

Committee against Torture

**Initial report submitted by Bangladesh under
article 19 of the Convention, due in 1999^{*}, ^{**}**

[Date received: 23 July 2019]

* The present document is being issued without formal editing.

** The annex to the present report is on file with the Secretariat and is available for consultation. It may also be accessed from the web page of the Committee.



I. INTRODUCTION

1. The Government of Bangladesh ('the GoB') hereby submits this initial state-party report under article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 ('the UNCAT'). The present report goes systematically through the UNCAT provisions so as to reflect the measures taken by the GoB to give effect to the provisions of the said Convention.

Methodology

2. This report contains information on the status of implementation of the UNCAT until the present. The report has been prepared after analysing the information and data collected from both primary and secondary sources. The primary sources consist of Acts of Parliament, Ordinance, Rules, Regulations, the decisions of the Supreme Court, information furnished by the relevant government entities etc. The secondary sources include the 2nd & 3rd Cycle UPR Reports of Bangladesh, reports prepared by the Ministries and information available on the government websites. While preparing the report the GoB held a series of consultations involving relevant Ministries/ Divisions/ Agencies during the course of preparation of the report. The GoB also held National Stakeholder Consultation with the participation of the National Human Rights Commission, Non-Government Organizations and Civil Society Organizations, particularly dealing with human rights issues.

II. SCOPE OF BANGLADESH'S LEGAL OBLIGATIONS UNDER THE UNCAT

3. Bangladesh acceded to the UNCAT on 5 October 1998. Bangladesh is among the UN member States that supported the UN General Assembly resolution mandating the UN Commission on Human Rights to draw up the draft text the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.¹ In addition, Bangladesh has supported a number of pertinent General Assembly resolutions relating to prevention and punishment of torture, such as the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,² the Code of Conduct for Law Enforcement Officials,³ the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,⁴ and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁵ Bangladesh is also a party to the International Covenant on Civil and Political Rights, 1966.⁶

4. While acceding to the UNCAT, the GoB made the following declaration with regard to article 14 in the following term:

'The Government of the People's Republic of Bangladesh will apply article 14 paragraph 1 in consonance with the existing laws and legislation in the country.'
Bangladesh is not a party to the Optional Protocol to the UNCAT.

5. In Bangladesh, international treaties do not automatically become part of the domestic law of Bangladesh unless they are transformed into the domestic laws by way of an enabling legislation. However, the absence of domestic legislation does not preclude the Courts for applying the principles of international instruments. The Supreme Court in Bangladesh has declared in the case of State vs Metropolitan Police Commissioner "If domestic laws are not clear enough on the issue in question, the national courts should draw upon the principles incorporated in the international instruments". Moreover, often the provisions of a particular

¹ G.A. Res. 32/62, U.N. Doc. A/RES/32/62.

² G.A. Res. 3452(XXX), UN Doc. A/RES/3452(XXX).

³ G.A. Res. 34/169, U.N. Doc. A/RES/34/169.

⁴ G.A. Res. 37/194, U.N. Doc. A/RES/37/194.

⁵ G.A. Res. 43/173, U.N. Doc. A/RES/43/173.

⁶ Acceded on 06 September 2000.

treaty are implemented through application of multiple relevant legislations. For example, a number of penal laws and the provisions of the constitution address specific provisions of International Covenant on Civil and Political Rights (ICCPR), although no single enabling legislation has been adopted to apply ICCPR provisions in Bangladesh.

6. The Constitution incorporates justiciable provisions prohibiting torture as one of the fundamental rights. In addition to the specific provision for protection in respect of trial and punishment, respect to human rights and dignity of a person is protected through Part II and Part III of the constitution. Part III which contains judicially enforceable provisions of 'Fundamental Rights' that ensure and safeguards rights related to trial and punishment including protection against torture. Moreover judicially non-enforceable Principles of State Policy (FPSP) which are incorporated in Part II marked 'fundamental human rights and freedoms and respect for the dignity and worth of the human person' as a guiding principle for the work of the State.⁷ In addition to the Constitution, Acts of Parliament, executive decisions/enactments, decisions of the Supreme Court, and policy measures constitute the domestic legal regime concerning prevention and punishment of torture.

III. DOMESTIC IMPLEMENTATION OF THE UNCAT

LEGAL FRAMEWORK FOR IMPLEMENTATION OF UNCAT

Article 2

7. The Constitution of Bangladesh has vested legislative, executive and judicial power respectively in the Parliament, the Cabinet and the Supreme Court. A brief account of their respective roles has been provided below in relation to the application of UNCAT provisions.

Legislative Measures

The Constitution

8. Article 35(5) of the Constitution, which provides for protection of any persons against torture or cruel, inhuman, or degrading punishment or treatment is recognised as a justiciable fundamental right. The protection against torture extends to citizens and non-citizens alike. Article 26 of the Constitution provides that any law inconsistent with fundamental rights shall to the extent of its inconsistency become void. The Constitution guarantees equality before law and entitles the citizens to equal protection of law.⁸ Protection of right to life and personal liberty from any detrimental action is recognised as a fundamental right.⁹ The Constitution provides for safeguards against arbitrary arrest and unlawful detention.¹⁰ It also incorporates the right to be informed of the grounds of arrest and the right to be represented by a legal practitioner of the apprehended person's own choice.¹¹

Primary & Delegated Legislations

9. The Constitution has invested the Parliament with the authority to make laws in order for giving effect to the fundamental rights enshrined therein. The Constitution also prohibits that the Parliament should not enact any laws inconsistent with the fundamental rights and any laws so made will be void to the extent of such inconsistency.¹²

10. The Parliament has enacted the Torture and Custodial Death (Prevention) Act, 2013 with the specific objective to give effect to the provisions of the UNCAT. The said Act contains extensive provisions for the prevention and punishment of any act amounting to torture.

⁷ The Constitution of the People's Republic of Bangladesh, § 11.

⁸ *Ibid*, §§ 27 & 31.

⁹ *Ibid*, § 32.

¹⁰ *Ibid*, § 33 (1).

¹¹ *Ibid*, § 33(1).

¹² *Ibid*, Art. 26.

11. The penal law of the country prohibits all acts of violence that may amount to torture in appropriate circumstances but under different definitions. The Penal Code, 1860 contains extensive provisions addressing the aforesaid criminal acts amounting to torture. The Penal Code criminalizes acts causing hurt¹³ and grievous hurt¹⁴ to any individual. 'Hurt' is defined as an act, which causes bodily pain, disease or infirmity to any person and some grace form of hurt is designated as 'grievous hurt.' Given that the concept of 'torture' includes mental sufferings, acts of 'criminal force',¹⁵ 'assault'¹⁶ and 'criminal intimidation'¹⁷ are also criminalised under the Penal Code.

12. Among other laws which purport to give effect to the provisions of the UNCAT are included the Children Act, 2013; the Code of Criminal Procedure, 1898; the Criminal Rules and Orders, 2009; the Domestic Violence (Prevention and Protection) Act, 2010; the Dowry Prohibition Act, 2018; the Evidence Act, 1872; the Extradition Act, 1974; the Identification of Prisoners Act, 1920; the Government Servants (Discipline and Appeal) Rules, 1985; the Legal Aid Services Act, 2000; the Mutual Legal Assistance in Criminal Matters Act, 2012; the Mutual Legal Assistance in Criminal Matters Rules, 2013; the Police Act, 1861; the Prisons Act, 1894; the Prisoners Act, 1900; the Police Regulations, Bengal-1943; the Probation of Offenders Ordinance, 1960; the Police Officers (Special Provisions) Ordinance, 1976; the Prevention of Cruelty to Women and Children Act, 2000 etc.

Administrative Measures

13. The Constitution of Bangladesh defines disciplined forces as - (a) the army, navy or air force; (b) the police force; (c) any other force declared by law to be a disciplined force. According to section 2(iv) of the Torture and Custodial Death (Prevention) Act, 2013, law enforcement agencies mean the Police, Rapid Action Battalion (RAB), Border Guard Bangladesh (BGB), the Customs Authority, the Immigration Authority, Criminal Investigation Department (CID), Special Branch (SB), Detective Branch (DB), *Bangladesh Ansar & Village Defence Party*, the Coast Guard including any other law enforcement agencies in Bangladesh. Among others, the Department of Narcotics Control and Anti-Corruption Commission wield the power to arrest any purported offender.

14. The Ministry of Home Affairs is the principal administrative authority which is responsible for maintenance of law, order and security in Bangladesh. The Ministry of Home Affairs has two Divisions namely, Public Security Division and Security Services Division. Public Security Division of the Ministry of Home Affairs oversees the disciplined forces/ law enforcement agencies, such as Bangladesh Police, Border Guard Bangladesh (BGB), Bangladesh Coast Guard and *Bangladesh Ansar & Village Defence Party* ('*Ansar & VDP*'). Security Services Division of the Ministry of Home Affairs oversees, among others, the Department of Prisons, the Department of Narcotics Control and the Department of Immigration & Passport.

15. Bangladesh Police has put in place a well-established administrative mechanism to take departmental actions against police officers responsible for any kind of misconduct (including those amounting to torture). Any aggrieved person may lodge complaint to the superior police officials about custodial or non-custodial torture. The laws concerning administrative actions against police members include the Police Officers (Special Provisions) Ordinance, 1976; the Police Regulations, Bengal-1943; and the Government Servants (Discipline and Appeal) Rules, 1985. The aforesaid laws set out comprehensive procedures for taking disciplinary actions against the guilty police personnel. The Police Officers (Special Provisions) Ordinance, 1976 has incorporated disciplinary measures including (i) dismissal from service; (ii) removal from service; (iii) discharge from service; (iv) compulsory retirement; (v) reduction to lower rank.

16. The Government Servants (Discipline and Appeal) Rules, 1985 incorporates a comprehensive list of punitive measures. The Police Regulations, Bengal-1943 includes

¹³ The Penal Code, 1860, § 323.

¹⁴ *Ibid*, § 325.

¹⁵ *Ibid*, § 352.

¹⁶ *Ibid*, § 357.

¹⁷ *Ibid*, § 506.

dismissal, removal from service, reduction, deprivation of approved service increment, removal from any office of distinction, black mark, warning and censures as a form of punitive measures against the police personnel guilty of misconducts.¹⁸

17. The Police Headquarters has a section titled ‘Discipline and Professional Standard’ to receive complaints against the police officers. Complaints may also be lodged with the relevant high officials in the field units.

18. The Ministry of Law, Justice and Parliamentary Affairs is the leading administrative authority which oversees the administration of justice as well as the normative development of the country’s legal system. The said Ministry has two divisions namely, the Law and Justice Division and Legislative and the Parliamentary Affairs Division. The functions of Legislative and Parliamentary Affairs Division include preparation of draft laws and vetting the Bills before they are placed before the Parliament.

Judicial Measures

The Supreme Court

19. The Supreme Court of Bangladesh is the apex court of the country. It consists of the Appellate Division and the High Court Division (HCD).¹⁹ According to the Constitution, the right to move the HCD for enforcement of fundamental right is itself a justiciable fundamental right.²⁰ A person can apply to the HCD in case of any violation of fundamental rights. As regards remedy, the Constitution provides that the HCD may give such directions or orders to any person or authority in connection with the affairs of the Republic as may be appropriate for the enforcement of the fundamental rights.²¹

20. The decision of the Supreme Court is binding on all of the subordinate courts of Bangladesh. In order to give full effect to the remedies granted by the Supreme Court, the Constitution stipulates that all authorities, executive and judicial, in the Republic will act in aid of it.²² In case of any default to comply with the decision of the Supreme Court, the Constitution provides that the Supreme Court will have all the powers to make an order for the investigation of or punishment for any contempt of court.²³ In addition to the Constitution, the Code of Criminal Procedure, 1898 (‘the CrPC’) empowers the HCD to issue direction in the nature of *habeas corpus* in cases of illegal detentions.²⁴ The Appellate Division of the Supreme Court hears and determines appeals from judgments, decrees, orders or sentences of the High Court Division.

21. According to section 14 of the Torture and Custodial Death (Prevention) Act, 2013; the Court of Sessions is empowered to try any offence of torture under the aforesaid Act. According to section 16 of the same Act, an appeal from the decision of Court of Sessions shall lie to the HCD of the Supreme Court. The same provision also provides that a victim of torture or an aggrieved person other than any accused-convict may also prefer appeal or review before the superior courts.

22. Any person convicted and punished with imprisonment for life or above under the Torture and Custodial Death (Prevention) Act, 2013 may appeal to the Appellate Division of the Supreme Court as of right from any decision of the HCD. For lesser punishment under the aforesaid Act, a convict may appeal to the Appellate Division from any decision of the HCD only if the Appellate Division grants leave for that purpose. A victim of torture or an aggrieved person including the government other than any accused-convict may also appeal to the Appellate Division from any decision of the HCD only if the Appellate Division grants leave for that purpose (Article 103 of the Constitution of Bangladesh).

¹⁸ The Police Regulations, Bengal–1943, § 857.

¹⁹ *Ibid*, § 94(1).

²⁰ *Ibid*, § 44(1).

²¹ *Ibid*, § 102 (1).

²² *Ibid*, § 111-112.

²³ *Ibid*, § 108.

²⁴ The Code of Criminal Procedure, 1898, § 491.

23. The Supreme Court of Bangladesh has laid down a number of safeguard measures relating to arrest and detention by the law enforcement agencies. In *Bangladesh Legal Aid and Services Trust v. Bangladesh*,²⁵ the HCD issued 15 directives on safeguard measures to be followed in the case of arrest without warrant, detention, remand and treatment of the arrested persons by the law enforcement agencies. In this case, it was contended that the police had a tendency to exceed its power while arresting someone without warrant under section 54 of the CrPC. In this connection, the Supreme Court observed that torture or cruel, inhuman or degrading treatment in police custody or jail custody was not permissible under the Constitution.

24. In a subsequent case, *Saifuzzaman v. State and Others*²⁶ the Supreme Court issued guidelines to be followed by the Magistrates and the police in respect of arrest, detention, investigation and treatment of the accused persons.

25. In *Bangladesh Legal Aid and Services Trust v. Bangladesh and Others*,²⁷ the Supreme Court urged the concerned authorities to ordain a code of conduct for the law enforcement agencies in the light of the UN General Assembly Resolution 34/169 [17 December 1979].

26. The Supreme Court has issued directives to stop all forms of corporal punishment in primary and secondary educational institutions.²⁸ The said Court has also issued directives with a view to laying down safeguard measures against sexual harassment of women in educational institutions and workplaces.²⁹

Other Measures

27. A number of statutory institutions such as the National Human Rights Commission; the Law Commission, the Legal Aid Services Organisation have played important role in the development and implementation of normative measures against torture.

The National Human Rights Commission

28. The National Human Rights Commission, Bangladesh (BNHRC) was constituted under the National Human Rights Commission Act, 2009 in the light of the Paris Principles to promote and protect human rights in Bangladesh. The functions of the BNHRC extend to, among others, summoning explanation from the law enforcement agencies and other public authorities, visiting jails, prisons or correctional centres, filing writ petitions with the HCD on behalf of the aggrieved persons, conducting inquiry into alleged violation of human rights etc. During 2012 -2019, BNHRC received 77 complaints about allegation of torture.

The Law Commission

29. The Law Commission is a statutory body which is responsible for facilitating normative development of the legal system of the country. Its functions include studying legal issues, preparing reports and draft laws, making recommendation for amendment or repeal of obsolete laws etc. While preparing draft laws, the Law Commission solicits, consults and considers submissions from various stakeholders. The Law Commission has prepared a number of reports on reform of laws and promotion of human rights such as, abolition of corporal punishment, prevention of sexual harassment in educational institutions and workplaces, prevention of violence against women, protection of victims and witnesses to grave offences, speedy disposal of civil and criminal cases etc.

The Legal Aid Services Organization

30. The GoB, under the authority of the Legal Aid Services Act, 2000, has formed the National Legal Aid Services Organization (NLASO) in order to facilitate poor citizens' access to justice.

²⁵ [2003] 55 DLR 363.

²⁶ [2004] 56 DLR 324.

²⁷ [1999] 4 BLC 600.

²⁸ Writ Petition no. 5684 of 2010.

²⁹ Writ Petition no. 5916 of 2008.

TORTURE AS A CRIME

Article 1

Definition of Torture

31. The Torture and Custodial Death (Prevention) Act, 2013 has adopted the definition of torture as incorporated in the UNCAT. Section 2(6) of the said Act provides, “‘torture’ means physical and psychological torture causing pain; beside this- (a) obtaining from any person or a third person information or confession; (b) punishing an accused or a convict; (c) intimidating a person or a third person through him; or (d) for any other reason based on discrimination, inducement or provocation, consent or in virtue of the power of any public official or of the government- such acts will also be regarded as torture.”

32. Section 13 of the Torture and Custodial Death (Prevention) Act, 2013 further provides that any attempt, or abetment, or conspiracy to commit torture is also tantamount to an offence under this Act. Any person who commits an offence will be personally liable for consequence thereof under the aforesaid Act.

Article 4

Torture as a Criminal Offence

33. Section 15(1) of the Torture and Custodial Death (Prevention) Act, 2013 provides for punishment of any person convicted of torture or custodial death. Any person convicted of torture will be punished with rigorous imprisonment for a term no less than five years; or fine of not less than BDT 50,000.00; or both. Section 15(2) of the same Act provides that if death occurs as a result of torture, the punishment will be rigorous imprisonment for life at the least; or fine, the amount of which will be no less than BDT 100,000.00; or both.

34. The Torture and Custodial Death (Prevention) Act, 2013 also provides for punishment of attempt, abetment or conspiracy for commission of torture. Any person who attempts to commit, or aids and abets in committing, or conspires to commit torture, will be punished with rigorous imprisonment for a term of not less than two years, or will be liable to a fine of not less than BDT 20,000.00, or both.³⁰

35. The Torture and Custodial Death (Prevention) Act, 2013 further provides that torture will be a cognizable,³¹ non-compoundable and non-bailable offence.³² No exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may be invoked in justification of torture.³³

36. The Penal Code, 1860 (‘the Penal Code’) defines a number of offences which amount to acts of torture. For example, section 348 of the Penal Code penalizes wrongful confinement of a person in order to extort a confession from him or from any other associated person. Section 323 and 324 of the Penal Code has designated acts causing hurt and grievous hurt to any individual as punishable offences. ‘Criminal force’ and ‘assault’ are also punishable offences under the Penal Code. Section 352 of the Code provides that the commission of assault or criminal force, unless caused in consequence of grave and sudden provocation, is punishable with imprisonment for a term which may extend to three months or with a fine up to BDT 500.00 (five hundred taka). Section 506 of the Penal Code defines ‘criminal intimidation’ as threatening a person with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person has an interest, with an intention to cause harm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat.

³⁰ The Torture and Custodial Death (Prevention) Act, 2013, § 15(3).

³¹ Cognizable offence means where a Police-officer may arrest without warrant in accordance with the second schedule of the Code of Criminal Procedure, 1898 or under any law for the time being in force.

³² *Supra* note 30, § 10(1).

³³ *Ibid*, § 12.

37. The Police Act, 1861 provides that every police officer who would offer any unwarrantable personal violence to any person in his custody will be liable to a penalty not exceeding three months' pay or to imprisonment, with or without hard labour, for a period not exceeding three months or both.³⁴

38. The Prevention of Cruelty to Women and Children Act, 2000 provides that if a woman is raped in police custody, each and every person responsible for custody of the victim, regardless of their actual involvement in commission of the offence, becomes liable for imprisonment up to ten years but not less than five years of rigorous imprisonment and may also be fined.³⁵

PROSECUTION / TRIAL

Article 5

Jurisdiction

39. The Torture and Custodial Death (Prevention) Act, 2013 is applicable in all cases of torture as well as any attempt to commit torture by or under the authority of any government official.³⁶ The jurisdiction established under the said Act encompasses situations when torture is committed within the territory or on board a ship or registered aircraft; or when the alleged perpetrator is a subject of Bangladesh; or when the victim is a national of Bangladesh.

40. The Torture and Custodial Death (Prevention) Act, 2013 incorporates the applicability of the CrPC which extends to the whole of Bangladesh.³⁷ The CrPC also provides that when a national of Bangladesh commits an offence outside Bangladesh, or commits an offence on any ship or aircraft registered in Bangladesh, that person may be tried in a manner as if he committed the offence within Bangladesh.³⁸

41. In addition, the Penal Code confers jurisdiction to try every person for offences defined therein which have been committed within Bangladesh.³⁹ The Penal Code also applies to acts amounting to offences committed by any citizen of Bangladesh in any place outside Bangladesh or by any person on any ship or aircraft registered in Bangladesh wherever it may be.⁴⁰ In virtue of section 3 of the Penal Code, any person who is not a citizen of Bangladesh may be tried for criminal acts amounting to torture punishable under the penal laws of Bangladesh for commission of such offences beyond the territory of Bangladesh, against any other person who is also not a citizen of Bangladesh in the same manner as if such offence were committed within Bangladesh.⁴¹ The jurisdiction provided for under the Penal Code applies to the offences defined therein.

Articles 6, 7 & 8

Arrest and Detention of Persons Accused of Committing Torture Abroad

42. A person can be taken into the custody when a formal allegation is brought against him of committing an offence with any competent authority in Bangladesh, or when extradition of a person has been requested by a foreign government in respect of any accusation or conviction of committing an offence by him abroad. As a result, in order to apprehend a person alleged to have committed torture within Bangladesh, a formal complaint is required to be lodged under the Torture and Custodial Death (Prevention) Act, 2013.

³⁴ The Police Act, 1861, § 29.

³⁵ The Prevention of Cruelty to Women and Children Act, 2000, § 9.

³⁶ *Supra* note 30, § 2(7).

³⁷ *Ibid*, § 9.

³⁸ *Supra* note 24, § 188.

³⁹ The Penal Code, 1860, § 2.

⁴⁰ *Ibid*, § 4.

⁴¹ *Ibid*, § 3.

43. On the other hand, the Extradition Act, 1974 authorises to apprehend a fugitive offender and take him into custody.⁴² The requisition for the surrender of a fugitive offender shall be made by a diplomat or the government of another State.⁴³ The Magistrate authenticates the arrest warrant upon inquiry and send the offender to prison until his return.⁴⁴

44. The provisions of the CrPC relating to bail shall apply to a fugitive offender whom the requesting State is seeking to be extradited as if he or she were an accused or convicted person in Bangladesh. The Magistrate before whom such fugitive offender will be brought shall have, as far as may be, the same powers and jurisdiction as a Court of Sessions under the CrPC so far as it relates to release of such accused person/offender on bail.⁴⁵

Domestic Prosecution of Individuals not Extradited

45. In prosecuting individuals not extradited, the constitutional provisions along with other legal provisions concerning fair trial are to be followed. The Constitution guarantees any person who is accused of a criminal offence the right to a fair and public trial by an independent and impartial court or tribunal established by law.⁴⁶ In addition, sections 177–365 of the CrPC lay down the procedures to be followed with a view to ensuring fair trial of a person accused of committing any offence including torture. The CrPC, in line with the Constitution, provides for specific time-limit for conclusion of criminal trials.⁴⁷ Below is provided a brief account of constitutional safeguards as to fair trial of the persons accused of committing torture in Bangladesh-

Right to equality before courts and tribunals

46. The Constitution guarantees equal application and protection of law.⁴⁸ The Constitution provides that to enjoy the protection of the law, and to be treated in accordance with law is an inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh. The Constitution further provides that no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law.⁴⁹

Presumption of innocence

47. An accused person charged with a criminal offence is presumed innocent until proved guilty. In other words, an accused person is not required to prove his innocence.⁵⁰ The prosecution is to prove beyond all reasonable doubts that an accused person is guilty of the offence charged with.⁵¹

Protection against double jeopardy

48. The Constitution provides that no person will be prosecuted and punished for the same offence more than once.⁵² The CrPC has reinforced the constitutional protection against double jeopardy by providing that a person who has once been tried by a court of competent jurisdiction for an offence, and convicted or acquitted of, will not be liable to be tried again for the same offence.⁵³

⁴² The Extradition Act, 1974, § 5.

⁴³ *Ibid*, § 7.

⁴⁴ *Ibid*, § 6.

⁴⁵ *Ibid*, § 19.

⁴⁶ *Supra* note 7, § 35(3).

⁴⁷ *Supra* note 24, § 339 C.

⁴⁸ *Supra* note 7, §§ 27 & 31.

⁴⁹ *Ibid*, §§ 31-32.

⁵⁰ *See* CCPR/C/BGD/1 (3 September 2015) 31, ¶ 162.

⁵¹ *Hasan Rony v. State* [2004] 56 DLR 580.

⁵² *Supra* note 7, § 35(2).

⁵³ *Supra* note 24, § 403.

Right to legal assistance

49. The Constitution provides that an arrested or detained person will have the right to consult and be defended by a legal practitioner of his choice.⁵⁴ This right has been further recognized in the CrPC, which provides that an accused person has the right to be defended by a lawyer of his or her own choice.⁵⁵

50. The Legal Aid Services Act, 2000 provides for legal aid when the accused person is unable to appoint any counsel due to financial constraint.⁵⁶

Right of the accused to be promptly informed of the grounds of arrest and charges

51. The Constitution provides that that no person who is arrested will be detained in custody without being informed. The CrPC provides when a person is arrested he will have to be notified of the reasons for arrest without delay.⁵⁷

52. The CrPC provides that when a court indicts an accused person, the charges will be read over and explained to him and the accused person will be asked whether he pleads guilty of the offence charged or claims to be tried.⁵⁸

Right to defend oneself against criminal charge

53. The CrPC provides that an accused person will be entitled to furnish his defence and adduce evidence he may have in support of his innocence.⁵⁹ Moreover, an accused person will be a competent witness for the defence and may give evidence to prove his innocence.⁶⁰

Right of the accused to be present in trials

54. The CrPC provides all evidence should be taken in the presence of the accused person or in presence of his lawyer as the case may be.⁶¹

Right to have convictions reviewed by a higher court/tribunal

55. The right to appeal against convictions is available in the legal system of Bangladesh. The Constitution provides that the Appellate Division of the Supreme Court will have the power to hear and determine appeals from judgments, decrees, orders or sentences of the HCD.⁶² The CrPC also contains extensive provisions on appeal. In Bangladesh, an appeal may lie on a matter of fact as well as on a matter of law.⁶³

Extradition of Persons Accused of Torture

56. Section 18 of the Torture and Custodial Death (Prevention) Act, 2013 provides for extradition of a foreigner who is either accused of or convicted of torture. It has been provided that a request of extradition for offences mentioned in aforesaid Act shall be dealt with in accordance with the Extradition Act, 1974. If a request is made by any country's government, the authorized department of the Ministry of Foreign Affairs of Bangladesh will notify that government regarding the extradition of any individual.⁶⁴ The aforesaid Act also provides that offences defined therein shall be deemed to be included in any extradition treaty concluded between Bangladesh and any other States as the case may be.⁶⁵

⁵⁴ *Supra* note 7, § 33(1).

⁵⁵ *Supra* note 24, § 340(1).

⁵⁶ The Legal Aid Services Act, 2000, § 3(1).

⁵⁷ *Supra* note 24, § 56.

⁵⁸ *Ibid*, § 265D.

⁵⁹ *Ibid*, § 265I.

⁶⁰ *Ibid*, § 340.

⁶¹ *Ibid*, §§ 265B & 353.

⁶² *Supra* note 7, § 103.

⁶³ *Supra* note 24, § 418.

⁶⁴ *Supra* note 30, § 18(2).

⁶⁵ *Ibid*, § 18(4).

57. The Extradition Act, 1974 provides an extensive list of offences as extraditable offences. These extraditable offences are taken into account while concluding extradition treaties between the States Parties. The Extradition Act refers, among others, to malicious or wilful wounding or inflicting grievous bodily harm, culpable homicide, rape, unlawful detention of children, trafficking in women, robbery for which a treaty State may seek extradition.⁶⁶

58. Extradition of persons who might be accused or convicted of torture within the jurisdiction of a foreign State with whom Bangladesh has not signed any extradition treaty is permissible under the Extradition Act, 1974.⁶⁷

59. The Extradition Act, 1974 provides that a fugitive offender who has been taken into custody, but has not yet been conveyed out of Bangladesh within two months after such committal, may apply to the HCD of the Supreme Court in order to be discharged from custody.⁶⁸ However, a broad construction of section 18(2) of the Torture and Custodial Death (Prevention) Act, 2013 supports the view that an accused foreigner may be tried for torture if he or she has not been extradited.

Article 9

Mutual Legal Assistance

60. The Mutual Legal Assistance in Criminal Matters Act, 2012 ('the Mutual Legal Assistance Act') has been enacted to facilitate inter-state cooperation in respect of enquiry, prosecution and judicial proceedings relating to criminal matters.

61. The scope of cooperation with a foreign government under the Mutual Legal Assistance Act includes: (a) searching or identifying any person; (b) taking testimony or statements of any person; (c) issuing the process of any foreign court; (d) providing original or certified copies of documents, records and information regarding the relevant matter in which the banking, financial, corporate or commercial records shall also be included; (e) ensuring the availability of the arrested or any other person for giving assistance in any investigation or taking testimony; (f) enquiry, confiscation or arrest; and (g) any kinds of assistance not inconsistent with this Act which the concerned States are mutually agreed upon to provide with.⁶⁹

62. According to the Mutual Legal Assistance Act, an administrative body called, 'the Central Authority'⁷⁰ is responsible for receiving and addressing requests for assistance from any foreign State and send requests made by Bangladesh to any foreign State for any judicial assistance.⁷¹ In addition, the Central Authority exercises the power and authority of a coordinator in the case of giving or receiving assistance to or from a foreign State, and also determine terms and conditions with a view to responding the requests for such assistance.⁷²

63. The Mutual Legal Assistance Act incorporates provisions to provide mutual assistance irrespective of any agreement between Bangladesh and any other foreign State in relation to criminal matters.⁷³ In addition to the aforesaid Act, the Mutual Legal Assistance in Criminal Matters Rules, 2013 has been framed in order to lay down procedures facilitative of receiving and sending mutual judicial assistance.

⁶⁶ See the schedule to the Extradition Act, 1974. *Supra* note 36.

⁶⁷ *Ibid*, § 4. Also, see *Supra* note 30, § 18(5).

⁶⁸ *Supra* note 42, § 12.

⁶⁹ The Mutual Legal Assistance in Criminal Matters Act, 2012, § 8(3).

⁷⁰ *Ibid*, § 3. The GoB shall, by notification in the official Gazette, determine the Central Authority.

⁷¹ *Ibid*, § 4.

⁷² *Ibid*, § 4 (e) & (f).

⁷³ *Ibid*, § 8.

PREVENTION

Article 10

Education and Information

64. The Bangladesh Police Academy ('the BPA') is the apex training institute of the Bangladesh police. Among others, it regularly conducts training on human rights. The BPA imparts knowledge, skill and training with a view to orienting the police officers with the administration of criminal justice system as well as relevant rules and regulations. The courses under its training program include, among others, human rights, gender consciousness, social responsibility, human trafficking, women and child abuse etc. The course on human rights is embedded in all the curricula of basic training.

65. The BPA has entered into partnership with ICITAP (International Criminal Investigative Training Assistance Programme – a project of the US Justice Department), Asia Foundation, ICRC, and PRP (Police Reform Programme) to provide international standard training courses to the entry level police officers.

66. The Criminal Investigation Department, a special branch of Bangladesh Police imparts separate training on prevention of violence against women and children, human rights, prosecution and investigation etc.

67. In addition, the Police Staff College has incorporated human rights courses in their training curricula for the junior and senior police officers as well as the officers of other law enforcement agencies under the Ministry of Home Affairs i.e. Corrections officers, Fire Service and Civil Defense officers, DNC officers etc. The courses are namely, Management Course on Human Rights and Key International Issues for Senior Police Officers, Police Management and Human Rights, Human Rights and Law Enforcement, Human Rights and Humanitarian Law, International Human Rights Law and Community Policing, Methods of Combating Human Trafficking Course, Training of Trainers (TOT) on Human Rights and Human Rights Training for the POM Commanders etc.

68. The Faculty of Law of Rajshahi University conducts a two-year Master's programme in Police Science, which is mandatory for certain law enforcement staff.

69. *Bangladesh Ansar & VDP* performs special duties as a law enforcement agency. They are responsible for, among others, maintaining internal security, public welfare, law and order in rural area. There are nine training institutes which provide training to the members of *Ansar & VDP*. In addition, *Bangladesh Ansar & VDP* Academy provides training to the members of *Ansar & VDP*. The Academy has put special emphasis on inclusion of human rights aspects in its training curriculum. The Academy conducts courses on gender sensitivity. It is to be noted that *Ansar & VDP* is the agency where the number of female members is equal to the number of their male members.

70. Border Guard Bangladesh (BGB) is responsible for guarding the territorial border of Bangladesh, prevention of smuggling, drugs, narcotics and other trans-border crimes. There are two training institutions which provide training to the BGB members. The courses of the training include among others, human rights, gender perspective and prevention of torture.

Article 11

Review of Interrogation Rules and Practices

71. The CrPC provides that the officer in charge of a police-station or post is responsible for safe custody of all prisoners/ arrested persons brought to the station or the post.⁷⁴ The law also requires that before admitting any prisoner or arrested person to custody, the concerned police officer should carefully examine them and record a full description of any marks of injury found if any in the general diary.⁷⁵

⁷⁴ *Supra* note 24, § 328(a).

⁷⁵ *Ibid*, § 328 (b).

72. The CrPC provides that police officers will not offer or make, or cause to be offered or made, any inducement or threat while carrying out interrogation.⁷⁶ Each and every incident where force or threat is used must be enquired into as per the legal procedures laid down in the Police Regulation, Bengal-1943, the CrPC, the Penal Code, and other applicable laws.

73. Having regard to the application of section 54 of the CrPC, the Supreme Court in *Bangladesh Legal Aid and Services Trust v. Bangladesh*⁷⁷ laid down, among others, the following directives with a view to safeguarding the rights of the arrested persons, such as – (i) whenever a police officer arrests a person under section 54(1), he will disclose his identity to the person to be arrested; (ii) the police officer will immediately record the reasons for arrest after bringing the arrested person to the police station; (iii) the police officer will record reasons for any injury found on the body of the arrested person, will take the arrested person to the nearest hospital or to a government doctor for treatment, and will obtain a certificate about the injuries; (iv) when an accused person is taken in custody for interrogation, the procedure mentioned hereinabove should be followed as far as possible; (v) the police officer, or the investigating officer, or the jailor (as the case may be) must inform the nearest Magistrate if any person dies in police custody or prison; (vi) a Magistrate will inquire if any person dies in police custody or prison.

Treatment of Prisoners

74. The GoB formed a Commission in 1978 with a view to ensuring better management of the prisons in the country. The Commission recommended for abolition of all kinds of physical punishment of the inmates. In addition, the Commission recommended for granting special remission to the prisoners as a reward for good behaviour. The GoB has implemented these recommendations. More recently, the GoB has formed a committee with a view to reforming the Prisons Act in line with human rights standards.

75. Every prison is regularly visited and inspected by the Jail Superintendent, the Jailor, the Deputy Inspector General of Prisons, the Inspector General of Prisons, the District Magistrate and the District Judge. While the Jail Superintendent visits the prison once in a day, the District Magistrate and the District Judge visit once in a month.

76. The Prison Authority provides basic training to the prison officials on prison management at the Jail Training Academy, Rajshahi and the Jail Training Institute, Dhaka. Another training academy called *Bangabandhu Sheikh Mujib Prisons Academy* is going to be launched soon. The prison officials also get training at various government training institutes such as the Bangladesh Public Administration Training Centre etc. The training institutes offer 10 to 15 courses on the duties and functions of prison officers. The training manual includes among others human rights, prohibition of torture, gender sensitivity. The manual also sensitizes the prison officers about dealing with torture victims.

Article 12

Prompt and Impartial Investigation

77. The Torture and Custodial Death (Prevention) Act, 2013 provides that investigation shall be initiated as soon as the Superintendent of Police registers a complaint of torture as per the order of court.⁷⁸ However, the court may order judicial inquiry instead, if the aggrieved person applies to the court on the grounds that a proper investigation by the police is unlikely to happen.⁷⁹ As regards investigation by the police, the court will not order any police officer below the rank of the accused person to investigate any complaint of torture.⁸⁰

78. An investigation/ judicial inquiry about allegation of torture must be completed within 90 days from the date of filing of the complaint.⁸¹ The law provides that investigation officer

⁷⁶ *Supra* note 24, § 163.

⁷⁷ *Supra* note 25.

⁷⁸ *Supra* note 30, § 5(2).

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, § 5(5).

⁸¹ *Supra* note 30, § 8(i).

will have to provide explanation before the court in the case of any delays to complete the investigation.⁸² The court while settling the issue of extension of time shall hear the victims or aggrieved persons.⁸³

PROTECTION

Article 13

Right to Complain about Torture

79. The Torture and Custodial Death (Prevention) Act, 2013 provides that a victim of torture, without any prior approval, has the right to lodge a complaint with a competent court about any purported act of torture. After receiving such complaint, the competent court will record the complainant's statement and order for medical examination of the victim by a registered medical practitioner. In case the victim is a female, a female medical practitioner will examine her. The law provides that such medical report should contain description and timing of the injury. The medical report has to be submitted to the court within 24 hours. The victim or his representative is entitled to have a copy of the medical report. The court, if it thinks appropriate, may order for admission of the victim to hospital for treatment.⁸⁴ The court, thereafter, will direct the concerned Superintendent of Police or any other superior police officer to register a complaint of torture.⁸⁵

80. If any person other than the victim of torture apprises any competent court of any incident of commission of torture to a third person, the court may issue order ensuring safety and security of such person. The court, if it thinks appropriate, may inspect the place where the incident of torture is alleged to have occurred.⁸⁶

81. In addition to the foregoing, any person other than the victim of torture may lodge complaint about torture with a Court of Sessions or a police officer not below the rank of the Superintendent of Police under section 7 of the aforesaid Act. If any complaint about torture is lodged with such police officer, the concerned officer will submit a report to the appropriate Court of Session within 24 hours.⁸⁷

Protection of Complainant and Witness

82. Section 11 of the Torture and Custodial Death (Prevention) Act, 2013 provides that a complainant may apply to a Court of Sessions for protection against a person accused of committing torture. The court may order detention of the person against whom such complaint has been made for a period of not less than 7 days and may also make such order as prohibiting his or her entry into a particular area for ensuring safety of the person who has petitioned the court seeking protection. Bangladesh is yet to formulate a full-fledged legislation for the witness protection. However the Law Commission has recently published a report proposing law related to protection of victims and witnesses of crimes involving grave offences which is currently under consideration. Besides, there are instances where the GoB has taken special witness protection measures on a case by case basis.⁸⁸

Article 14

Compensation for the Torture Victims

83. The Torture and Custodial Death (Prevention) Act, 2013 provides that a person convicted of torture is required to pay a fine amounting BDT 25,000.00 to the victim. If death

⁸² *Ibid*, § 8(ii).

⁸³ *Ibid*, § 8(iii).

⁸⁴ *Supra* note 30, § 4.

⁸⁵ *Ibid*, § 5(1).

⁸⁶ *Ibid*, § 6.

⁸⁷ *Ibid*, § 6.

⁸⁸ International Crimes Tribunal Rules of Procedure, 2010, § 58A.

occurs as result of torture, the convicted person will be required to pay a fine amounting BDT 200,000.00 to the next of kin of the victim.⁸⁹

84. In *BLAST v. Bangladesh*, the Supreme Court held that it would award compensation whenever it would find infringement of fundamental rights by the police while making arrest under sections 54 and 167 of the CrPC.⁹⁰ There are cases where the Supreme Court awarded compensation for detention of citizens without any legal basis or because of utter negligence.⁹¹

Article 15

Evidentiary Value of Statements Made as a Result of Torture

85. The Constitution of Bangladesh as well as other laws provides for protection against self-incrimination. The right not to be compelled to be a witness against oneself is a constitutionally entrenched fundamental right.⁹² Moreover, the CrPC reiterates this constitutional right by providing that no influence, by means of any promise or threat or otherwise, will be used to induce an accused person to disclose or withhold any matter within his or her knowledge.⁹³

86. The Evidence Act, 1872 contains provisions rendering forced confessions as legally inadmissible evidences. The said Act provides that any confession if obtained by inducement, threat or promise is irrelevant in a criminal proceeding.⁹⁴ Moreover, law forbids use of confession made to a police officer as evidence against the accused person making it.⁹⁵ Besides, a confession made in the police custody unless in the immediate presence of a Magistrate following applicable procedure is not legally admissible as evidence against the accused person making it.⁹⁶

87. In addition to the above, sections 164 and 364 of the CrPC along with Rule 79 of the Criminal Rules and Orders, 2009 provide that confessions are to be recorded during the court-hours either in a Magistrate's Court or premises ordinarily used as a court house.⁹⁷ Before recording a confession, the concerned accused person will be given sufficient time for reflection and he will not come in contact with any police officer or any other person at that time.⁹⁸

88. The CrPC provides that a competent Magistrate, before recording a confession, should explain to the accused person making it that he is not bound to make a confession, and that if he does so it may be used as evidence against him. Moreover, a Magistrate should not record any such confession unless he has reason to believe that it is being made voluntarily.⁹⁹

89. In similar vein, the Supreme Court in *State v. Abul Hashem*¹⁰⁰ has observed that a Magistrate who records confession should enquire about how the accused person was treated at the police station. Failure to follow the standards will render the confessions inadmissible as evidence either against the accused who has made it, or against any co-accused.

⁸⁹ *Supra* note 30, § 15.

⁹⁰ *Supra* note 24, § 363.

⁹¹ *Shahnawaz v. Bangladesh* [1998] 50 DLR 633; *Korban v. Bangladesh* [2003] 55 DLR 194.

⁹² *Supra* note 7, § 35(4).

⁹³ *Supra* note 24, § 343.

⁹⁴ The Evidence Act, 1872, § 24.

⁹⁵ *Ibid*, § 25.

⁹⁶ *Ibid*, § 26.

⁹⁷ The Criminal Rules and Orders, 2009, § 79(1).

⁹⁸ *Ibid*, § 79(4).

⁹⁹ *Ibid*, § 164(3).

¹⁰⁰ [1998] 50 DLR 17.

Article 16

Prohibiting other Forms of Cruel, Inhuman or Degrading Treatment or Punishment

90. Corporal punishment in educational institutions has been traditionally an accepted practice in Bangladesh. The Supreme Court in Writ Petition no. 5684 of 2010 has issued directives to stop all forms of corporal punishment in primary and secondary educational institutions. Accordingly, the GoB has issued a circular prohibiting all forms of corporal punishment in all such educational institutions.

91. The said circular states that imposition of corporal punishment will be treated as a misconduct. The circular has directed the District Education Officer and *Upazila* Secondary Education Officer to take effective steps to eliminate corporal punishment, and also to take appropriate action under the Penal Code, the Children Act, 2013, and wherever appropriate, to initiate departmental proceedings.

92. According to the said circular, the heads of the educational institutions should take necessary steps to eliminate corporal punishment in their respective educational institutions. The Managing Committee of the schools are directed to identify the teachers who mete out corporal punishment and take punitive action against them. The circular has further directed the Inspectors under the Offices, Departments and Education Boards under the Ministry of Education to monitor imposition of corporal punishment when inspecting educational institutions and submit a report in this regards.

93. In view of frequently reported allegations of sexual harassment of women, the Supreme Court in Writ Petition no. 5916 of 2008 issued directives on protection of women against sexual harassment. These guidelines are to be followed at workplaces and educational institutions in both public and private sectors alike. The objectives of these directives include creating awareness about sexual harassments. As per the directives of the Supreme Court, Complaint Committees have been set up in a number of Ministries, Divisions, educational institutions and other workplaces to receive and address allegations of sexual harassment.

NON REFOULMENT

Article 3

94. Neither the Torture and Custodial Death (Prevention) Act, 2013 nor any other domestic statute obliges the GoB to expel, return or extradite a foreigner to a State where he or she would be in danger of being subjected to torture. Bangladesh remains committed to complying with its obligations of *non-refoulement* under this provision by refraining from expelling, returning or extraditing persons to another State where they may be in danger of being subjected to torture.

95. Currently Bangladesh is hosting over one million Forcibly Displaced Myanmar Nationals (FDMN) who fled atrocities and torture in the Rakhine State of Myanmar. A number of independent studies and reports including those published by the UN or UN mandated entities suggest that the FDMNs, ethnically identified as '*Rohingyas*', had been victims of worst forms of torture which include rape, burning, beating, killing, forced starvation, etc. Besides, due to systematic persecution and planned disenfranchisement, they remain vulnerable to continued violence and torture in Myanmar. That is why, while negotiating their return to Myanmar, Bangladesh government remained strictly committed to the principle of *non-refoulement* and pledged to send the Rohingyas back to Myanmar only when their safety, security and basic human rights are guaranteed.

IV. CONCLUSION

96. The fullest implementation of the Convention against Torture is undoubtedly a challenging task which requires extensive institutional and legal reforms as well as massive awareness among citizens and public officials, specially the law enforcement and members of judiciary. Bangladesh Government has already undertaken several measures to improve the responses from the authorities and bodies responsible for promotion and protection of

human rights and also the quality of access to justice for the victims of torture. Government of Bangladesh will continue to work with international partners, local NGOs, civil societies and citizen to gradually walk towards fulfilling its mandate to prevent all forms of torture and other cruel, inhuman or degrading treatment or punishment.
