is not an "accused" but he is merely "a person complained against" and as soon as cognizance is taken by the Magistrate applying his mind to the complaint made and issues a process of summons or warrant the "person complained against" is transformed into "accused person" or simply "accused".⁹

⁷ Ain O Salis Kendra (ASK), *Human Rights in Bangladesh 2002*, 1st Edition, Hameeda Hossain (ed.) (Ain o Salish Kendra (ASK): 2003, Dhaka) p. 153.

⁸ *The Code of Criminal Procedure, 1898*.

⁹ Paul, Gopal Chandra., *Rights and Privileges of Accused Person*, 1st Edition (Mrs. S R Paul: 2003, Dhaka) pp. 1-2.

So long such process is not issued "a person complained against" is not under any sort of legal infirmity. But as soon as such process is issued he is under certain disabilities and hence question of his rights and privileges arises. The matter is different when the offence alleged is a cognizable one authorizing a police officer to arrest a person without warrant. But in such a case also police cannot detain such a person in custody beyond twenty four hours and is bound to produce him before the nearest Magistrate. Though such a person is a "suspect" is not an "accused" before cognizance is taken against him by the Magistrate after considering the police report of investigation into the offence. As soon as a person arrested by police is produced before the Magistrate he gets a chance to pray for and obtain bail even in a non bailable offence. In a bailable offence the "suspect" is entitled to bail as of right both from the police or Court and in a non-bailable offence at the discretion of the Court the suspect may get bail. Many, the rights and privileges of the accused person are production or appearance before the Magistrate, bail, charge or discharge, defence through lawyer, production of evidence in defence, trial in open court by an independent tribunal, appeal, revision etc.¹⁰

The rights of the accused is a "class" of civil and political rights that apply to a person accused of a crime, from when he or she is arrested and charged to when he or she is either convicted or acquitted. Rights of the accused are generally based on the maxim of "innocent until proven guilty" and are embodied in due process.¹¹

The rights of the accused hold a particularly important role in the legal process. They balance the desire of a state to maintain

¹⁰ *Ibid.*, pp. 7-18.

¹¹ Wikipedia, 'The Rights of the Accused', at: http://en.wikipedia.org/wiki/Rights_of_the_accused, last visited 27 June 2011.

order with the rights of citizens to exist freely. This collection of laws ensures that justice is served equally to all brought into the criminal system. These rights represent a great shift away from the totalitarian powers enjoyed by the state in medieval ages and even into the modern era as the value of people and their individual rights was emphasized. Fundamentally, the rights of the accused involve the right to a fair trial, usually a trial by a jury of one's peers unless a bench trial (by judge only) is requested, representation by counsel, and the opportunity to confront one's accusers.

In the twentieth century these rights were expanded from simply during the trial to also include pre-trial and post-trial rights. Pre-trial rights include reasonable bail, and prohibition against being held indefinitely without the opportunity to post bail, as well as the right to a speedy trial, avoiding the situation where the accused languishes in jail for lengthy periods without the possibility of defending himself. Post-trial rights include the prohibition of double jeopardy (trying a person twice for the same crime) and the right to appeal the verdict in one's case.¹²

The rights of the accused, in eye of law, the rights and privileges of a person accused of a crime. In most modern legal systems these include the presumption of innocence until proved guilty, trial by jury, representation by counsel, the right to present witnesses and evidence to establish one's innocence, and the right to cross-examine one's accusers. Also important are a prohibition against an unreasonable search and seizure, the right to a speedy trial, and guarantees of freedom from double jeopardy and of the right to appeal. In the US a person accused of a crime must be

¹² Encyclopedia, 'Rights of Accused' at:
http://www.newworldencyclopedia.org/entry/Rights_of_the_accused, last visited 2 May 2011.

notified immediately of the right to secure counsel and the right to refuse to answer questions if answering might be incriminating.¹³

In short the accused person can enjoy such kind of rights, which are universally acclaimed as the rights of the accused, these are given below-

1. Right of due process.
2. Protection from illegal search and seizures.
3. The right to indictment by a grand jury.
4. Protection from double jeopardy.
5. Protection against self-incrimination.
6. Right to a fair and speedy public trial.
7. Right to trial by jury (to be judged by one's peers).
8. Notice of accusations (to be informed of the nature and cause of the accusation).
9. Right to confront one's accuser.
10. Right to counsel.
11. Protection from excessive bail and fines, and from cruel and unusual punishment.¹⁴

¹³ 'Rights of Accused' at: <http://www.answers.com/topic/rights-of-the-accused>, last visited 2 May 2011.

¹⁴ Britannica, 'Right of Accused', <http://www.britannica.com/EBchecked/topic/3114/rights-of-accused>, last visited 27 June 2011.

Significance of Rights of the Accused

Infringement of rights of the accused person is a major concern throughout the world today. Bangladesh is not an exception. Rights of the accused person violations have become endemic and remedies for breaches are almost non-existent. Members of the law enforcement agencies are often accused of abusing their powers and defying rights of the accused person. Allegations of torture and extortion of money are also common against them. The rights of the accused is trampled when victim die in police custody. Recent years many people died in police custody.¹⁵

The development of constitutional rights in Bangladesh was inspired by historical documents such as England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man. In constitutional law, rights of the accused person have special significance for protection of the citizen rights of states. Via the due process and equal protection of some kind of rights which is enforceable by the court of law, the Supreme Court has held that some rights are so rights of the accused in many cases, that any law restricting such a right must both serve a compelling purpose, and be narrowly tailored to that compelling purpose.

While the recognition of such rights has changed over time, they are generally identical with the rights listed in the Bill of Rights. Although some of the rights enumerated in the Bill of Rights are currently recognized as accused rights, others statements were included to restrict the government's permission with respect to the privileges granted by citizens, or more clearly

¹⁵ BLAST Bulletin (In Bengali), 2nd ed. Special Issue, January 2008, p. 2.

explain one of the many rights each citizen was born with, declared in the preamble of the United States Bill of Rights.¹⁶

Provisions for Rights of the Accused under the Laws of Bangladesh

The idea of protection of rights of the accused may be divided into following three main heads:

1. Universal Protection of Rights of the Accused.
2. Regional Protection of Rights of the Accused.
3. National Protection of Rights of the Accused.¹⁷

The Bangladesh Constitution bears the impacts of Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. When the Constitution of Bangladesh was being drafted and adopted, those three documents had been passed by the General Assembly of the UN. Bangladesh has recognized the influence of those three documents. The Bangladesh Constitution incorporates human rights or the rights of the accused person in following three ways-

1. Specifically enumerated Rights.
2. Other Rights or Rights not specifically enumerated.
3. Not enumerated Rights (and also not recognized rights).¹⁸

¹⁶ 'History of Fundamental Rights in India', 4th Consultation Report, (Hong Kong: Asian Human Rights Commission & Asian Legal Resource Centre, 7-21 November, 2008).

¹⁷ Kapoor, S. K., *International Law and Human Rights*, 12th Edition (Central Law Agency: 2003, Allahabad) p. 57.

¹⁸ Ain o Salish Kendra (ASK), *Human Rights in Bangladesh 2002*, 1st Edition, Hameeda Hossain (ed.) (Ain o Salish Kendra (ASK): 2003, Dhaka) p. 33.

In Bangladesh the rights of the accused have been addressed in the Constitution and by other laws. In various sections and articles of the Bangladesh Constitution and different laws mentioned here provide focus on rights of the accused. These are:

- i. The Rights of the Accused under the Constitution of Bangladesh, 1972.*
- ii. The Rights of the Accused under the Code of Criminal Procedure, 1898.*
- iii. The Rights of the Accused under the Evidence Act, 1872.*
- iv. The Rights of the Accused under the Penal Code, 1860.*
- v. Rights of the Accused under the Jail Code, 1920.*
- vi. The Prisons Act, 1894.*
- vii. The Prisoners Act, 1900.*
- viii. The Identification of Prisoners Act, 1920.*

All the above references refer to the rights of the accused such as right to freedom from unwanted arrest, right to reasonable investigation, search and seizer or right to defend that means right to choice of a lawyer and right to legal aid. But even after so much attention in Bangladeshi laws the rights of the accused are commonly violated through different loopholes.

Drawbacks or Loopholes in the Criminal Justice System with Regard to Rights of Accused

The following defects in our legal system destroy the very foundation of criminal justice system and are great obstacles in the way of ensuring rights of the accused.

i. Existence of harsh criminal laws

In Bangladesh a commonly found legislative trend is to enact harsh penal laws. They are aimed to suppress offences or to reduce the rate of crimes. But unfortunately these laws have often seriously demoralized the constitutional principles of

justice and the due process of law. These new harsh criminal laws tend to create serious human rights implications for those accused under the laws.¹⁹

ii. *Inadequate utility of the Constitution in the criminal process*

It is believed that because of legal positivism or legal formalism, Bangladeshi judges, lawyers and academics are trained and intended to indoctrinate not to utilize the Constitution adequately in the criminal process. The excessive focus by the criminal justice system on the deterrence goal often ignores and trivialises the rights of the accused. Positivist law making and law administration in the field of criminal law have indeed facilitated an exclusionary approach to those charged with committing crimes.²⁰

iii. *Legacy of colonial law making*

This kind of legal thinking which lacks adequate rationales and moral supporting has a legacy in the colonial law making. It is claimed that this colonial law making aimed at increasing imperial economic interest rather than justice for the natives.²¹ So the dominant approach to the criminal law in Bangladesh has often been the approach of legal positivism that nourishes a black letter law in tradition. According to this tradition, criminals as human beings are fully entitled to enjoyment of human dignity and other rights often get lost sight of in the enactment and construction of laws. “--- apart from the

¹⁹ Hoque, Ridwanul, ‘Criminal Law and the Constitution: The Relationship Revisited’, Special Issue: Criminal Justice System, *Bangladesh Journal of Law*, (2007), p. 64.

²⁰ *Ibid.*, pp.75-76.

²¹ Benton, L. A., *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*, (Cambridge University Press: 2002, Cambridge), pp.127-66.

distorted criminal laws of the colonial origin as well as the control focused post Independence criminal laws that are often fraught with over-criminalisation, lawyers' and judges' uncritical tilt towards legal formalism, i.e., their trained fidelity to posited law, is worth blaming for inadequate presence of the Constitution in the country's criminal law and practice."²²

iv. *The abuse of law of confession*

Convictions based solely on confession seem to be a common incident in some courts, and it is the quick conclusion of a case that is making this a common practice. A confession means that the police need not carry out further investigation for supporting evidence, that they can close a case quickly. It means they need not ascertain whether the accused is telling the truth or whether he confesses to stop the inhuman torture being inflicted upon him. This overzealousness of the police is contagious and the magistrates have also picked it up. It is only when a few of the cases reach the high court division of the Supreme Court for appeal for retraction then we are sure that something is seriously wrong.

v. *Filing of FIR*

The Officer –in-Charge of a police station is statutorily bound to register a case on the basis of an FIR with regard to a cognizable offence. There is no system of examination of the informant. As a result, many false FIRS are filled with the help of the police and sometimes very genuine FIR is not taken by the police.

²² Malik, Shahdeen, *The Transformation of Colonial Perceptions into Legal Norms: Legislating for Crime and Punishment in Bengal, 1790s to 1820s*, London, SOAS, 1994. (Unpublished PhD thesis), cited in Hoque, Ridwanul, *ibid.*, pp.76-77.

vi. Abuse of police power of arrest

Under section 54 of the Code police officer may arrest a person without warrant upon a reasonable suspicion and there is a great danger of abusing it. What is “reasonable suspicion” in absence of legal definition bears the risk to be subjectively defined in diverse ways. Even before arresting a person there is no pre-arrest investigation system in our country. As a result, any person whether a criminal or an innocent can be arrested by the police on the basis of an information although it may not be genuine.

vii. No pre-arrest investigation

Although one might assume that the first phase of criminal justice system is arrest this usually occurs only when a crime is directly observed by a police officer. In other situation the system begins with some level of investigation. Pre arrest investigation can be initiated when police receive a complaint from a victim or witness or knowledge from informers.²³ But unfortunately our legal system does not emphasis on pre arrest investigation and that’s why rights of the accused always remain under threat.

viii. Abuse of police investigation, search and seizure

Police has been given many authorities to promote the course investigation. Police is authorized to make search, order production of documents, seize any suspicious property, call witness, require them to attend the court and arrest suspected

²³ Hymongross, J.A., *Theory of Criminal Justice*, 7th Edition (Oxford University Press: 2005, New York) p. 141.

persons. So police can easily change the very nature of a criminal case.²⁴

In *Tamijuddin Ahmed vs. The State*,²⁵ the Court said that irregularities in a search conducted by an authorised officer may not ordinarily affect the legality of a proceeding and it may only affect the weight of evidence—Search, recovery and seizure of alleged incriminating articles not by a Magistrate or police officer but by members of the public are illegal. Respectability of a witness is of no importance when a search is not made in accordance with law.

ix. Remand

While interrogating a suspect or accused, the police is always coercive or too intimidating. The police extract admission for confession by coercive means, which is known as “third degree method.” In spite of the prohibition in the Constitutional and Evidence Act, the police is compelling. Custodial torture by the police has become so endemic that every year many people die or severally injure due to police torture.²⁶ There may not be much disagreement as to the illegitimacy of such actions by the police.

x. Pre-trial detention

For most of the accused, the period immediately after arrest is the most frightening. That is why the initial hours following arrests often referred to as a period of crisis for the accused. The fact that an accused is being held in jail seriously affects

²⁴ Karzon, Sheikh Hafizur Rahman., *Theoretical and Applied Criminology*, 1st Edition (Palal Prokashoni and ELCOP: 2008, Dhaka) p. 215.

²⁵ (1987) BLD (AD)22, as cited by Rahman, Muhammed Habibur., *On Rights and Remedies*, 1st Edition (University Press Limited:1997, Dhaka) p. 690.

²⁶ *Ibid.*, p. 214.

the ultimate disposition of his or her case. As Erving Goffman has written, the ways we present ourselves to others have important effects on their actions towards us.²⁷ Thus pre-trial detention is mostly contrary to the concept of presumption of innocence.

xi. Police report

Police is the only state agency to investigate criminal case. The outcome of which may come out as a charge sheet for the prosecution or final report for release of the accused. This reality places police in an advantageous situation which they can manipulate and they do extensively for their personal gain. There is no authority to monitor the investigation activities of police in the absence of a supervising authority. Police officers easily include or delete names from the charge sheet or give final report where charge sheet should be given or vice versa. As a result, it may be imagined that many accused fail to achieve their rights.

xii. Delay in the Courts

One of the oldest concepts of the common law is that justice delayed is justice denied. Now a days the place of the criminal courts in our country is usually assumed to be slowed down by the case loads thrust upon mismanagement and inefficient operations. Because of the courts' deficiency, accused must wait unreasonably for a long period often in jail. Prosecution is hampered by accused's loss of interest and witness's fading memory of crucial facts as time passes.

xiii. Deliberate prolongation caused by prosecutor and complainants

²⁷ Sanford, G. F., *Criminal Law and Its Process*, 4th Edition (Books/ Cole Publishing Company: 1986, California) p. 362.

The complainants may put forward false, frivolous and vexatious accusations to harass the accused. In order to do that the victim can pray and be granted prolonged time allocation so that the accused be kept in prison for a longer time. This continuance is a prime example of the type of accommodation that causes delay. From a legal stand point, the judge has the discretion to grant continuances so that the victims will have an opportunity to prepare its case. The need for time to obtain council, to prepare pretrial motions, to obtain evidence, or to find a witness can be used as a reason for postponement. The prosecution can also request continuance.

xiv. Intentional delay

Delay benefits not only accused's seeking lenient treatment but defense's counsels, prosecutors and judges. The major goals of defense's advocates are to collect their fees and to minimize their court time per case. They are further motivated to avoid a conviction or severe punishment for their clients. Although a move to delay the course is usually initiated by the defense advocate, it cannot succeed without the cooperation of the prosecutor and judge.

xv. Role of the judge

With so much public discussions about case backlogs in the criminal courts, many citizens visiting the local court room would be surprised to find the bench empty, the judge and staff absent. In our country judges are on bench only less than half a workday. If the judge is on bench only less than half a workday, how can the load be removed? We tend to think that the judge's functions are primarily concerned with presiding at trials, but the work of most judges extends to all parts of the

judicial process. Apart of this in our system of justice the judge takes no active part in investigation.

xvi. Time limit

Magistrates are to conclude trial of a case within 180 dates from the date of receipt of the case for trial and the courts of sessions are to conclude a trial within 360 days from the date of receipt of record.²⁸ In *Abu Sufian vs. The State*,²⁹ the Court said, provisions of this section are not merely a procedural law. It is a law vesting the accused with a right which could not be taken away by a subsequent amendment of the law.

In *Master Giasuddin and Others vs. The State*,³⁰ the Court said that it required the trial Court to conclude trial within the statutory period from the date the case was received by it and not from the date of framing of charge. But it is very disappointing that failure to conclude trial of a case within the time limit having not been following with any judicial consequences the time limit has become a directory and not a mandatory provision.

xvii. Absence of grand jury trial

The purpose of the grand jury is to serve as an investigatory body and to act as a buffer between the state and its citizens, to prevent the state from unfair invoking of the criminal process against its enemies. Absence of grand jury remains as major drawback towards the protection of rights of the accused.

²⁸ Halim, Md. Abdul., *Text Book on the Code of Criminal Procedure*, 3rd Edition (CCB Foundation : 2006, Dhaka) p. 423.

²⁹ 45(1993) DLR 610.

³⁰ 17(1997)BLD (AD) 35.

xviii. Absence of jury trial

Our criminal justice system is based on the common law of England. Under the common law system the jury trial is well organized but in our country we have avoided jury trial. The absence of jury trial is a prime example of the type of accommodation that causes corruption of judges. The absence of jury trial is also helping to increase injustice in our criminal justice system.

xix. Absence of effective speedy trial

Lack of speedy trial in the full sense creates further problem in the rights of the accused. Without it, individuals accused of crimes would have no protection against incarceration for an indefinite period prior to trial. Speedy trial would remove the delay caused by the Court.

xx. Concept of plea bargaining

A plea bargaining is an agreement between the prosecution and the defense whereby a person accused of a criminal offence may plead guilty to a criminal charge for a more favorable settlement. Often times suspects either faces several criminal charges or a severe criminal charge with impending severe consequences. As a way for the prosecution to secure a conviction, they often offer an accused a plea bargaining. This not only ensures a guilty verdict on at least one charge a suspect may face, but allows the prosecution to speedily process case. This saves valuable time and money and allows the court to take on a heavier case load.³¹ Plea bargaining is an agreement by the accused to plead guilty in return for the promise of some benefits from the prosecution. Plea bargaining can conclude a criminal case without a trial. When it is successful, plea bargaining results in a plea agreement between the prosecutor and the accused. Plea bargaining is originally an

³¹ Zacharias, Fred C., 'The Justice in Plea Bargaining', in William and Marry (eds.) *Law Review*, (1998) vol. 39, issue 4/4, p. 1121.

Anglo- American system of bypassing juries to reduce workload of the courts. But in our country this concept is not available.

xxi. Abuse of Preventive detention law

The Special Power Act, 1974, since its enactment, been used by every government as a brutal weapon to suppress anti government movement, sometimes democratic movement and to perpetuate rule. Hundreds of political leaders and workers have been and are being detained under this law, sometimes for years together without trial.³² This system also destroys the virtue of trial.

Possible Suggestions to Ensure Rights of the Accused to Humanize Criminal Justice System

a. Separate statute by the State or Legislature

It is very important to form a statute by the state that is only to guarantee rights of the accused. This issue under criminal justice system today is a significant concern and affects large numbers of people. The rights of the accused and criminal justice system is linked with key socio political objectives, such as maintenance of law and order and preservation of the peace, the security of the individual and the protection of property, and increasingly, the protection of human rights and individual freedom. So there is no doubt that a separate statute on the rights of the accused or adoption of accused protection measures is the demand of time now.

b. Humanizing remand and abolishing third degree method

Brutal, inhumane and cruel torture to the accused under the name of remand and third degree method must be stopped. Since laws treat an accused person as innocent before he is

³² Halim, Md. Abdul., *Constitution, Constitutional Law & Politics: Bangladesh Perspective*, 5th Edition (CCB Foundation: 2009, Dhaka) p. 288.

proved guilty, so to an innocent, such violent torture should not be allowed. Physical torture in the name of torture or mental threat directly goes against rights of the accused. So if we think of ensuring rights of the accused there is no alternative but eliminating torture or threat by remand or third degree method. Basing on that Bangladesh Legal Aid and Service Trust (BLAST) with other concerned persons and organizations field a writ petition in the High Court Division which is popularly known as *BLAST and Others vs. Bangladesh Case*,³³ to the Supreme Court of Bangladesh challenging the misuse of power given under section 54, arbitrary use of remand and torture under section 167 of the Criminal Procedure Code.

c. Establishing authority for monitoring police power

There is no authority to monitor the investigating activities of the police. To remove all types of abuse of police powers a strong authority to scrutinize police activity may be solution. Before arresting a fair pre-arrest investigation would be very helpful for the rights of the accused to be preserved. Before filing of FIR, the informer should be examined properly to become sure about the occurrence. This type of examination can remove the culture of filing untrue FIR.

d. Developing supporting facilities for the accused

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice. Through out the trial of a case, supporting facilities to be developed for the accused. If because of poverty

³³ 55(2003) DLR 363.

or helplessness the accused is unable to appoint a legal counsel or advocate, the state must take that responsibility on behalf of the accused in order to ensure justice. In the same way if the accused is seriously ill, disable or mentally unsound then the supporting system should address this problem of an accused and arrange required medical and legal aid.

e. Psychological counseling

During the trial process the accused may go under detrimental psychological pressure which may turn them aggressive and violent in their later life. This can be very common to the women and children who might not have adequate mental strength to face the odds of reality. So it may be said that, this type of accused persons need psychological counseling when necessary, the onus to assure this lies on the state.

f. Training of legal personnel

It is the judicial officers and prison staffs who are officially required to help the accused person. They must realize importance of right treatment, attitude and approach to the accused person by them. With this aim training sessions can be conducted for the representatives of law. A better comprehension of the duties and responsibilities of human behaviour by the judicial officers or prison staffs towards the accused person can bring a positive change in the practical scenario of rights of the accused in Bangladesh.

g. Reshaping the concept of custody

To honor the intention of law for treating the accused as innocent before being proved guilty, the concept of custody should be changed. With this regard the idea of introducing probation or open prison system can be significantly benefiting for the accused.

h. Compensation for humiliation

During the investigation or trial the accused is required to be in the custody. Often this process takes a long time to reach a decision to prove him or her innocent or guilty. It might happen that during this extended period of trial some physical, psychological, monetary or social damage is brought to the accused. Law must ensure that if ultimately the accused is proved to be innocent then such loss is compensated to the accused.

i. Gender sensitive justice system

The criminal justice must address gender sensitive issues regarding the accused. For female accused, female officers can be appointed at different level of trial, the police and judicial officers can be sensitized, and even the police custody can be refurbished so that a gender sensitive justice system may be developed.

j. Modernization of criminal justice administration

Through digitization of criminal records, adoption of specific crime indicators, panoptic surveillance in crime zones, adding emails and SMS as cognizable evidences etc can make the system modernized and can contribute significantly in the restructuring of British methods of reporting and criminality in Bangladesh.

k. Appointment of interpreter

The accused person must be able to understand the charge against him and its consequences. A suspected or accused person who does not speak or understand the language that is used in the proceedings may need an interpreter. Particular attention should also be paid to the needs of suspected or

accused persons who are deaf and dumb, or any other visionary or linguistic impediments.³⁴

l. Providing information on rights and about charges

A person that is accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of accusation against him or her. Anyone who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defense, without prejudicing the due course of the criminal proceedings.

m. Chance for Communication with relatives, employers and consular authorities

An accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty, it being understood that this should not prejudice the due course of the criminal proceedings. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than his or her own shall be informed of the right to have the competent counsel or support from his/ her state.³⁵

n. Ensuring mandatory provision of reasonable time for trial

The time for pre-trial detention must not be excessively long as it would prejudice the justice system. Under Section 339C of *the Code of Criminal Procedure 1898*, Magistrates are to conclude trial of a case within 180 days from the date of

³⁴ Jimeno-Bulnes, Mar., 'Towards Common Standards on Rights of Suspected and Accused Persons in Criminal Proceeding in the EU?' 2010,7, at:<http://www.ceps.eu>.

³⁵ *Ibid.*, pp. 9 & 11.

receipt of the case for trial and the courts of sessions are to conclude a trial within 360 days from the date of receipt of record, make it mandatory provision for a trial that the time limit should strictly be maintained by the Courts. To ensure reasonable time for trial speedy trial can be a strong implementation.

o. Plea bargaining

Plea bargaining is a process to avoid trial, in our system of justice it should be offered at the beginning of a case. In section 242 and 265(d) of the Code of Criminal Procedure, 1898, where courts frame formal charge against any accused after considering the case *prima face* and ask the accused whether he pleads guilty or wants trial; they should have power to offer the accused necessary incentives for a mutual satisfactory disposition of the case through plea bargaining.

p. Option for Jury trial

In our system of justice jury trial should be included for a fair and free criminal trial and to ensure justice to the accused because a trial by jury composed of members of the community is one of the best safeguards against arbitrary and unlawful actions by the criminal justice officials. It is likely that jury trial can upset corruption by functioning as a parallel yet significant bench to reach the decision and thus checking the wide discretionary powers of the judge.

q. The Grand Jury

In America accusation is a formal charging document issued by a Grand Jury. The purpose of the grand jury is to prevent the state from unfairly invoking the criminal process against its enemies and to investigate and to protect the citizens from unfair accusation. The grand jury means body of persons who

have been selected according to law and sworn to hear evidence to bring those persons to trial, to investigate criminal activity generally, and to investigate the conduct of public agencies and officials. In our legal system we should establish grand jury in case of framing of charge because framing of charge by a single judge can be big injustice and it is always helping to our judges in return of bribe or vice versa.

Conclusion

Law by itself and without reference to a notion or system of justice often relegates itself to a mere tool and not a means towards an end. The criminal justice system has a broader goal of both crime control and crime prevention rather than simply the reaching of judgement. Unfortunately our criminal justice system has excessively focused on goal of crime control through imposition of harsh punishment rather its prevention. In keeping with the growth of human civilization, social values and knowledge of criminal behavior, the penal philosophy has shifted its emphasis from retribution to deterrence and finally top reformation and social regeneration of the deviants. Therefore, our penal laws need to be re-examined in the light of current penal philosophy of reformation.³⁶ With the Universal Declaration of Human Rights of 1948, a new meaning was accorded to the rights of the accused in criminal justice. New vistas were opened for the defence of the accused and the promotion of his rights came to be recognized as the legitimate objective of the international and national communities. International law has traditionally defined the rights

³⁶ Faruque, Abdullah Al, 'Goals and Purposes of Criminal Justice System in Bangladesh: An Evaluation', Special Issue: Criminal Justice System, *Bangladesh Journal of Law*, (2007), p. 30.

and responsibilities of states with regard to each other. During the past century, the development of International Humanitarian and Human Rights Law has focused attention on the protection of individuals.³⁷ The guiding principles of the Universal Declaration of Human Rights to which the municipal law of all countries is morally bound to pay respect, provides for a fair and just deal to the accused.³⁸

Needless to say, the main objective of the criminal justice system is not to convict the greatest possible number of accused but the main objective of a criminal law process is the search for truth, and convict the guilty and to discharge the non-guilty by seeking the truth by fair means. But recent judicial interpretation and legislative trend of withering away of presumption of innocence and other procedural safeguards entails the risk of erroneous conviction , which may threaten the legitimacy of criminal justice system and undermine the value of criminal law. Judicial interpretation of criminal laws and principles does not indicate consistent approach to the issue of presumption of innocence.³⁹

The rights of the accused being a key part of the human rights strategy must be recognized by the constitution and the law of every country to safeguard the individual's personal liberty against the state-sponsored oppression and violence. The close scrutiny on the rights of the accused in criminal justice system in Bangladesh reveals the fact that the Constitution and other laws intend to safeguard the interest of the accused. However, we have seen that because of some major practical incongruity between law and

³⁷ Jimeno-Bulnes, Mar., *ibid.*, p. 20.

³⁸ Batra, Manjula., *Protection of Human Rights in Criminal Justice Administration*, 1st Edition (Deep and Deep Publication:1989, New Delhi) p. 3.

³⁹ Faruque, Abdullah Al, *ibid.*, p. 31.

practice rights of the accused in our country is not properly maintained. New ideas, views and implementations are necessary for a better scenario of convenient criminal justice administration with the relieving of the accused from inhumane, unjust, forceful procedures which are damaging individual freedom.