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Laws relating to Prosecution Service in Bangladesh: A Critical Analysis

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The Laws relating to Muslim Women-Initiated Divorce in Bangladesh: An Overview from Right-Based-Approach



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Rajshahi University Law Journal is an official journal of the Faculty of Law, University of Rajshahi that publishes research articles. Contributions to the Journal may be in English or in Bangla and must be unpublished articles containing original research that have not been submitted for publication elsewhere. All submissions are subject to peer review and to edition by the Editorial Board. The decision of the Editorial Board regarding publication is final and the copyright of published articles rests with the Faculty of Law, University of Rajshahi.

Manuscripts submitted for publication must be in three copies, double-spaced typescript or electronic print-out on A4 size (8.5"×11") white sheets with margins of 1" on all sides and pages consecutively numbered. The manuscript should have a title-page with the title of the article and the author's name, designation and contact address. The author's name or anything that may identify the author should not appear anywhere in the text paper. An abstract in English must be provided within 200-300 words at the beginning of the article. Submissions should be addressed to the Editor in Chief, Rajshahi University Law Journal, Faculty of Law, University of Rajshahi, Rajshahi 6205, Bangladesh.

Role of Police Relating to Detention of Children and Women in Bangladesh: A Critical Review

Md. Nahidul Islam*

Abstract: *This paper is mostly concerned with the concept of the role of police emphasizing particular Domestic Laws, and a number of relevant International Instruments, as well as the basic human rights norms regarding the detention of children and the detention of women in relation to human rights. The author made an effort to analyze a documentary about the role of police in the detention of children and women in relation to human rights in Bangladesh's criminal justice system. Finally, in this study, the author has endeavored to bring out the actual scenario and activities with such references of having particular examples from the role of the law enforcement agency i.e., the police, in promoting a democratic and developing state like Bangladesh.*

Keywords: Police, Safe Custody, Human Rights, Judicial Review

1. Introduction

A fundamental aspect of a child's rights is juvenile justice, which is also a crucial area where a state's commitment to a child's rights can be most clearly seen. We have a unique opportunity to promote a paradigm shift and help the criminal justice system transition from an adult universe where children and adolescents hardly belong and where violence still carries a high risk to one where children are seen as rights holders and are always protected from all forms of violence. In order to create and speed up the implementation of practical safeguards for juvenile offenders' children against all sorts of harm, at an expert meeting in Vienna in January 2012, Marta Santos Pais, the Special Representative of the Secretary-General (SRSG) on Violation against Children, made the following remarks:

"We need awareness in all those who deal with children as to their rights and needs and a benevolent attitude towards children and their plight. We should not forget the obvious truth that children, who become victims or come into conflict with the law, do not do so of their own volition. A little circumspection would reveal that they come into contact with contact due to actions or failures of adults around them."

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The Children Act of 1974 was passed on June 22, 1974, with the goal of bringing together the laws governing child custody, protection, and treatment as well as the prosecution and punishment of young offenders.¹ In accordance with Gazette notification No. 315-L / 76 dated the 11th September 1976, the Act became operative on November 1st, 1976, only for the District of Dhaka. It became effective for the remaining districts on June 1st, 1980, pursuant to S.R.O. No. 127-L / 80, dated May 16, 1980.² The Reformatory Schools Act, 1897, the Bengal Jail Code Act, 1922, the separation of children from adults in jails, and the separate trial of children and adults as contained in that law were all reflected in the Children Act, 1974, which also provided for the trial of children in juvenile courts (see Section 29B of the Code of Criminal Procedure, 1898). (Act No. XXXIX of 1974). In this regard, it must be noted that the Children Act of 2013 has repealed this Act (Act No. 24 of 2013). For kids in Bangladesh, the Act's passage marks an important turning point. This Act is a major step toward protecting vulnerable children.

2. Children and Juvenile Rights under the National and International Instruments

The Convention on the Rights of the Child, 1889

The Convention on the Rights of the Child (CRC) is the most broadly recognized human rights agreement, with all but two countries ratifying it. The Convention encapsulates all of a child's civil, political, economic, social, and cultural rights in a single treaty. Bangladesh's Criminal Procedure Code includes a special provision for juvenile trials. The police must notify the parent or legal guardian of the child's detention and present them with the date on which they must appear in court, according to the Children Act of 1974. The United Nations Convention on the Rights of the Child is a human rights treaty that establishes the political, economic, social, cultural, and other rights of children.³ This treaty binds nations that ratify it to international law. Governments of ratifying member nations must report to and testify

¹ Md. Nurul Alam et al., 1st ed., *Human Rights Training Manual for Bangladesh Police* (Institutional Development of Human Rights in Bangladesh (IDHRB), 2001, Dhaka, p.38.

² *Ibid.*

³ The United Nations Human Rights Office of the High Commissioner, 20 November, 1989, *Convention on the Rights of the Child*, accessed 2 April 2023, available at <https://www.legalserviceindia.com>.

before the United Nations Committee on the Rights of the Child on a regular basis on their progress in implementing the convention and the status of children's rights in their nation. The Committee's documented views and concerns, as well as their findings, are available on the committee's website.

The followings are the significance of juveniles in the Convention on the Rights of the Child:⁴

Article 1 of the convention describes a child as:

- Unless the applicable legislation specifies otherwise, a person is considered a kid if they are under the age of eighteen.
- The convention's Article 3 addresses the child's best interests.
- According to Article 6 of the convention, each member state is required to acknowledge that every child has a right to life.
- The convention's Article 37(a) underlines the ban on cruel and inhumane treatment of children and specifically forbids the death penalty and life in prison for minors.
- According to Article 37 (b) of the agreement, detention and imprisonment are only to be used as a last option.
- According to Article 37(c) of the treaty, children who are imprisoned shall be treated decently.
- Article 37(d) of the agreement emphasizes the importance of the right to legal representation and the ability to appeal their imprisonment before a court of law.
- Article 40 of the convention calls for general legal protections and measures addressing children outside of the court of law.
- Article 40(1) underlines the importance of treating children accused with dignity.

The UN Standard Minimum Rules for Juvenile Justice Administration (Beijing Rules), 1985

The Beijing regulations provide baseline standards for dealing with juvenile offenders that are widely accepted. The purpose of juvenile justice is maintained in the Beijing regulations. The Beijing regulations provide specific mechanisms for documenting the various stages of juvenile justice. The rules are divided into six sections: juvenile rights

⁴ The United Nations Human Rights Office of the High Commissioner, 20 November, 1989, *Convention on the Rights of the Child*, accessed on 03 April 2023, available at <https://www.ohchr.org>.

(Article 7), police specialization (Article 12), adjudicative authority (Article 14), representation by attorneys, parents, and guardians (Article 15), professionalism and training requirements (Article 22), and provision of necessary assistance (Article 24).⁵

The Havana Rules for the Protection of Juveniles Deprived of Liberty, 1990

According to the Havana Rules, juveniles will gain from initiatives aimed at assisting them in adjusting to family, society, education, or post-release employment. The young people will need support from the appropriate authorities.⁶

The Vienna Guidelines for Action on Children in the Criminal Justice System, 1997

The Vienna guideline addresses minors in the criminal justice system who are offenders, victims, or witnesses. Government interventions, according to the regulations, are oriented on non-discrimination, the child's best interests, and the child's rights to life, survival, and growth.⁷ Now, a few of the domestic laws and international treaties relating to the rights of detainees and the process of holding children in custody have been briefly mentioned below:

The Children Act, 2013

The Child Bill 2013, which was adopted by the National Parliament on June 16, 2013, was published in the Gazette on June 20. The new law replaced the 1974 Child Act and is in accordance with the United Nations Convention on the Rights of the Child (CRC), which is mentioned in the preamble. This Act's literal objective is to safeguard children and young people and to put an end to child labor.

⁵ The United Nations Human Rights Office of the High Commissioner, 29 November, 1985. The UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules) General Assembly Resolution 40/33, available at <https://www.ohchr.org/Documents/>. accessed on 04 April, 2023,

⁶ The United Nations Human Rights Office of the High Commissioner. 14 December, 1990, The UN Rules for the Protection of Juveniles Deprived of their liberty (The Havana rules) General Assembly Resolution 45/113, available at https://www.unodc.org/pdf/criminal_justice/, accessed on 03 April, 2023.

⁷ The United Nations Human Rights Office of the High Commissioner, 14 December, 1990, The UN Guidelines for action on Children in the Criminal Justice System (The Vienna guidelines) General Assembly Resolution 45/112, available at <https://www.unicef.org>, accessed on 03 April 2023.

The Children Act 2013 was written by the Ministry of Social Welfare and comprises 11 chapters and 100 parts. The new law repeals the Early Children Act of 1974. The Act specifies the age of 18 or under as the generally recognized definition of a kid. Additionally, it should be briefly noted that this Act recognizes certain organizations and members and lists their duties, which are now listed below:

The Act requires the government to appoint a Probation Officer or Probation Officers in each district, upazila, and metropolitan area. According to this act, A National Child Welfare Board will be constituted. The chairperson of the board will be the Minister of Social Welfare. Boards will also be established at the district and upazila levels. The district commissioner and the Upazila Nirbahi officer (sub-district executive officer) will serve as the boards' presidents. The Ministry of Home Affairs will establish Child Help Desks in police stations across the country. A police officer with the rank of sub-inspector or higher will be in charge of the desk. The Act specifies the duties of the appointed police officer. The Act mandates the filing of charges against minors. The Act prohibits the submission of a single charge sheet that includes both adults and minors. A district or major city will establish at least one juvenile court. Whatever crimes a child is accused of committing will be tried in juvenile court if a case is brought against them. A child under the age of nine cannot be arrested under any circumstances, according to the Act. Handcuffs and a rope around the waist of a detained youngster older than nine years old are not permitted by law enforcement officials. If a child is abused in criminal activity, the offender or offender(s) will receive a maximum sentence of five years in prison, a fine of Tk. five lacks, or both.

Furthermore, it is more important that the Children Act of 2013 comprises 100 sections that outline particular guidelines for the goal of protecting and controlling children. These guidelines are described below. The punishment for violations involving children is specified in Section 79 of the aforementioned Act if a child bears any of the following: cruelty, beggarly behavior, intoxication while in charge of a child, use of the child to carry weapons or other illegal things, exploitation, and so on. However, Section 82 of the Penal Code of 1860 states that nothing is an offense that a child does under nine years of age.

Section 83 of the Penal Code describes that nothing that a youngster over the age of nine but under the age of twelve does that leaves him

unable to appreciate the nature and ramifications of his actions is considered an offense. Even under Section 13 of the Children Act of 2013, every police station in the country must have a Child Affairs Desk staffed by a "Child Affairs Police Officer" who is at least a Sub-Inspector and favors female officers. Keeping separate files and registers for cases involving children, notifying the PO, the child's parents or caregiver, attending to the child's basic needs, determining the child's age from the birth certificate or school records, taking deterrent measures, determining the likelihood of bail, and creating a separate charge sheet for a child offender are all responsibilities of the law enforcement official in this case. The law also enables the custody of children in CDCs (child development facilities). When a child is found guilty of a crime that carries a death or life sentence, the Children's Court may impose a detention term of three to 10 years. If found guilty of a crime that is not punishable by death or life in prison, a child may receive a sentence of up to three years in a CDC. In other cases, such as in response to a CDC recommendation, the government or the court may also decide to release a child from custody. In light of the aforementioned viewpoint, it is important to note that an effort has been made to briefly discuss the landmark Sections 13 and 79 of the Children Act, 2013 regarding the Child Affairs Desk and the penalty for offenses involving children, regardless of whether the laws have been broken or not by law enforcement.

Other Relevant Provisions Relating to the Detention of Children /Juveniles

The right to life is described as a fundamental human right in Articles 6(1) and 6(5) of the International Covenant on Civil and Political Rights of 1966. This right must be upheld by the law. No one's life shall be taken arbitrarily, and neither the death penalty nor the execution of pregnant women may be applied to offenses committed by those under the age of 18. According to Article 10 (1) (a) (b) of the International Covenant on Civil and Political Rights, 1966; it is said that all persons detained must be treated with humanity and with regard for the inherent dignity of the human person. Except in exceptional circumstances, accused persons shall be separated from convicted persons and subject to separate treatment appropriate to their status as unconvicted persons, and accused juvenile persons shall be separated from adults and brought for adjudication as soon as possible.

In this regard, article 25 (2) of the Universal Declaration of Human Rights (UDHR), 1948⁸ prescribed that motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. Article 24(1) of the International Covenant on Civil and Political Rights (ICCPR), 1966⁹ also prescribed that every child has the right, without regard to race, color, sex, language, religion, national or social origin, property, or birth, to the measures of protection demanded by his status as a minor on the part of his family, society, and the State. In this regard, Article 10(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966¹⁰ prescribed that the States Parties to the present Covenant recognize that Special measures of protection and aid should be adopted on behalf of all children and young people, without regard to parentage or other circumstances. Children and adolescents must be shielded against economic and social exploitation. Their employment in jobs that are damaging to their morals or health, dangerous to their lives, or likely to impede their normal development should be illegal. States should also establish age restrictions below which paid child labor should be outlawed and penalized by law. In this regard, Article 7 of Part I of the European Social Charter (ESC) of 1961 stated that children and young people have the right to special protection from physical and moral hazards to which they are exposed.¹¹ Article 17 further stated that mothers and children, regardless of marital status or family relationships, have the right to adequate social and economic support.¹²

Article 17(a)(b)(c) of the Constitution of the People's Republic of Bangladesh has prescribed that the State shall adopt effective measures for the purpose of Establishing a uniform, mass-oriented, and universal

⁸ "Universal Declaration of Human Rights," United for Human Rights, last modified 2008-2015, available at <http://www.humanrights.com/what-are-human-rights/universal-declaration-of-human-rights/articles-21-30.html>, accessed on 01 December, 2015.

⁹ "International Covenant on Civil and Political Rights," United Nations, last modified 1996-2015, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, accessed on 01 December, 2015,

¹⁰ *Ibid.*

¹¹ "The European Social Charter," Council of Europe, last modified 1 January 2015, accessed December 1, 2020, available at <https://rm.coe.int>

¹² *Ibid.*

system of education and extending free and compulsory education to all children to such stage as may be determined by law; relating education to the needs of society and producing properly trained and motivated citizens to serve those needs and removing illiteracy within such time as may be determined by law. Article 28(4) of the Constitution of the People's Republic of Bangladesh also prescribed in this regard that nothing in this article shall prevent the State from making special provisions in favour of women or children or for the advancement of any backward section of citizens. After briefly describing the provisions made regarding the detention of children through various pertinent domestic laws and international instruments, we may have many examples of specific infractions committed by law enforcers in Bangladesh if we analyze the real practice and current scenario on the basis of such provisions, as follows:

Violence against children when they are in prison includes torture, beatings, seclusion, shackles, rape, harassment, self-harm, and humiliation, to name just a few. The Special Rapporteur on Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment has stated that:

“Violence in places of detention, including special institutions for children, is manifest in several ways, mainly through physical and sexual violence, as well as through verbal abuse. In addition, children are also subjected to violence as a result of conditions of detention, or as a form of discipline or punishment.”¹³

States that have ratified the United Nations Convention on the Rights of the Child (CRC) have a legal obligation to protect imprisoned children from all forms of bodily or mental injury, abuse, neglect, or exploitation, including sexual exploitation. Their laws, administrative procedures, and educational programs reflect this duty.¹⁴

Moreover, under Article 40(1) of the CRC States are obliged to:

¹³ Manfred Nowak, “Sexual Violence in Institutions, including in detention facilities,” Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2010, p.5, available at <http://www.blast.org>.

¹⁴ Article 19, *The Convention on the Rights of the Child (CRC)*, 1999.

“.....recognize the right of every alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

In its General Comment on Children’s Rights in Juvenile Justice (General Comment No. 10), the CRC Committee urges that all types of violence against children in legal difficulties must be outlawed and prevented.¹⁵ In fact, the International Covenant on Civil and Political Rights (ICCPR), signed in 1966, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), signed in 1984, both mention children’s rights to be free from violence. Children have the right “to such measures of protection as are required by [their] statuses as minors” according to Article 24 of the ICCPR. Also prohibited are cruel, inhumane, or degrading treatment under the ICCPR and CAT. However, in its concluding observations on Bangladesh, the Committee on the Rights of the Child has repeatedly expressed concern about the administration of the juvenile justice system, specifically the minimum age of criminal responsibility, the number of children in jails, the mistreatment of children in police custody, the length of police custody, and the lack of juvenile courts. The Committee has made specific recommendations to bring juvenile justice in line with the Convention, such as raising the minimum age of criminal responsibility from 9 to 12 years old, considering the establishment of juvenile courts, establishing legal limits on the length of children’s pre-trial detention, and ensuring that children are placed in detention centers.¹⁶ Part III of the Bangladesh Constitution outlines fundamental rights. The following are rights that pertain to the protection of children:

¹⁵ UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, April 25, 2007, CRC/C/GC/10 here after General Comment No., para 13, available at <http://www.blast.org.bd>.

¹⁶ Committee on the Rights of the Child, Concluding Observations: Bangladesh’s Second Periodic Report and Concluding Observations, October 27, 2003, available at <http://www.blast.org>.

- Article 27 guarantees equality before the law and equal protection of the law for all citizens;
- Article 28(1) prohibits discrimination on the basis of gender, race, religion, caste, or place of birth;
- Article 28(4) allows the State to make special provisions in favor of women or children or for the advancement of any backward section of citizens, and
- Article 31 guarantees the right to legal protection.
- Article 32, which safeguards a person's right to life and personal liberty, is one of the rights linked to the protection of children in detention.
- Article 33, requires that no person under arrest shall be denied the right to consult and be defended by a legal practitioner of his choice, i.e., (Miranda Warning¹⁷) and
- Article 35 provides for protections in respect of speedy trial and punishment, and expressly prohibits torture and cruel, degrading, inhuman treatment or punishment.

As stated in Article 44(1) of the Bangladeshi Constitution, the right to enforce fundamental rights through the filing of a writ petition with the Supreme Court's High Court Division is in and of itself a fundamental right.

According to both the Children Act of 1974 and the Code of Criminal Procedure, children in Bangladesh may only be tried by the juvenile court and cannot be tried with adults. The trial must be held in secret and may only be attended by individuals directly interested in the case and court employees. It is banned to publish a report of the proceedings or a child's picture that could directly or indirectly reveal the child's identity. This includes the probation officer's report and any other report the court may examine. But these rules have rarely

¹⁷ Wikipedia, the free encyclopedia, "Miranda warning," available at <https://en.wikipedia.org>, accessed on 20 March, 2021.

been adhered to when prosecuting young offenders.¹⁸ Numerous convictions of young offenders under the Children Act of 1974 have left the country's juvenile justice system in a chaotic state because children under 16 cannot be punished.¹⁹ In addition to these, if it appears to the court that the accused is a minor, the court must enquire about the child's age. In the lack of a birth registration practice, judicial officials must rely on guesswork or the child's medical records. A police officer may release a child imprisoned under the age of 16 on bond under Section 48 of the Children Act of 1974. The facts, on the other hand, indicate something. Odhikar found that 7% of juveniles held in Dhaka Central Jail in 2001 on suspicion of breaking Section 54 of the Code of Criminal Procedure 1898 had been there for more than two years. A 14-year-old boy was imprisoned in 2002 for 2.5 years before being released in December.²⁰ The young individual was imprisoned as part of a huge anti-crime operation but was never charged (US Bureau of Democracy, Human Rights, and Labor, 2004). After human rights investigators from the area observed him during a normal prison visit, the Dhaka Metropolitan Magistrate Court released a nine-year-old boy from a criminal case in July 2005.

3. Women's Rights under the National and International Instruments

At the outset, it is essential to state that women's rights in national and international affairs are a hotly debated topic. As a result, taking into account the notion of women's rights under national and international instruments, a precise statement was made here. Some international legal laws expressly safeguard and promote women's rights in both human rights and humanitarian law. Because both systems are based on nondiscrimination, all of their laws should be equally available and accessible to men and women. In fact, however, its application has centered on the public domain, which is controlled by men, and has ignored the domestic sector, where women live and where many of the

¹⁸ "Child rights based juvenile justice system in Bangladesh," Uk Essays, last modified, 04 May 2017, available at <https://www.ukessays.com>, accessed on 14 March 2021,

¹⁹ *Ibid.*

²⁰ *Ibid.*

causes of their incarceration occur. According to the Fourth United Nations Conference on Women, which called for gender-sensitive education and training for those officials in 1995, women may be vulnerable to violence from public officials (including police, prison officials, and security forces) in both conflict and non-conflict situations. Additionally, it called for governments to actively work to advance and defend women's rights rather than merely refraining from violating them.²¹ The United Nations (UN) passed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 to strengthen women's legal status and protect their rights from all types of discrimination. With a few notable exceptions, all UN members have ratified this agreement to establish gender equality as the standard. Bangladesh has taken a number of legislative and political measures to strengthen the protection of women's rights after ratifying this treaty in 1984. It is now clear that CEDAW has had a positive impact on Bangladesh's current situation regarding women's rights and gender equality. However, there is still a great distance to travel.²² This research also highlights the positive effects of the CEDAW Convention on Bangladesh's improved legal framework for women's rights and gender equality. In order to evaluate the problems and prospects of the anticipated gender equality stated in CEDAW, succeeding governments have thoroughly studied the local and international legal framework for women's rights. The oldest and maybe most well-known international law on women's rights and gender equality is the Convention on the Elimination of All Forms of Discrimination Against Women. It is composed of 30 articles separated into 6 parts and is known as the "Women's Bill of Rights." These are precisely mentioned below:²³

- Part I (Articles 1-6) addresses nondiscrimination, gender stereotypes, and sex trafficking.

²¹ Julie Ashdown and Mel James, "Women in detention," *International Review of the Red Cross*, Volume 92, Number 877, 2010, p.125, available at <https://www.icrc.org>, accessed on 14 April, 2023.

²² See, <https://thelawbrigade.com/wp-content>, accessed on 14 April, 2023.

²³ See, <https://conferenciamujer.cepal.org/14/sites/crm14/files>, accessed on 14 April 2023.

- Part II (Articles 7-9) focuses on women's public rights, with a particular emphasis on political life, representation, and nationality rights.
- Part III (Articles 10-14) focuses on the economic and social rights of women, with a particular emphasis on education, employment, and health. Part III also provides specific protections for rural women and the difficulties they face.
- Part IV (Articles 15 and 16) emphasizes women's legal equality as well as their rights to equality in marriage and family life.
- Part V (Articles 17-22) establishes the Committee on the Elimination of Discrimination against Women and the state party reporting system.
- Part VI (Articles 23-30) examines the Convention's implications for existing treaties, state parties' commitments, and the Convention's administration.

To avoid violence against women's rights, it is critical to support and fund strong, independent feminist groups that protest violence against women and girls.

4. Role of Police Relating to the Detention of Children in Bangladesh

ARBITRARY imprisonment, or detention without due process of law, as well as custodial abuse, continue to be issued in Bangladesh. The Children Act of 2013 provides child welfare boards, child-specialized police officers, separate children's courts, child development centers, and probation officers for the protection and well-being of children. Children's legal age has been raised from 16 to 18. In fact, Jail is hardly a place where a child should be kept.²⁴ However many children are illegally detained in different jails in violation of the Children Act of 1974 and the CRC. As per the report of the NTF meeting dated 5 July 2006, 819 children were detained in jail countrywide. There were 471

²⁴ Dr. Nahid Ferdousi, "Juvenile Justice for the Best Interest of the Children in Bangladesh: A Legal Analysis," *Journal of Law, Policy and Globalization*, Vol. 18 2013, p.30, available at <https://www.google.com>, accessed on 30 March 2021.

male children and 40 female children in the jail. According to the news report, 2380 accused juveniles are languishing in jails despite repeated High Court orders not to keep children in prisons. In contrast, three juvenile correctional institutions remain practically deserted with only 282 inmates against the capacity of 700. Furthermore, according to a 2007 report by Save the Children UK, 1,532 children were imprisoned in Bangladesh. The Penal Code detained 617 males and 24 females, the Code of Criminal Procedure detained 136 males and 11 females, the Special Powers Act detained 95 males and two females, the Arms Act detained 51 males, the Narcotics Control Act detained 98 males and four females, and the Speedy Trial Act detained 43 males and one female. As a result, juveniles are frequently imprisoned, which is expressly prohibited by law. However, due to a lack of cooperation among important components of the legal system, children have not been adequately housed in correctional facilities and have been taken to jail. As a result, they are exposed to serious contamination by adult prisoners of all types in jails.

In another case in 2011, five people, including three children, were allegedly tortured at Lalbagh Police Station custody in Dhaka.²⁵ On September 4, 2011, officers from Dhaka's Lalbagh officers Station apprehended Akhi Aktar (7) and Barek Haolader (8), the daughter and son of Babul Haolader, as well as Moksed Shikder (32) and his wife Shajeda Begum (30). Mirajul Shikder (6), Moksed and Shajeda's kid, was detained on stealing charges on September 7, 2011. Police allegedly abused the three youngsters for six days, from September 4 to September 10, 2011, and similarly tormented Moksed and Shajeda for two days.²⁶ However, the police do not notify the probation officers after the child's arrest, and the guardians are not found with the assistance of probation officers. No kid would be convicted, jailed among adults, or condemned to life imprisonment in the best interests of the child. Nonetheless, the subject of a child's joint trial with an adult has arisen in a few criminal situations. A child has the right to education, entertainment, training, cultural activities, and other things

²⁵ "Five people including three children were allegedly tortured at Lalbagh Police Station custody in Dhaka," *Odhikar*, available at: <http://odhikar.org>, accessed on 30 March 2021.

²⁶ *Ibid.*

if they are at a child development center. Unfortunately, insufficient administrative and logistical support makes it challenging to defend the child's best interests in such facilities. The offenders are not brought before the court on the scheduled day, and the probation officers fail to submit routine reports to evaluate the development of the juveniles (Khan and Rahman, 2008:83-84).²⁷ However, it is observed that through the history of the cases mentioned above, the children told absolutely about malpractices beyond imagination in the eyes of the law performed by law enforcers, i.e., police, while in police custody, and also referred to ill-treatment, inhuman torture violating not only domestic laws but also disobeying international instruments, which certainly reveals how such a violation of human rights occurred in a country like Bangladesh.

5. Role of Police Relating to the Detention of Women in Bangladesh

Now, the following domestic legislation and international treaties, given below in order from 5.1 to 5.3, only briefly discuss the legal framework relating to women's detention:

5.1 Domestic Laws²⁸

The Code of Criminal Procedure, 1898

The Special Powers Act, among other Acts, has a number of provisions for arrest without a warrant, and Section 54 of the Code of Criminal Procedure, 1898, states that this section does not claim to be comprehensive or unqualified. A police officer acting in accordance with this provision must have a legitimate complaint, credible information, or reasonable suspicion that the individual being arrested has been implicated in a cognizable offense. The powers conferred by this provision should not be utilized carelessly because they are discretionary, especially after a complaint has been made. It can only be applied in this circumstance if an arrest is warranted. Even though Section 54's authority indicates a right to detain, a person should not be

²⁷ *Ibid.*

²⁸ Md. Nurul Alam et al., 1st ed., *Human Rights Training Manual for Bangladesh Police* Institutional Development of Human Rights in Bangladesh (IDHRB), Dhaka, 2001, p. 44.

detained without being arrested.²⁹ Witnesses cannot be imprisoned by the police. Detention during a trial is permissible until bail is granted. The holding of an accused person while they are on trial is not intended to penalize them. Its objective is to ensure attendance.³⁰

5.1 Safe Custody³¹

A Juvenile Court gives custody of a child under the Children Act of 1974. Section 19 of the 1933 Suppression of Immoral Traffic Act defines "Safe Custody." "Any person to whose custody a girl is committed by an order made under Section-14 shall, while the order is in force, have the like control over the girl as if he were her parent and shall be responsible for her maintenance and protection, and the girl shall continue in his custody notwithstanding that she is claimed by her parent or any other person," according to the law. A court would usually order the safe custody of a woman who has been raped or who elopes. As a result, the woman is imprisoned and effectively detained in the facility. Despite the fact that she is a witness, all of her liberties are restricted, and she effectively becomes a prisoner. This is a violation of her fundamental constitutional rights.

5.3 Human Rights Standards³²

In this regard, Article 1 of the Universal Declaration of Human Rights (UDHR), 1948 prescribed that all humans are born free and with equal dignity and rights. They have reason and conscience and should act in a brotherly manner toward one another. Everyone has the right to life, liberty, and personal security, as stated in Article 3. No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment, as provided for in Article 5. According to the provisions of Article 7, everyone is equal before the law and has the right to equal legal protection without discrimination. Everyone has the right to

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² Md. Nurul Alam et al., 1st ed., *Human Rights Training Manual for Bangladesh Police*, Institutional Development of Human Rights in Bangladesh (IDHRB), Dhaka, 2001, pp. 44-46.

equal protection from any discrimination that violates the Declaration of Human Rights, as well as any incitement to such discrimination.

No one shall be subjected to arbitrary arrest, confinement, or expulsion, as stipulated in Article 9. Sections 54 of the Code of Criminal Procedure, 1898 prescribed in this regard:

According to Section 54(1) - any police officer may, without an order from a Magistrate and without a warrant, arrest -

Firstly, someone charged with a cognizable offense, or against whom a valid complaint has been filed, reliable information has been gathered, or there are good grounds to suspect they were involved;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

Thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;

Fourthly, any individual found in possession of something that is fairly considered to be stolen property and who is reasonably suspected of having committed an offense in relation to such object;

Fifthly, any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

Sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

Seventhly, any person who has been involved in, or against whom a reasonable complaint has been made, credible information has been received, or a reasonable suspicion exists that he has been involved in, any act committed outside of Bangladesh that, if committed in Bangladesh, would have been punishable as an offense, and for which he is liable to be apprehended or detained under any law relating to extradition or the Fugitive Offenders Act, 1881, or otherwise.

Eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);

Ninthly, any person whose arrest a requisition has been received from another police officer, provided the requisition contained the person to be arrested, the offense or other reason for the arrest, and it appeared from the requisition that the person might lawfully be detained by the officer who issued it without a warrant.

Most importantly, Section 52 of the Code of Criminal Procedure, 1898, stipulated that anytime it is required to search a woman, the search shall be undertaken by another woman, with strict regard for decency. After briefly stating the provisions mentioned above regarding women's detention via various relevant domestic laws and international instruments, it can analyze real-world practice and the current situation based on these provisions and find numerous examples of the said laws being applied by law enforcement in Bangladesh, such as the following:

Different types of torture are perpetrated against women. There is no doubt that women experience various types of exploitation and discrimination. Gender-based violence against women is sustained by prevalent discriminatory behaviors and cultural norms. Gender-based violence is now acknowledged to fall under the category of torture. The media has made the public aware of the serious issue of incarceration rape and death. Many women are discouraged from filing complaints against the police due to the stigma associated with rape and other forms of sexual harassment.³³

In general, specific crimes involving violence against women and children are covered by the Prevention of Oppression of Women and Children Act, 2000. In the form of a separate penal section and vicarious criminal liability when there is custodial rape, it may be the only law that specifically addresses offenses committed while an individual is in custody.³⁴ It's significant that this Act also

³³ *Ibid.*

³⁴ Section 8, *The Children Act, 1974*, quoted in Dr. Abdullah Al Faruque, "Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh,"

acknowledges the vicarious liability of other officials in charge of the detained woman. In this regard, the Special Tribunal established by this Act sentenced to death the three policemen who had been charged with the rape and murder of Yasmin Akter in the case of *Moinul Haque (Md.) and others vs. State*.³⁵ The Supreme Court's Appellate Division and High Court Division both upheld this Special Tribunal decision in turn. However, in another case, Shima Chowdhury, an 18-year-old victim of an alleged rape in police custody in October 1996, died in Chittagong Jail where she was being held in "safe custody"³⁶ during an investigation in February 1997. In July 1997, a trial court in Chittagong cleared four police officers who had been charged with raping Shima Chowdhury. The judge reportedly criticized the prosecution for making a weak case.³⁷ In Jahangirnagar University (JU) Vandalism Case; May 2017, 12 female students talk of 'ordeal' in custody.³⁸

Many students reported that male police officials from the Dhamrai Police Station "counted" at least 15 times over the course of eight hours beginning at 12:30 a.m. on Sunday to ensure that the 12 female students from Jahangirnagar University were really in the lock-up.

National Human Rights Commission, Bangladesh (NHRC), Dhaka, January 2013, p.44.

³⁵ 56 DLR (AD) (2004) 81, quoted in Dr. Abdullah Al Faruque, "Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh," National Human Rights Commission, Bangladesh (NHRC), Dhaka, January 2013, p.45.

³⁶ Section 3, *The Prevention of Oppression of Women and Children Act*, 2000 states that If at any stage of the trial of an offence under this Act, the Tribunal thinks that any woman or child is needed to be kept in safe custody, the tribunal can direct to keep the women or the child, out of the jail and under the custody of a Government authority determined by the Government for this purpose or under the custody of a person or organization whom the tribunal thinks proper. quoted in Dr. Abdullah Al Faruque, "Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh," National Human Rights Commission, Bangladesh (NHRC), Dhaka, January 2013, p.46.

³⁷ Dr. Abdullah Al Faruque, *Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh*, National Human Rights Commission, Bangladesh (NHRC), Dhaka, January 2013, p.46

³⁸ *The Daily Star*, 31 May 2017

According to several pupils, this is harassment. Maliha Mostafa Suchana, a finance and banking student at JU, told the Daily Star:

“We were taken to the lock-up of the police station [Dhamrai] from the university campus around 12:30 A.M. and several policemen appeared before the lock-up to count us till 8:00 A.M.”

Suchana was one of 12 female students detained for protesting the unfortunate death of two of their classmates in a car accident near the C & B bus terminal area in Savar on the Dhaka-Aricha highway. Police arrested 42 students, including 12 females, following the arrest of detainees in a mischief case. Several female students told the Daily Star about their hardship and abuse while detained by police.³⁹ Another female student claimed that some police officers personally requested their mobile numbers while promising to assist them later. She said, requesting anonymity, “I could never think that I would have to go through such an experience.” The majority of the female students claimed that while being transported to the police station inside a microbus, officers treated them very rudely and even hurled insults at them. Right from this unexpected incident, when it comes to the code of conduct for females or women while they are in police custody, it should be noted that police officials did not follow both domestic and international laws. Such actions are beyond belief and beyond expectation, especially if one considers how the law is actually enforced by the police in a country like Bangladesh. In a different instance, college student Sumaiya Sultana Shima and her mother Aleya Akhter were brutally abused for six days while being held in police custody in Kushtia on the solitary pretext that they were suspected of being the murderer.⁴⁰ Therefore, it was unexpected that law enforcement (police) could make arrests only on the basis of their suspicions where there was a great risk that the law may have been applied imperfectly and resulted in the greatest human rights violation in the history of police administration.

³⁹ *Ibid.*, p.10.

⁴⁰ “College student Sumaiya Sultana Shima and her mother Aleya Akhter were given electric shocks and physically tortured in six days of confinement in police custody at Kushtia,” Odikar, available at <http://odhikar.org>, accessed on 30 March 2021.

In a different incident from 2013, "Girl 'raped' in a Police Station," five police officers were accused of sexually assaulting a teenage girl while she was in their care at the Govindaganj Police Station in Gaibandha.⁴¹ However, it has been noted that throughout the history of the cases, the victim has admitted to absolutely outrageous legal malpractice committed by the police while she was detained. Therefore, despite the fact that there are adequate safeguards in place under national and international laws that vehemently forbid violence against women, cases of physical and mental torture, maltreatment, rape, or sexual abuse of women in police custody have not only significantly increased but have also started to occur outside of police custody in recent years through threats:

On October 9, 2008, Rajshahi police indicted a Boalia Police Station Assistant Sub Inspector (ASI) for allegedly raping a field representative for an insurance agency. According to the FIR, the victim was subjected to phone harassment, and ASI Faruk once led ASI Abdul Hamid to the victim's home. The victim was a child who lacked a mother. Before raping the woman, the perpetrator frightened her and pretended to be a police officer. After informing her mother about the incident, the victim was transferred to the Rajshahi Medical College Hospital's One-Stop Crisis Centre (OCC).

As a result, it is noted in the police station's code of conduct for officers as well as in the fundamental Human Rights Standards for Law Enforcement Officials that Basic Standard 7 requires that Female detainees should be entitled to a medical examination by a female doctor. They should be provided with all necessary pre-natal and post-natal care and treatment. Restraints should only be used on pregnant women as a last resort and should never put the safety of a woman or fetus at risk. Women should never be restrained during labour.⁴² Female detainees should be entitled to a medical examination by a female doctor, and female visitors will need to have behaved with the

⁴¹ "Girl 'raped' in police station," in *bdnews24.com*, last modified 6 October 2013, available at <https://bdnews24.com/bangladesh/2013/10/06/girl-raped-in-police-station>, accessed on 30 March, 2021.

⁴² 10 Basic Human Rights Standards for Law Enforcement Officials, available at <https://www.amnesty.org>, accessed on 24 March, 2021

utmost decorum. Decency in words and behavior with them must also be maintained.

All inmates must be handled humanely, according to Basic Standard 8. Inflict, incite, or tolerate any form of torture or ill-treatment under any circumstances, and refuse to obey any such command.⁴³ The application of Basic Standard 8 mandates, among other things, that law enforcement agents be instructed that raping women in their custody is torture and will not be permitted. Similarly, kids should be informed that any other forms of sexual abuse may constitute torture or cruel, inhuman, or degrading treatment and that those who commit such crimes will be prosecuted.⁴⁴ Not only should the female guards be present during the questioning of female detainees, but they should also be the only ones in charge of conducting a body search of female detainees.

Even the Bangladesh Jail Code permitted the detainee to interact physically or in other ways with the family at reasonable intervals. In addition, the following is stipulated in Rule 377 of the Police Regulations of Bengal (PRB), 1943, for the protection of women held by the police:

1. Each lockup's accommodations must be based on a scale of 36 squares per prisoner.
2. Outside each police station and post, a sign stating the number of male or female convicts the lock-up is permitted to house in both English and the local language must be hung.

The absence of the aforementioned legislation and its hidden enforcement, as indicated by an increase in new cases of rape, sexual harassment, and other forms of physical punishment conducted by law enforcement agents, is profoundly sad. But it is a fact that rape is a sin in our religious and social contexts, and victims are forced to hide the rape as violence due to social stigma and shame, which are also to blame for violence against women.

6. Findings and Suggestions

⁴³ *Ibid.*

⁴⁴ *Ibid.*

The United Nations Guidelines and Standards on Juvenile Justice show a change in favor of minors. They have all become a resource for those involved in the administration of the juvenile justice system around the world, in addition to juveniles. It is advisable to create a separate area or appoint qualified employees to handle adolescent issues. The nation bears primary responsibility for the change, but society and the general public can actively participate in urging the nation to accept reforms. Detention may be hazardous and distressing. Even individuals who are robust find it difficult to deal with because it involves physical, emotional, and intellectual deprivation. Detention is consequently likely to have a particularly negative and long-lasting impact on youngsters. Because of this, they ought to be held only in extreme cases and for the least amount of time.⁴⁵

According to the Article 27, of the United Nations Convention on the Rights of the Child. "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." Law enforcement officers are obligated to uphold, respect, and preserve everyone's human rights and dignity. Every law enforcement agency must be responsive to, represent, and answerable to the entire community. There must be no unlawful discrimination in the hiring, assigning, promoting, or recruitment processes of police agencies. Investigations, arrests, detention, use of force and weapons, victim assistance, and all other areas of police action must be clearly, fully, and accurately documented. Training and thorough guidelines on all aspects of police activity affecting human rights would be made available.

Police officers must be trained to employ a number of tools for the selective use of force. Superior officials must be notified and given the opportunity to investigate any incidents of the use of force or firearms. If a higher-ranking official was aware of or should have been aware of abuses but did nothing, they would be held liable for the actions of the police officers under their charge. Officials who disagree with illegal orders from superiors will be awarded impunity. Confidential material

⁴⁵ Children and Detention in Brief @ ICRC (November 2014), available at <https://www.icrc.org/en/doc/assets>, accessed on 16 April 2023.

must be treated with extreme caution. All prospective police officers must possess the necessary cognitive and physical abilities. Every police officer must follow consistent and effective reporting and review processes. Every police officer must be subjected to consistent, efficient reporting and evaluation procedures. Aside from these, law enforcement agencies in a democratic society like Bangladesh should have adopted the following steps and strategies:

1. Initially, law enforcement employees must adhere to a voluntary code of ethics.
2. By modifying the Code of Criminal Procedure, any court in the country should be able to order secure detention.
3. To make arrangements for determining the victim's preferences for safe custody while detained.
4. Every government-supported area may build unique safe custody in detention.
5. Before providing such permission, a thorough inquiry should be done, and plans for routine inspection should be prepared in this regard if any non-governmental group declares its desire to offer safe custody in detention.
6. Issue explicit and mandatory directions addressing the protection of human rights in all aspects of police activity.
7. If any non-governmental group stated its intention to offer safe custody in detention for women and children, a rigorous inquiry should be done before giving such approval, and measures for regular inspection should be implemented in this regard.
8. Disseminate information on the incorrect use of safe custody in detention.
9. To establish a strong police network for locating competent guardians of secure detainees.
10. All officials should receive basic and continued in-service training, with a focus on areas of police work linked to human rights, particularly the imprisonment of children and women, as outlined in this handbook.

11. Establish extensive hiring processes and regular evaluations of each officer to ascertain whether they are morally fit to carry out law enforcement tasks, including the detention of women and children.
12. Establish and uphold stringent reporting and record-keeping rules.
13. Create and publicize a suitable variety of punishments for police infractions, such as suspension, pay reduction, and termination, as well as criminal prosecution for serious infractions.
14. Establish specific units to enhance police reaction to circumstances involving kids/teens, victims, big crowds, women's prisons, border control, and other problems.

Finally, in a democratic society like Bangladesh, simply implementing the aforementioned steps is not enough; victims and the general people must also be made aware of the law and its procedures, particularly in terms of children's and women's incarceration detention.

7. Conclusion

After the observation mentioned in this study above, it is to be noted that the real scenario and power practices over the role of the law enforcement officials (police) through certain cases where so many unexpected and unlawful practices have been committed while children or women in detention one after another under the police custody or outside the police custody eventually through threaten in a democratic and developing state like Bangladesh.