

National Human Rights Protection Mechanisms in Bangladesh: An Overview

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1.1 Introduction

The way the term human right is defined denotes safeguard and protection through a sustainable and institutional mechanism. The obligation of the states to respect, protect and to promote human rights being derived from international instruments developed by the international community, the human rights protection mechanism is surely divisible into two broad categories namely international and national. International mechanism relies on various treaty bodies operating under the UN supervision and at the same time national mechanism relies upon the constitution, domestic legislation, independence of judiciary, right based institutional framework¹ and effective coordination among legislature, executive and judiciary is the prerequisite for protection of human in the national life. Apart from institutional arrangement easy access to those institutions not only reflects the commitment of the state but also ensures guaranteed observance of human rights standards². Among the three important organs of the government the executive is found to be the most violator of

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¹ Right based Institutional Framework refers to different national institutions like National Human Rights Organization, Anti Corruption Commission, Office of Ombudsman, Legal Aid Organization etc.

² Jean-Bernard Marie, "National System for the Protection of Human Rights", in Janusz Symonides (ed.), *Human Rights: International protection, monitoring and enforcement*, Ashgate, (2003), p.258.

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human rights whereas the judiciary is found to be acting as the protector of human rights through judicial review and judicial activism³. National protection of human rights also depends upon access to effective remedies for violation of rights. In this regard an effective remedy means ‘accessible, affordable, timely and effective’⁴.

The national protection of human rights implies the state to adopt any policy or legislative effort in compliance with the UN Charter, UDHR and other human rights instruments of international nature depending on the culture, attitude of people, practice in government and socio-economic infrastructure of a particular country.⁵

The national responsibility of the state to protect human rights casts an obligation upon the state to take a holistic approach between government approach and social initiatives ranging from setting institutional framework, reviewing existing legislation to identify the necessity of amendment in certain legislation and enacting new legislation if necessary keeping in mind the judicial precedent developed time to time to fill up the gap between domestic legislation and international instruments, promoting human rights education through incorporating human rights curriculum in the syllabus of educational institution and so also mass education program for building awareness of mass people in

³ Ch. Perelman, “The Safeguards and foundation of Human Rights”, *Journal of Law and Philosophy*, Vol. 1 (1982), p.119.

⁴ Dr. Sarkar Ali Akkas, “Judicial Independence and Protection of Human Rights in the Age of Globalisation”, in Dr. Mizanur Rahman(ed.) *Human Rights and Globalisation*, ELCOP, Dhaka, 2003, p.157.

⁵ A paper presented by Professor Dr. Bertrand Ramcharan on “The National Responsibility to Protect Human Rights” in a conference on ‘Implementation of the right to Vote and be elected- the Theory and the Practice’, organized by the Centre for Comparative and Public Law, University of Hong Kong, 28 march 2009

association with print, electronic and other media existing in the country, a strong, effective and independent mechanism for reviewing the functions of the Government periodically to justify whether the same in confrontation with the basic human rights standards or not.⁶

In Bangladesh the national protection system can be inferred from its constitutional commitments from the fundamental rights incorporated in Part III of the Constitution, which are judicially enforceable by the High Court Division under Article 102 of the Constitution. The constitutional safeguards in respect of arrest and detention and the role of judiciary to uphold the constitutional mandate without compromising with the basic rights of the people is the usual development in the context of Bangladesh. There are several remedies for violation of human rights ranging from making complaint to the National Human Rights Commission to taking recourse to the apex judicial authority are available. But the access to these remedies is not easy due to the technicalities of formalities and lack of awareness among the people about their rights and restoration of the same.

In this view of the matter the presence of an independent Anti Corruption Commission and a self motivated National Human Rights Commission is prime necessity to deal with the human rights issues in Bangladesh.

Therefore the present study aims to understand the obligation of Bangladesh under different international instrument and how the obligations are performed in the prevailing situations of human rights violations and evaluating the activities of the Government taken in that behalf.

1.2 Objectives

The objectives of the research are the following-

⁶ *Ibid.*

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- To discuss the national protection system of human rights in Bangladesh and to evaluate it with the present human rights situation in Bangladesh.
- To examine the nature of domestic implementation of international human rights law in Bangladesh.
- To assess the national protection system of Bangladesh.
- To find out the challenges to effective enforcement of human rights in Bangladesh.
- To draw recommendations for strengthening the national protection system of Bangladesh.

The National Protection System of Human Rights of Bangladesh

2.1 Constitutional Protection

2.1.1 Fundamental Rights:

Bangladesh maintains constitutional supremacy and as such the rights under the constitutional guarantee supersedes any other provisions of law⁷. It was promulgated within a year of the establishment of the new state of Bangladesh⁸. It guarantees of a wide range of civil and political rights as *fundamental rights* in its Part III. The essence of this part of the Constitution refers to its commitment for ensuring right to life⁹, removing discrimination on grounds of race, religion, caste, sex, or place of birth, gender¹⁰, ensuring protection of law for the citizens and foreigners¹¹,

⁷ See Article 7(2) and 26 of the Constitution of the Peoples' Republic of Bangladesh

⁸ Bangladesh got independence on 16 December 1971 and the Constitution came into force on 16 December 1972.

⁹ See Article 32 of the Constitution of the Peoples' Republic of Bangladesh

¹⁰ See Article 27, 28 & 29, *Ibid.*

¹¹ See Article 31, *Ibid.*

prohibition on forced labor¹², right to fair trial¹³ and enables the arena for developing the extent of rights in practice¹⁴. The significance of Part III of the Constitution is that it just not incorporated the basic human rights of civil and political nature; it has also guaranteed as a fundamental right a mechanism for establishment of the same through judicial intervention¹⁵.

2.2 Judicial Protection

2.2.1 Judicial Review:

The constitutional adjudication of human rights mainly rests upon the principle of judicial review whereby the Court justifies legislative, executive and judicial actions whether in confrontation with the human rights standards or not. In Bangladesh the Court gathers the power for judicial review from Article 26 of the Constitution and applies it in accordance with Article 102 of the Constitution¹⁶ which illustrates the way how the judicial review can be made.

2.2.2 Judicial Enforcement of Human Rights:

Every individual has a right to move before the High Court Division for violation of constitutional rights. This right is also a fundamental right and guaranteed under the Constitution of

¹² See Article 34, *Ibid.*

¹³ See Article 33 & 35, *Ibid.*

¹⁴ See Article 36-41, *Ibid.*

¹⁵ See Article 44 read with Article 102, *Ibid.*

¹⁶ Article 26 provides that all existing law inconsistent with the provision of fundamental rights shall, to the extent of such inconsistency, become void. It further provides that that the State shall not make any law inconsistent with any provisions of fundamental rights and any law so made shall, to the extent of such inconsistency be void. It means rights so guaranteed cannot be reduced or taken away by ordinary legislation and legislation which contravenes the rights can be declared by the courts. See Article 26 of the Constitution of the Peoples Republic of Bangladesh.

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Bangladesh¹⁷. But the enforcement of this right requires fulfillment of the preconditions set forth in Article 102 of the Constitution¹⁸. The High Court Division in such a situation is empowered to give any direction or order to any person authority for protection of fundamental rights¹⁹ by declaration, injunction, writ of *certiorari*, writ of *prohibition*, writ of *mandamus*, writ of *habeas corpus* and writ of *quo warranto*.

2.2.3 Public Interest Litigation (PIL):

PIL is an effective tool for protecting rights of a group of people under a simplified complaint system. In Bangladesh PIL has entered into the legal system for the first time in *Kazi Mukhlesur Rahman vs. Bangladesh*²⁰ and thereafter it got recognition in *Dr. Mohiuddin Farooq vs. Bangladesh (FAP 20 Case)*²¹. Since then, the Supreme Court of Bangladesh has been continuing for addressing irregularities in governance, challenging arbitrary detention and ensuring citizen's lawful rights.²² So, this is a good contribution of the Judiciary to protect and restore human rights for the people even in a circumstance in which the victim has no means to go before the Court²³.

2.2.4 Protection from Arbitrary Deprivation of Life and Liberty:

The Constitution allows deprivation of life and liberty only in accordance with law²⁴. Justification of detention is mandatory even

¹⁷ See Article 44 of the Constitution of the Peoples Republic of Bangladesh

¹⁸ *Serajul Islam vs. DG, Food*, 43 DLR 237

¹⁹ See Article 102 of the Constitution of the Peoples' Republic of Bangladesh

²⁰ 26 DLR (SC) 44

²¹ 49 DLR (AD) 1

²² A/HRC/WG.6/4/BGD/1, para. 2o.

²³ See *Bangladesh Sangbadpatra Parishad vs. the Government of Bangladesh*, 43 DLR (AD) 126; *Dr. Mohiuddin Farooque vs. Bangladesh & Others*: WP No. 92/1996

²⁴ See Article 32 of the Constitution of the Peoples Republic of Bangladesh.

if it is supported by law like Special Powers Act 1974²⁵. In *Anisul Islam Mahmood vs. Bangladesh* it was held that right to life and liberty being fundamental rights curtailing of the same requires justification by reports and materials and not by mere satisfaction of the Government. The higher judiciary of Bangladesh is always vigilant to protect these constitutional guarantees. In the case of *Abdul Latif Mirza v. Government of Bangladesh*²⁶, the Supreme Court held that it has not only the power to examine the legality, but also the manner in which the order of detention is passed under the Special Powers Act, 1974. Besides this the Constitution provides for treatment of accused person by ensuring right to defense and to submit the arrested person before the Magistrate within 24 hours of arrest²⁷. The authority detaining a person under a law otherwise than a preventive detention is under obligation to inform the detenu the cause of detention²⁸.

2.3 Legislative and Policy Framework:

Bangladesh's commitment to protect and promote human rights in compliance with international obligations is evident from the enactment/amendment of domestic legislation right to information²⁹, prevention of oppression against women and children³⁰, labor right³¹, legal aid³², establishment of National

²⁵ See Section 3 of the Special Powers Act, 1974 which provides that the Government can detain any person if the Government is satisfied that the person is involved with any prejudicial act defined under section 2 of Special Powers Act, 1974

²⁶ 31 DLR(AD) (1979) 41

²⁷ See Article 33 of the Constitution of the Peoples Republic of Bangladesh.

²⁸ *Professor Ghulam Azam vs. Bangladesh*, 46 DLR 29 and *Habiba Hahmud Vs. Bangladesh* 45 DLR (AD) 89

²⁹ The Right to Information Ordinance 2008

³⁰ The Prevention of Repression against Women and Children Act 2000, The Acid Violence Act 2002, Acid Control Act 2002

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Human Rights Commission³³, Anti-Corruption Commission³⁴ and other welfare legislation for protecting the interest of the citizens of different catastrophe³⁵.

2.4 Equality and Equal Protection of Law:

The Constitution of Bangladesh declares equality of citizen before the law and equal protection of law³⁶. Citizens are also ensured equal opportunity in respect of employment in Government Services³⁷. These constitutional guarantees were relied upon by the majority of the Appellate Division of the Supreme Court of Bangladesh, in *Dr. Nurul Islam v. Bangladesh*³⁸, to hold that certain provisions of the *Bangladesh Public Service Retirement Act*³⁹ were *ultra vires* the constitution as being violate the guaranteed of equality rights⁴⁰.

2.5 National Protecting Institutions

2.5.1 National Human Rights Commission (NHRC):

The long-awaited National Human Rights Commission (NHRC) was established under the National Human Rights Commission Act 2009⁴¹ which works like a national human rights watchdog. NRHC consists of three members, one chairman and other two members.⁴²

³¹ The Bangladesh Labor Act 2006, The Bangladesh Labor Welfare Foundation Act 2006

³² The Legal Aid Act 2000

³³ The National Human Rights Commission Act 2009

³⁴ The Anti-Corruption Commission Act 2004

³⁵ The Disability Welfare Act 2001

³⁶ Article 27, the Constitution of Bangladesh.

³⁷ Article 29(1), *Ibid.*

³⁸ (1981) 33 DLR (AD) 201

³⁹ Bangladesh Public Service (Retirement) Act, 1974, Act No. 12 of 1974

⁴⁰ Section 9(2) of the *Public Service (Retirement) Act* provides that, “the government, at any time, retire from a service a public servant who has completed twenty years of service without assigning any reason”

⁴¹ Act No. 53 of the 2009.

⁴² Section 4(1), the National Human Rights Commission Act 2009.

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The chairman and members of the human rights commission will be nominated by the six member selection committee and finally appointed by the president for three-year tenures and for no more than two consecutive terms.⁴³ The establishment of a National Human Rights Commission consistent with the Paris Principles relating to the status of National Human Rights Institutions for the promotion and protection of human rights could have served as an effective mechanism to address gross and systematic human rights violations.⁴⁴

The functions of the commission will include investigating any allegation of human rights violation received from any individual or quarter, or the commission itself can initiate investigation into any incident of rights violation. The commission would be empowered to investigate particular human rights violation allegations brought forward by citizens or discovered through their own monitoring. If a human rights violation has been proved, the NHRC can either settle the matter or pass it on to the court or relevant authorities.⁴⁵

The Commission is also mandated to review conformity of legislation with international standards, undertake education on human rights, visit jails or other custodial institutions.⁴⁶ It shall also monitor the overall human rights situation in the country.

Drawbacks of NHRC:

The 2009 Act itself may not inspire confidence in the efficacy, independence or transparency of the institution. The reasons are to be found in formation of the selection committee, the size of the Commission, in restraints on its investigative powers, and limited mandate to try perpetrators. First, the selection committee includes

⁴³ Section 5, *Ibid.*

⁴⁴ Sultana Razia, "National Human Rights Commission Sees the Light of the Day", *The Daily Star*, Dhaka, December 15, 2007, p. 13.

⁴⁵ Section 11, the National Human Rights Commission Act 2009.

⁴⁶ Section 11(1), *Ibid.*

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a judge, but the majority is constituted by bureaucrats⁴⁷; it includes no representation from political parties in Parliament, professional organizations such as the Bar Associations, or from recognized human rights organizations. Second, the Commission is to comprise of only three members having no space of fair representation of the most discriminated groups like the ethnic and religious minorities and women. After investigation the Commission can only refer such cases to relevant authorities⁴⁸, which implies that it will not have independent power to implement its decision.

The defect in the National Human Rights Commission starts from the very beginning of its establishment by limiting its scope to deal with the fundamental rights of the Part III of the Constitution⁴⁹. Therefore the Commission has no power to deal with other human rights not incorporated with the fundamental rights and the same is conflicting with the state obligation under international instruments concerning human rights and it reflects the state's reluctance to ensure human rights in Bangladesh.

It has not power not intervene in any matter pending before the court⁵⁰ which prevents the commission from playing a valuable role as national institution for protection of human rights in the country. The Commission should have at least *amicus curiae* brief on application of law in different circumstances for protecting human rights⁵¹. Mediation and conciliation has been advised as

⁴⁷ Bureaucrats from the Ministry of Home and Law, the Attorney General's office, the Auditor General's office

⁴⁸ Section 16(1) (a), the National Human Rights Commission Act 2009.

⁴⁹ See Section 2(f), *Ibid.*

⁵⁰ Section 11(2)(a), *Ibid.*

⁵¹ Ain o Salish Kendra (ASK), "Bangladesh: Further Amendments Needed for the Human Rights Commission Ordinance 2007", in The Asian NGOs Network on National Institutions (ANNI)(ed.), *2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia*, Bangkok(2008), p.25.

measure for tackling human rights situation but rights like right to life, freedom of expression etc. cannot be resolved in this way⁵². Addressing violations to the above mentioned rights through mediation and conciliation may merely farther foster a culture of impunity in the country⁵³. The reporting system is not transparent on the ground that it is not publicly accessible and to signify state's standing on preventing violations the transparency of reports is a must. The most important drawbacks of the National Human Rights Commission is that it cannot act *suo-moto* in case where it finds any violation of human rights and it can come forward only in cases referred to them by the Court or by any person only. So the ultimate objective of the establishment of National Human Rights Commission to monitor the human rights situation in Bangladesh is vague and absurd.

2.6.2 Anti-Corruption Commission (ACC)

An Anti-Corruption Commission (ACC) was established in 2004 by an Act of the Parliament. The Act sought to establish an independent agency for combating corruption with legal authority to conduct inquiries and investigations, file and conduct cases, review legal measures for preventing corruption, demand statement of assets and liabilities, and seize property in excess of known sources of income. On 22 February 2007, rules of procedure of the ACC have been reformulated providing it with greater independence and authority. But in practice the ACC is full of defects mainly on the ground that the officials of the Commission are from different agencies of the Government who are apparently known as corrupted. So, the dream of removal of corruption by the corrupt officials will definitely not come true. The ACC to act perfectly requires a fresh start. Recently the independence of the ACC has been interfered by the Members of Parliament which

⁵² Section 13, the National Human Rights Commission Act 2009.

⁵³ Ain o Salish Kendra (ASK), *Ibid*, p. 24.

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makes it clear that the Government is not willing to lose the control over it though theoretically the ACC is about to function independently⁵⁴.

2.6.3 National Legal Aid Organization (NLAO)

Recognizing inherent difficulties that impede marginalized and poor people's access to justice, the government enacted the Legal Aid Act in 2000 under which a National Legal Aid Organization has been set up to provide legal aid services to the poor and the disadvantaged. The eligibility criterion for obtaining legal aid is absurd⁵⁵ on the ground that the annual income of Tk. 5000 is vague requirement and not in compatible with the present socio-economic condition of the country.

3. Application of International Human Rights law in Bangladesh:

Bangladesh has ratified all the core human rights treaties, such as: ICCPR, ICESCR, CERD, CEDAW, CAT, and CRC. However it has entered reservations to several treaties⁵⁶. It has accepted the individual communications procedure under only CEDAW. In the question of applications of international law in domestic legal systems, it will be pertinent to discuss the relevant provisions of the constitution of Bangladesh. Article 145A of our Constitution provides for law of enforcement of treaty. The provision relating to treaty in our constitution is vague on the ground that it does not sufficiently indicate whether it requires implementing legislation or merely parliamentary approval. But the interpretation of the provision makes it clear that treaties are not directly enforceable in

⁵⁴ See <http://www.theindependent-bd.com/details.php?nid=122333>, accessed on 10 April 2009.

⁵⁵ See Rule 2 of the Legal Aid Rules, 2001

⁵⁶ Bangladesh made reservation to Article 14 of the ICCPR, Article 2 and 16(1)(c) of the CEDAW, Article 14(1) of the CAT, Article 14(1) and 21 of the CRC. For details see also, A/HRC/WG.6/4/BGD/2, p. 2.

the legal system of Bangladesh and thus, it follows dualist view regarding implementation of treaty.⁵⁷ So, International treaty obligations must be incorporated into national law before they can be directly enforceable. However, international human rights norms have been judicially applied in order to interpret extensively the scope of constitutionally guaranteed rights in a number of significant cases like *H.M. Ershad v. Bangladesh*⁵⁸ recognizing the state obligation under the domestic arena even in the absence of specific domestic legislation.

4. Present Human Rights Situation in Bangladesh:

4.1 Violation of right to life, liberty and security of person:

Extra judicial killings by law enforcing agencies, custodial death and torture, including rape, and lack of any public reports of investigation and prosecution of those responsible demonstrate the vulnerability of the right to life of Bangladeshi citizens. In between 2004-June 2008, 1190⁵⁹ people were extra judicially killed by the Rapid Action Battalion (RAB)⁶⁰ in the name of combat terrorism. According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, to date, not a single RAB member is known to have been criminally convicted for having tortured or killed a suspect.⁶¹ In 2008, 53 persons were killed by the law enforcing agencies in custody either by torture or ‘crossfire’.⁶² Violent attacks, reportedly led by religious extremist groups with virtual

⁵⁷ Dr. M. Shah Alam, “Enforcement of International Human Rights law by Domestic Courts”, New Warsi Book Corporation, Dhaka (2007), p. 108.

⁵⁸ 21BLD (AD)(2001) 69.

⁵⁹ See ‘Annex -4’ of the FORUM submission to UPR on Bangladesh, p.15.

⁶⁰ In March 2003 the Government of Bangladesh formed Rapid Action Battalion as a composite elite force for law enforcement under the Ministry of Home Affairs.

⁶¹ A/HRC/WG.6/4/BGD/2, para. 15.

⁶² Hamida Hossain(ed.) “Human Rights in Bangladesh 2008” Ain o Salish Kendra(ASK), Dhaka (2008), p.49

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impunity for several years, had severely curtailed the right to life, liberty and security of persons. Incidents of arbitrary arrests and detention by the law enforcing agencies severely curtailed the right to liberty. In 2006, numbers of 47,235 persons were victims of mass arrest while from 26 May 2008-17 June 2008, the joint forces arrested some 23,949 persons.⁶³ Every year cross border firing by Indian Border Security Force (BSF) has reportedly violated the right to life. In 2008, 51 persons were killed in such incidents, 49 were injured and another 19 were abducted.⁶⁴ The main reason for such deaths is, reportedly, border crossing.

4.2 Violation of equality and non-discrimination norms:

Personal laws based on religion in matters of inheritance, marriage, divorce, maintenance, child custody and adoption are discriminatory against women.⁶⁵ Women are still unable to transmit their nationality to their foreign husbands under the newly reformed citizenship law.⁶⁶ *Hindus* continued to be treated as unequal citizens and confined to low-skilled jobs.⁶⁷ Indigenous women in Bangladesh are victims not only of repression and negligence, but also of violence like rape, kidnap and murder.⁶⁸

4.3 Violence against women and children: The number of reported cases of rape had increased from 436 cases in 2007 to 486 as of end December 2008. Amongst these, four involved allegations of custodial rape by the police. The number of reported

⁶³ *Ibid*, para. 23

⁶⁴ Hamida Hossain(ed.), *Ibid*. p 53

⁶⁵ See A/59/38, para. 247

⁶⁶ CRC/C/15/Add. 221, para. 39.

⁶⁷ ILO, Equality at Work: Tackling the Challenges, Geneva, 2007, p. 34, Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf (accessed on 10 April 2009)

⁶⁸ Asia Indigenous Peoples Pact Foundation's submission to UPR on Bangladesh, p.4, para.20

cases of dowry related violence was 296 in 2008 compared to 294 the previous year. There has been a considerable increase in reporting on the incidence of violence against domestic workers, rising to 108 reports between January and December 2008 ranging from physical assault to rape and murder, with three of these cases resulting in suicide.⁶⁹ In 2008, it reported that 155 children were killed, 114 girls were raped, 112 children were trafficked, 386 children went missing, 42 children committed suicide and 15 children suffered acid attacks.⁷⁰

4.4 Violation of prisoner's right: Bangladesh is far behind in conforming to international standards for prisons. Prisoners' rights are mostly disregarded in practice, despite detailed legal safeguards, with most persons incarcerated in unsafe, overcrowded cells with inadequate ventilation or sanitation.⁷¹ In January 2008, the total number of prisoners stood at about 78,000 against a capacity of 26,000 only.⁷² 72 prisoners including 37 under trial prisoners died in jail or in jail hospitals in 2008 due to torture and fail to get required urgent treatment outside the prison.⁷³

5. Assessment of the National Protection System:

Although the Constitution states that laws in conflict with fundamental rights shall be void⁷⁴, still there are some discriminatory and laws conflicting with fundamental rights continue to be applied and enforced. Such laws include

⁶⁹ Hamida Hossain(ed.), *Ibid.* p 167.

⁷⁰ Monthly Compilation of Violence Reports, January 2008 – 16 December 2008 (based on 6 national newspapers), Bangladesh Shishu Adhikar Forum, Dhaka, Available at <http://www.bsafchild.org/month.php>, accessed on 10 April 2009

⁷¹ FORUM submission to UPR on Bangladesh, para 38, p. 7.

⁷² Hamida Hossain(ed.), *Ibid.* p 250.

⁷³ *Ibid.*

⁷⁴ See Article 26 of the Constitution of Bangladesh.

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respectively the gender-discriminatory the Bangladesh Citizenship (Amendment) Act 2008⁷⁵ and personal laws governing rights within the family. A number of laws have been consistently identified as furthering human rights abuses, but nevertheless remain in application. The most notorious among these is the Special Powers Act 1974, which every Government to date has failed to repeal, despite clear electoral commitments in this regard. Antiterrorism laws, enacted by every elected government since 1990, have also enabled the exercise of arbitrary powers or arrest and severely encroached on fair trials. Most recently, the Anti-Terrorism Ordinance, 2008 has created a set of new offences of ‘terrorism’ and provides for the speedy trial of persons accused of such offences, many of which are punishable by the death penalty.⁷⁶

The Judiciary, and in particular the Supreme Court, comprising the Appellate and High Court Division respectively, is responsible for the enforcement of fundamental rights through its constitutional jurisdiction. Despite clear guarantees of judicial independence in the original Constitution, a series of amendments and continuing executive interference have resulted in significant erosion of the traditionally high esteem in which the judiciary has been held. Deep and partisan politicization of the higher judiciary – mainly through appointment and non-confirmation of judges, as well as providing opportunities for their holding high office following retirement – has affected public perceptions of its impartiality and competence. Under Emergency Regulations, the powers of the

⁷⁵ According to this Act, women are not entitled to transmit their citizenship to their spouse which violates the fundamental rights ‘Equality before Law’ under article 27 of the constitution.

⁷⁶ See, Section 6(2), the Anti Terrorism Ordinance, 2008

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Supreme Court have been substantially curtailed both *de jure* and *de facto*.⁷⁷

The power to arrest on suspicion by the law enforcing agencies has been found to be applied capriciously with ulterior motive⁷⁸. The High Court Division provided a guideline to be followed during arrest of people on suspicion but the same has not been incorporated with the law which will definitely prevent the capricious use of law for any subjective interest⁷⁹. In any case, there is a growing concern that law enforcing agencies, especially the police, are doing more of law breaking than law enforcing.⁸⁰ 97 percent of the people in Bangladesh considered police to be corrupt. The High Court, while delivering a verdict in a case made a statement that “people’s trust in police is gone”.⁸¹

The institutional framework though set up by the Government but their capacity is doubtful on the ground that the newly formed National Human Rights Commission suffers from executive predominance in the composition of the selection committee; the lack of any special measures to ensure diversity within the Commission; the Commission’s limited jurisdiction to investigate cases already pending before a Court, Ombudsman or Administrative Tribunal, and its limited powers to ensure state compliance with its recommendations and directives. The drawbacks of the NHRC have already discussed detail in the previous section. Despite express constitutional⁸² and legislative

⁷⁷ A.A. Faruque, “Access to Justice and Judicial Protection of Human Rights”, in Dr. Mizanur Rahman (ed.) *Human Rights and Domestic Implementation Mechanism*, ELCOP, Dhaka, 2006, p.53.

⁷⁸ See Section 54 of the Code of Criminal Procedure, 1898

⁷⁹ See *Blast vs. Bangladesh*, 55 DLR 363; and also 23 BLD 115

⁸⁰ A.N.M. Wahid, “The Role of Police in Preventing Crime and Protecting Human Rights In Bangladesh”, *the Chittagong University journal of Law*, Vol. V, 2000, p. 170.

⁸¹ *The Daily Star*, 29 March 2005.

⁸² Article 77, the Constitution of Bangladesh.

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provisions⁸³, the office of the Ombudsman has not been established to date.

International treaty obligations must be incorporated into national law before they can be directly enforceable. Such incorporation has not taken place with respect to most treaty provisions.⁸⁴ Bangladesh has not yet ratified a good number of conventions and protocols which are essentially deals with various aspects of basic human rights standards⁸⁵. Bangladesh has failed to comply with its treaty reporting obligation to send periodic reports to treaty bodies. No report has been submitted to the CAT Committee, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights⁸⁶. Bangladesh generally has not co-operated effectively with the UN Special Procedures on human rights. Thus within the reporting period only the Special Rapporteur on the Right to Food (2007) has visited Bangladesh, while others have not yet received any response to their request for visits. Bangladesh did not issue an invitation to the United Nations Special Rapporteur on summary and extrajudicial executions.⁸⁷

Human rights education is one of the most important for the promotion and protection of human rights. But, unfortunately, it is provided for the secondary and higher secondary students in Bangladesh. Only a few law Schools provide human rights education in Postgraduate level. Some NGOs are engaged in raising awareness of human rights amongst members of government agencies including administrative, judicial and law

⁸³ The Ombudsman Act, 1980

⁸⁴ FORUM submission to UPR on Bangladesh, para 7

⁸⁵ A/HRC/WG.6/4/BGD/2, p. 2

⁸⁶ *Ibid*, p. 3.

⁸⁷ Commonwealth Human Rights Initiative's (CHRI) submission to UPR on Bangladesh, para. 13

enforcement officials through specialised training and information dissemination.⁸⁸

6. Challenges to effective enforcement of human rights:

Poverty: Poverty is being considered as human rights violation and it hinders the fulfillment of basic and fundamental human rights.⁸⁹ In Bangladesh near about half of population (49.8 percent, according to *Household Income and Expenditure Survey 2004*) is absolutely poor.⁹⁰ In addition, child malnutrition rates of 48 percent are the second highest in the world.⁹¹ According to the UNDP Human Poverty Index (HPI)⁹² the position of Bangladesh is 110th among 135 developing countries.⁹³ Poverty is both cause and effect of pervasive discrimination and violence against women.⁹⁴ Poverty reduction, therefore, remains a central development challenge for Bangladesh. Bangladesh, an LDC, faces multi-dimensional challenges in fulfilling its commitment to promotion

⁸⁸ A/HRC/WG.6/4/BGD/1, para. 111.

⁸⁹ Barrister Harun Ur Rashid, "Elimination of Poverty: Mother of all Human Rights", *The Daily Star*, Dhaka, December 9, 2006, p. 13.

⁹⁰ Atiur Rahman, "Impact of Global Economic Institutions and Policies on poverty, Social and Gender Justice" in Dr. Hameeda Hossain(ed.) *Human Rights in Bangladesh 2005*, Ain o Salis Kendra (ASK), Dhaka(2005), p 16.

⁹¹ Available at:

http://www.thp.org/where_we_work/south_asia/bangladesh/overview?gclid=CMDYrpyI-pkCFcctpAodwxrZGA accessed on April 18, 2009

⁹² The Human Poverty Index for developing countries (HPI-1) focuses on the proportion of people below a threshold level in the same dimensions of human development as the human development index - living a long and healthy life, having access to education, and a decent standard of living. By looking beyond income deprivation, the HPI-1 represents a multi-dimensional alternative to the \$1.25 a day (PPP US\$) poverty measure.

⁹³ Available at:

http://hdrstats.undp.org/2008/countries/country_fact_sheets/cty_fs_BGD.html accessed on April 18, 2009

⁹⁴ Atiur Rahman, *Ibid*, p. 17.

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and protection of human rights primarily because of lack of resources.

Environmental Disaster: Bangladesh suffers from multifaceted environmental constraints that effectively challenge human rights and development efforts. Chronic floods and more recently, cyclone *Sidr* in 2007 have severely affected crops in the northern and southern belts of the country adding to the overall scarcity of food.⁹⁵

Corruption and Bad Governance: Corruption is the cause and core of many human rights violations. Besides poverty and environment, Bangladesh has been experiencing difficulties in sustaining progress on account of large-scale corruption that has over the years systematically eaten into some of the core public and private institutions. According to the Transparency International's (TI) Annual Corruption Index Bangladesh has become champion for five consecutive years since 2001.⁹⁶ The estimated annual burden on households in Bangladesh because of corruption in nine selected sectors⁹⁷ is BDT 67,960 million (990 million USD)⁹⁸. Incidence of corruption is highest in police and lower judiciary.⁹⁹

Judicial corruption undermines justice, denying victims and the accused the basic human right to a fair and impartial trial, sometimes even to a trial at all. It allows criminals to go

⁹⁵A/HRC/WG.6/4/BGD/1, para. 118.

⁹⁶ <<http://www.thedailystar.net/magazine/2005/10/04/news.htm>>, accessed on 17 April, 2009

⁹⁷ Nine sectors are- Education, Health, Land Administration, Police, Judiciary, Electricity, Taxation, Local Government and Pension

⁹⁸ Transparency International Bangladesh, "Corruption in Bangladesh: A Household Survey- 2005", Available at: <<http://www.tibangladesh.org/documents/HouseholdSurvey200405-sum1.pdf>>, accessed on 17 April 2009

⁹⁹ *Ibid.*

unpunished, destroying effective governance and democratic participation.

Human Insecurity: Political Rivalry and Confrontation:

Overriding all the factors outlined above is the growing concern of the members of the public about physical safety of the individual and growing threats to life irrespective of socio-economic and political status, age, sex, identity or any other marker. The confrontation has created the space where militancy has grown allegedly with the connivance of the major political parties and Government of the day.¹⁰⁰ Not only that to a great extent because of the confrontational politics and bitter rivalry, the integrity of key institutions of the national protection system have been rendered ineffective only due to politicization of the same¹⁰¹. The political patronage of militancy and its reported linkage of the sections of the government have left the police and administration initially inactive and now ineffective, in taking any measures against growing insecurity ranging from petty crimes and violence, repression against women, children and minorities including minorities within Islam.¹⁰² Indiscriminate killings of citizens have now created a widespread sense of human insecurity and despair.

¹⁰⁰ Allegations of connivance of a section of the government with militancy are coming from within the ruling party. See for instance statements of the ruling party Member of Parliament Abu Hena, quoted in *Prothom Alo*, November 23, 2005.

¹⁰¹ Mohammad Muztafizar Rahman, "Parliament and Good Governance: A Bangladesh Perspective", *Japanese Journal of Political Science*, 9(1), pp.39-41.

¹⁰² Even high profile killings like former Finance Minister SAMS Kibria, Awami League MP Ahsanullah Master and professionals such as Professor Yunus of Rajshahi University, journalists Manik Saha and Shamsur Rahman, and equally high profile attempts to life of the British High Commissioner, poet Shamsur Rahman, Humayun Azad and Udichi bombing, series of attacks on cinema houses were never addressed because of politicization.

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Negligence of duty for political consideration being a form of political corruption, and politicization of key institutions being one of the most difficult impediments against good governance, failure to control the situation at the roots could turn out to be an example of worst implications of political corruption including social, political and economic instability, disorder and anarchy.

7. Recommendations and Conclusion:

Theoretically the national human rights protection mechanism seems good but in practice they suffer from various critical lacking for which in spite of having the initiative it fails to fulfill the aspiration of the people. Nevertheless the Government's attitude to have control over all the institutional framework within the state does not enable it to perform for protection of human rights in a way as it ought to have. In such a circumstance the following initiatives may reduce the fear of the people and encourage them to come forward for their rights effectively. Therefore in the present context of Bangladesh the human rights protection to work effectively depends on:

- Ensuring full independence and accountability of the entire judiciary and consider establishing a Judicial Reforms Commission to review outstanding concerns regarding appointments and related matters.
- Amending the National Human Rights Commission Ordinance to conform to the Paris Principles and providing the NHRC with sufficient resources and capacity so that it able to carry out its functions independently and effectively.
- Reviewing policing practices and procedures to bring them into conformity with human rights standards, including through enactment of a law to replace the Police Act 1861, following further public consultations on the Draft Police Bill.

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- Ensuring adequate and impartial investigation of allegations of extra-judicial killings by law enforcement agencies and security forces, including the Armed Forces, RAB and the police, prosecution of those responsible and reparation for victims.
- Implementing existing High Court guidelines on safeguards regarding arrest without warrant and placing individuals in police remand under section 54 and 167 of the Code of Criminal Procedure.
- Ensuring independent, impartial and adequate investigation of allegations of torture in previous regimes and prosecuting those found responsible, and providing adequate and effective redress to victims.
- Repealing existing legal provisions which provide impunity for or obstruct prosecution of law enforcing or security agencies for human rights violations such as torture or ill-treatment, for example Section 197 and Section 132 of the Code of Criminal Procedure and provision of the Armed Police Battalions Ordinance.
- Adopting specific legislation on redress including compensation for victims of arbitrary arrest and torture.
- Removing reservations to international human rights instruments to which Bangladesh is a party including the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and Ratify the Statute of the International Criminal Court. Ratifying the Optional Protocol to the Torture Convention, withdrawing reservations to Article 14(1) of the CAT, and incorporating the treaty obligations into national laws.
- Repealing existing legal provisions which provide impunity for or obstruct prosecution of law enforcing or security

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agencies for human rights violations such as torture or ill-treatment, for example Section 197 and Section 132 of the Code of Criminal Procedure and provision of the Armed Police Battalions Ordinance.

- Ensuring application of laws and procedures on prisoners' rights without discrimination and providing training to prison staff on their obligations to protect fundamental rights and on prison management.
- Taking measures to ensure effective investigation of allegations of violence against women, and engaging concerned agencies including the police, health professionals and prosecutors in ensuring the provision of redress and protection for victims and for witnesses, and adopting a policy on sexual harassment in educational institutions and workplaces.
- Reviewing, amending and implementing the Children Act, 1974 to develop an effective mechanism to protect children from violence, abuse and exploitation.
- Extending the mandate of the newly formed National Human Rights Commission to include comprehensive research into discrimination against the religious and ethnic minorities.
- Implementing the poverty reduction strategy to reduce poverty which will reduce the frequency of social crimes. It will not be out of place to mention here that implementation of PRSP will not be effective unless or until it adopts the right based approach by collaborating between different stakeholders.
- Empowering the Anti-Corruption Commission and building their capacity with proper training and logistic support for combating corruption without compromising with the human rights standards.

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- Incorporating human rights education at secondary and higher secondary level keeping in mind the mental growth of the children at this stage and adopting various promotional approach for mass awareness on human rights issues.
- Developing a periodical training schedule for the law enforcing agencies and judicial officers enabling them to understand the human rights standards and to equip them with the know how to secure human rights standards during their performance of duties.
- Developing a progressive and sustainable economic management whereby the people will be able to lead their life with contextual change in the society and economy which will not only enable the people to respect law but also build an attitude to give up the corruption.

In this view of the matter the present system of protection of human rights in Bangladesh can work effectively on proactive approach of the Government to rectify the lacunas in its initiative and only in that case the people can enjoy their rights without any fear or control by any interested quarter which is the main theme for establishment of the human rights in Bangladesh.