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CONTENTS

Editorial

Faculty of Law, University of Barishal is immensely pleased to present the third volume of Barishal University Law Journal. Barishal University Law Journal is a peer reviewed journal devoted to publishing original research papers and review articles. The unbiased and un-opinionated peer review system of this journal is effective in filtering the authentic and significant articles that are associated with recent contemporary legal and cross-cutting studies.

Barishal University Law Journal is an interdisciplinary journal that aims to open a space for research in the fields of law and other allied disciplines. This volume consists of seven academic articles which cover various research areas including religious extremism and terrorism, environmental law relating to natural resources, criminal justice system regarding restorative justice, domestic enforcement of the international laws on torture and degrading punishment, juvenile justice system in Bangladesh.

We appreciate all contributors for endeavoring such intellectual efforts and sharing their findings as well as ideas with the readers of the journal. We would also like to extend our gratitude to article reviewers and readers. We believe, with continued dedication and effort, Barishal University Law Journal will successfully endure its mission in offering a unique platform for original research publication encompassing ongoing research in the fields of law and other related disciplines. We believe that the esteemed readers will find the present volume of the journal much informative, interesting, and useful. Feedback from readers, researchers, professionals and from different spheres will help us in upgrading and improving the contents and quality of the journal.

With thanks,

Supravat Halder
Chief Editor
Barishal University Law Journal.

Exploring the Relationship between Religious Extremism and Terrorist Activities: A Criminological Analysis

Talukdar Rasel Mahmud*

Abstract: This study examines the relationship between religious extremism and terrorist activities from a criminological perspective. The study provides an overview of the various types of religious extremism and terrorism, including Islamic, Hindu, Buddhist, and Christian extremism, and explores the underlying causes and drivers of these phenomena. Additionally, the study analyzes the case of Bangladesh, where religious extremism and terrorism have become increasingly prevalent in recent years. The findings of this study suggest that religious extremism and terrorism are driven by a range of factors, including political and economic grievances, religious tensions, and a desire to impose extremist views on others. Effective strategies for preventing and countering religious extremism and terrorism should include intelligence gathering, law enforcement action, and community-based initiatives aimed at countering radicalization and promoting social cohesion.

Keywords: Religious extremism, terrorism, criminology, violence.

1. Introduction

The relationship between religious extremism and terrorist activities has been a topic of much debate and controversy in the field of criminology.[1] While some argue that religion plays a minor role in the genesis of terrorist acts, others contend that it is a major motivating factor. This paper seeks to explore the nexus between religious extremism and terrorist activities from a criminological perspective. According to Finklestein and Einhorn[2], religious extremism refers to the adoption of extreme views and practices in the context of religious

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[1] Wibisono, S., Louis, W. R., & Jetten, J. (2019). A multidimensional analysis of religious extremism. *Frontiers in Psychology*, *10*, 2560.

[2] Finkelstein, C., & Einhorn, T. (2017). Religious Extremism.In The SAGE Encyclopedia of Terrorism (pp. 587-591). Sage Publications.

beliefs. Such extremism can lead to violence and terrorism, as individuals may seek to impose their beliefs on others or defend their beliefs from perceived threats. In contemporary years, there has been a rise in religious extremism and its connection to terrorist activities, which has prompted concern among policy makers and law enforcement agencies.

Terrorist activities are criminal acts that aim to intimidate, coerce, or influence a government or society for political or ideological reasons.[3] Religious extremism can be a significant motivating factor in the commission of terrorist acts, as extremist groups may use religion to justify violence and recruit followers. In addition, the use of religion as a tool of propaganda can lead to radicalization and the formation of extremist groups. Thus, this study indicates that one of the leading causes of terrorism is religious extremism. No religion is immune to extreme inclinations, as shown by some who take their religion too far and occasionally employ sadism to express their religious enthusiasm and others who utilize terrorism to frighten society. There are several terrorist attacks by Muslims, Christians, Jews, and Hindus worldwide. For example- the 9/11 attacks of AL-Qaeda in the United States in 2001,[4] the Mumbai attacks by the Islamist terrorist group Lashkar-e-Taiba in November 2008,[5] a Nice truck attack in France,[6] the Rohingya genocide in Myanmar,[7] the Christchurch mosque shootings in New Zealand in 2019.[8] Besides, Hindu extremists' persistent violence against Muslims in India is less well-known, yet these occurrences demonstrate the global proliferation of religious fanatics via terrorist acts.

[3]Enders, W., & Sandler, T.,*The Political Economy of Terrorism,* (Cambridge University Press,2012)

[4]Byman, D., & Mir, A. (2022).Assessing al-Qaeda: A Debate. *Studies in Conflict & Terrorism*, 1-40.

[5]Rai, A. K., & Kumar, S. (2022). Identifying the leaders and main conspirators of the attacks in terrorist networks. *ETRI Journal*.

[6]Czymara, C. S., Dochow-Sondershaus, S., Drouhot, L. G., Simsek, M., &Spörlein, C. (2022). Catalyst of hate? Ethnic insulting on YouTube in the aftermath of terror attacks in France, Germany, and the United Kingdom 2014–2017. *Journal of Ethnic and Migration Studies*, 1-19.

[7]Sejan, S. S. (2022). Strategic Denial of Rohingya Identity and Their Right to Internal Self-Determination. *International Studies*, 00208817221112544.

[8]El-Nawawy, M., &Hasan, B. A. (2022). Terrorism, Islamophobia and White supremacy: Comparing CNN and the BBC coverage of the Christchurch mosque shooting. *Journal of Arab & Muslim Media Research*, *15*(1), 65-85.

The international community is fighting terrorism as humanity's common adversary. Terrorist forces threaten international peace and security by violating human rights, killing innocent people, harming public safety, and spreading fear and panic via violence, sabotage, and intimidation. Religious extremism is frequently considered regarding religious fanaticism, terrorism, and "classic" religious faction concerns.[9] Primarily, the connection between religious fanaticism and terrorist activities appears evident. Religiously motivated extremists are prepared to massacre because they adhere to doctrines that legitimize ferocity in the name of God. They lack empathy for the victims as they see them as opponents of God. They gladly give up their lives as they anticipate immense and instantaneous blessings in the afterlife in return for martyrdom.[10]

2. Methodology of the Study

This study is conducted with an analytical approach to investigate the relationship between religious extremism and terrorist activities from a criminological perspective. This paper is based on secondary data, including several reputable and trustworthy research papers, articles, and publications. After carefully examining those articles, the necessary part was taken to create this research paper to assess the relationship between religious extremism and terrorist activities. This paper also investigates other news regarding terrorist attacks across the world. Case studies are used to examine the criminological aspects of terrorist activities. The case studies focused on terrorist acts committed by individuals or groups motivated by religious extremism.

3. Religious Extremism and Terrorism across the World

At first look, it is evident that religious extremism and terrorism are related. Religious radicals are prepared to murder because they adhere to violent theologies in the name of God. They see their victims as God's adversaries and

[9]Rixer, Á. (2019). *The typology of religious extremism. Advances in Social Sciences Research Journal*, 5(12).
[10]Iannaccone, L. R., & Berman, E. (2006). *Religious Extremism: The good, the bad, and the deadly. Public Choice,* 128(1-2), 109-129.

have no sympathy for them. They are prepared to end their lives because they believe martyrdom would bring them enormous and instant benefits in eternal life.[11] Religion is often at the center of conflict, particularly in multiethnic, multicultural, and multi-religious settings, where religion and extremism are ideologically grounded. Extremism may be associated with terms such as radicalism, fanaticism, fundamentalism, terrorist, extreme, militants, and violence, and such judgmental categorizations are capable of provoking resentment.[12]

Extremist Muslims, Christians, Buddhists, and Hindu organizations have committed terrorist actions that contravene the fundamental principles of the faiths they represent. In recent years, however, notorious organizations like the Taliban, ISIS, Al Qaeda, Lashkar e Taiba, and others from across the globe have interpreted Islamic theologies and practices to legitimize their terrorist operations. They are using Islam to justify their atrocities against the broader populace. As a consequence, people all across the globe think that Muslims are solely responsible for the rise in worldwide terrorism. There are extremist factions within every faith. However, some notable incidents of terrorist activities fueled by different religious beliefs are described below:

3.1 Islamic Extremism and Terrorist Activities

Islamic Extremism refers to a movement that calls for strict adherence to religious or Muslim law prescriptions. The extreme religious belief that is held as a result of misperception has inspired this movement. The proponents of this interpretation of Islam, sometimes known as Islamists, support *Jihad* against others in their nation to build an Islamic state as they strongly oppose the secular principles prevalent in the non-Muslim world.

Jihadist groups like the Islamic State of Iraq and Syria (ISIS) and Al Qaeda actively recruit Muslims to join their ranks. As this situation persists, Western

[11]Cordesman, A. H. (2017). *Islam and the patterns in terrorism and violent extremism*. Center for Strategic and International Studies (CSIS).

[12]Ebim, M. (2022). A Sociolinguistic Representation of Boko Haram Insurgency As A Reflection of Politics, Religious Extremism, And Terror. *Global Journal of Arts Humanity and Social Sciences ISSN*, *2583*, 2034.

nations are being put in danger since they have seen a rise in the number of overseas combatants traveling to Middle East countries like Iraq and Syria to help terrorist organizations. Previous research has looked at the traits of foreign fighters who join ISIS and Al Qaeda and the traits of the propaganda magazines these groups use to recruit Muslims. Each of these publications employs various ways to influence readers from different areas of the world.[13] These radicalized groups often have a strong desire to change the political system and laws, which may push them to resort to violence.

Therefore, any kind of Islamism that encourages violence to further Islamist objectives is called militant Islamic Extremism. Between 1979 and May 2021, there were 48,035 Islamist terrorist attacks worldwide, which resulted in at least 210,138 fatalities.[14] However, information about a few international Islamist terrorist attacks is provided below, demonstrating the radicalization of Muslims' influence on terrorism.

i. The Grand Mosque Seizure (1979)

In Mecca, Saudi Arabia, in November and December 1979, radical militants calling for the overthrow of the House of Saud occupied Masjid al-Haram, the holiest mosque in Islam. The militants declared Mohammed Abdullah al-Qahtani, one of their commanders, to be the Mahdi (Islam's redeemer) and demanded that Muslims submit to him. With the aid of French commandos, the Saudi army battled for about two weeks to retake the Grand Mosque.[15]

ii. Beirut Barracks Bombings (1983)

The Multinational Force in Lebanon (MNF), a military peacekeeping operation during the Lebanese Civil War, was housing American and French service troops when two truck bombs exploded early on Sunday morning, October 23,

[13]Msall, K., &Lary, N. (2022).A link between radicalization models and extremist propaganda. *Global Security: Health, Science and Policy*, *7*(1), 44-50.
[14]Iqbal, K. (2021). *The Rise of Hindutva, Saffron Terrorism and South Asian Regional Security*. *Islamist Terrorist Attacks in the World 1979-2021*. (2021).
[15]Allison, M. (2018). Militants Seize Mecca: The Effects of the 1979 Siege of Mecca Revisited. *Metamorphosis*.

1983, in Beirut, Lebanon. Six civilians, two attackers, 241 US and 58 French military members, and 307 others perished in the incident.[16]

iii. United States Embassy Bombings (1998)

Osama bin Laden, Ayman al-Zawahiri, and his terrorist organization, al-Qaeda, came to the attention of the American public for the first time as a direct result of the attacks, which were linked to local members of the Egyptian Islamic Jihad. More than 200 people died in a truck blast concurrently.[17]

iv. The 9/11 Attacks

Al-Qaeda is a rebellious Islamic terrorist organization that operated a series of four organized attacks on the United States on September 11, 2001, which came to be known as 9/11. The attacks resulted in catastrophic long-term health consequences, 2,977 deaths, more than 25,000 injuries, and infrastructure and property destruction worth at least $10 billion.[18]

v. The Bali Bombings (2002)

A terrorist attack happened on October 12, 2002, at Bali Island, Indonesia. The incident claimed the lives of 202 individuals, including 38 Indonesians, 88 Australians, 23 Britons, and victims from more than twenty other countries.[19]

vi. The Madrid Train Bombings (2004)

A series of synchronized and almost simultaneous bombs attacked the Cercanas commuter rail system in Madrid, Spain, on March 11, 2004. The explosions

[16]Geraghty, T. J. (2009). *Peacekeepers at War: Beirut 1983-the Marine Commander Tells His Story*. Potomac Books, Inc.
[17]Schmidbauer, J. M., Hess, T., Biedler, A., Spang, S., Hille, K., &Ruprecht, K. W. (2000). Ocular injuries and triage after the bombing attack on the United States embassy in Nairobi (Kenya). *KlinischeMonatsblatter fur Augenheilkunde*, *217*(6), 315-322.
[18]Byman, D., & Mir, A. (2022). Assessing al-Qaeda: A Debate. *Studies in Conflict & Terrorism*, 1-40.
[19]West, B. (2008). Collective memory and crisis: the 2002 Bali bombing, national heroic archetypes and the counter-narrative of cosmopolitan nationalism. *Journal of Sociology*, *44*(4), 337-353.

were responsible for the deaths of 193 persons and wounded almost 2,000 others.[20]

vii. The Sharm El Sheikh Bombings (2005)

The Islamist organization Abdullah Azzam Brigades assaulted the Egyptian vacation town of Sharm El Sheikh on July 23, 2005, located at the southern most point of the Sinai Peninsula. A total of 88 individuals were murdered in the three blasts.[21]

viii. The Mumbai Attacks (2008)

In November 2008, over four days, 10 members of the Pakistani Islamist terrorist organization Lashkar-e-Taiba carried out 12 coordinated shooting and bombing attacks in Mumbai. There were 175 fatalities, nine attackers, and nearly 300 injuries.[22]

ix. Peshawar School Massacre (2014)

The Army Public School in Peshawar, a city in northwest Pakistan, was attacked by six terrorists connected to the Tehrik-i-Taliban Pakistan (TTP). In the fourth worst school shooting in history, the terrorists, who were all foreigners and comprised of one Chechen, four Arabs, and two Afghans, invaded the school and started shooting at instructors and pupils. 149 people were killed, including 132 students between the ages of eight and eighteen.[23]

x. The Baga Massacre (2015)

The northern Nigerian town of Baga and its surroundings, located in the state of

[20]Rose, W., Murphy, R., &Abrahms, M. (2007). Does terrorism ever work? The 2004 Madrid Train Bombings. *International Security*, *32*(1), 185-192.
[21]Amara, D. (2016). Re-branding tourism hotspots after crisis: The case of Sharm El Sheikh, Egypt. *International Journal of Advanced Scientific Research and Management*, *11*(1), 35-44.
[22]Rai, A. K., & Kumar, S. (2022). Identifying the leaders and main conspirators of the attacks in terrorist networks. *ETRI Journal*.
[23]Malik, A. (2015). Godless Gods–The Peshawar School Attack and the Formidable Adversary. *Harvard Human Rights Journal Online. BBC News Asia. Revived from http://www.BBC.co. UK/news/world-Asia-30491435*.

Borno, was the scene of a string of mass atrocities committed by the Boko Haram terrorist organization between January 3 and January 7, 2015.[24]

xi. ***The November 2015 Paris Attacks***

A coordinated string of Islamist terrorist attacks took place in Paris, France, and Saint-Denis, the city's northern suburb, on Friday, November 13, 2015. One hundred thirty-seven people were murdered, and 368 others were wounded. There were some well-planned assaults, such as suicide bombs and shooting sprees. Since World War II, this was the bloodiest catastrophe to occur in France.[25]

xii. ***ISIL Bomb Attacks in Baghdad (2016)***

A suicide truck bomber attacked the predominantly Shia neighborhood of Karrada, which was bustling with Ramadan shoppers late at night. It resulted in the lives of 340 people and hundreds more injured.[26]

xiii. ***Bombings in Sri Lanka(2019)***

Three churches in Sri Lanka and three upscale hotels in the country's commercial center were targeted by Islamist terrorists on Easter Sunday, April 21, 2019, in a coordinated series of suicide bombings. The catastrophe resulted in the deaths of 267 people.[27]

The unpleasant fact is that the vast majority of extremist and terrorist violence happens in Muslim nations, while it consists primarily of Muslim extremists targeting other Muslims. Terrorist acts are carried out in the name of Islam even if they are not a real Islamic phenomenon, including suicide bombings. This has

[24]Belmonte, A. (2020). Inter-ethnic dynamics in the wake of terrorist attacks: Evidence from the 2015 Baga Massacre. *Peace Economics, Peace Science and Public Policy*, *26*(2).
[25]Cragin, R. K. (2017). The November 2015 Paris attacks: the impact of foreign fighter returnees. *Orbis*, *61*(2), 212-226.
[26]Bannelier-Christakis, K. (2016). Military interventions against ISIL in Iraq, Syria, and Libya, and the Legal Basis of Consent. *Leiden Journal of International Law*, *29*(3), 743-775.
[27]Imtiyaz, A. R. M. (2020). The Easter Sunday bombings and the crisis facing Sri Lanka's Muslims. *Journal of Asian and African Studies*, *55*(1), 3-16.

sparked a debate about these actions and Islamic principles among Muslims and in the West.[28] However, the above cases relate to terrorist activities by Muslim extremists.

3.2 Hindu Extremism and Terrorist Activities

Hindu Extremism is prevalent in India. It is a kind of right-wing extremism with a lengthy history in India, where the present context is strongly favorable to right-wing extremists.[29] Hindu Extremism lies in Hindutva, which refers to the effort to establish a Hindu state in India.[30] Hindutva and Hindu Extremism are interchangeable terms for describing this issue. 'Hindutva' is an ideology that spans a vast array of manifestations, ranging from violent paramilitary fringe groups to organizations advocating the restoration of Hindu culture to major political parties.[31] Hindutva ties Indians who trust India as a sacred land. This interpretation of the phenomena as an elitist and radical religious ideology contrasts sharply with Nehru's vision of unity in variety in the pluralistic and polytheistic religion of Hinduism.[32] The term "saffron terror" refers to terrorist operations perpetrated by persons with a Hindutva ideology (Hindu extremism). The term derives from the symbolic use of the color saffron by Hindu nationalist organizations.[33]

Saffron groups want to operate worldwide, and its target population consists of not only Muslims and Christians but also Hindus who reject the Hindutva doctrine or are not Hindu.[34] Following are the specifics of various Hindutva/Saffron-inspired terrorist acts in India. This indicates the significant impact of Hindu fundamentalism on terrorist operations.

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[28]Bar, S. (2004). The Religious Sources of Islamic Terrorism.-Policy Review.June/July. P. 27-37.
[29]Siyech, M. S. (2021). An Introduction to Right-Wing Extremism in India. *New England Journal of Public Policy*, *33*(2), 5.
[30]Ibid
[31]Leidig, E. (2020). Hindutva is a variant of right-wing extremism. *Patterns of Prejudice*, *54*(3), 215-237.
[32]Supra Note-14
[33]Ibid
[34]Ibid

i. Samjhauta Express Bombings (2007)

Around midnight on February 18, 2007, two Samjhauta Express coaches were shaken by twin explosions. The resulting fire killed 68 individuals and wounded hundreds more.[35]

ii. Ajmer Dargah Attack (2007)

On October 11, 2007, the Hindutva movement Rashtriya Swayamsevak Sangh (RSS) reportedly damaged the Dargah of Sufi Moinuddin Chishti in Ajmer, Rajasthan. On October 22, 2010, five alleged culprits were detained in connection with the explosion; four of them were reportedly RSS members.[36]

iii. Malegaon Blasts (2008)

On September 29, 2008, three bombs detonated in Gujarat and Maharashtra, resulting in eight deaths and eighty injuries. During the inquiry, a Hindu organization was suspected of involvement in the explosives in Maharashtra.[37]

3.3 Extreme Buddhism and Terrorism

Although Buddhism is a religion that is often linked with meditative and calm practices, there is a growing perception that some Buddhists engage in violent acts and subject others to oppression. In countries like Myanmar and Sri Lanka, the expression of Buddhist nationalist fervor has been associated with acts of violence such as fire bombs, mob scenes, and forced migrations, and the situation is only getting worse.

i. Myanmar Rohingya Crisis

The Myanmar Rohingya crisis is a significant example of extreme Buddhism. In August 2017, the military of Myanmar began a counterterrorism campaign

[35]Singh, U. K. (2019). Law, state and right-wing Extremism in India. *Journal of policing, intelligence, and counterterrorism*, *14*(3), 280-297.
[36]Ibid
[37]Gittinger, J. L. (2020). SAFFRON TERRORISM. *Religious Violence Today: Faith and Conflict in the Modern World [2 volumes]*, 300.

targeting Rohingya Muslims, which resulted in many deaths. The terrorist assault was inspired by radical Buddhists such as the well-known monk Wirathu, who is 53 years old and favors authoritarian governments.[38] Wirathu espouses a militant position that justifies the use of force against religious and cultural minorities, and he also supports authoritarian regimes. Because of this heinous attack, hundreds of thousands of Rohingya Muslims fled to Bangladesh, putting their lives in danger by fleeing by sea or on foot. The military, assisted by local Buddhist mobs, destroyed their villages, attacked and killed inhabitants, and then set the communities on fire, forcing them to flee.[39] The Rohingya people in Myanmar have been exposed to terrible human rights abuses for many decades. In recent years, Myanmar's Rohingya, Karen, San, and Chin people, along with members of other ethnic groups, have been subjected to ethnic cleansing.[40] The Rohingya are the ethnic minority group subjected to the most significant amount of dehumanization and persecution. The Rohingya are considered to be stateless and live in exile inside their nation.[41]

ii. The Emergence of Buddhist Extremism in Sri Lanka

Radical Buddhist groups in Sri Lanka began targeting Muslim and Christian minorities with hate speech and violence as Buddhist Extremism developed in Myanmar. Since 2014, intermittent assaults against Muslims in several localities have killed individuals and destroyed homes and places of worship.[42] The Bodu Bala Sena and other extreme Buddhist organizations have waged anti-Muslim campaigns, dismantled the halal certification system for food and other items made in Sri Lanka, and propagated stories about Muslims encroaching on Sinhalese Buddhists.[43] These have provided extreme Buddhists with why they

[38]Sohel, M. (2017). The Rohingya crisis in Myanmar: Origin and emergence. *Saudi J. Humanities Soc. Sci*, *2*.
[39]Ibid
[40]Ibid
[41]Mohajan, H. K. (2018). The Rohingya Muslims in Myanmar are victims of Genocide! *ABC Journal of Advanced Research*, *7*(2), 95-108.
[42]Gunasingham, A. (2019). Buddhist Extremism in Sri Lanka and Myanmar: An Examination. *Counter Terrorist Trends and Analyses*, *11*(3), 1-6.
[43]Ibid

need to commit violent crimes. Despite discussions over its financing sources and connections to the state, the Bodu Bala Sena is a strong, well-funded, and well-connected group.[44]

Nationalist/extremist Sinhala Buddhist organizations have historically engaged in anti-Muslim propaganda operations, mainly via the national media. Campaigns like this addressed concerns, including killing livestock during the Hajj, the inconvenience brought by the mosque's call to prayer, and the development of new mosques. They took the form of newspaper articles and letters to the editor. These advertisements were well-known starting in the 1980s.[45] Since the conclusion of Sri Lanka's three-decade-long military struggle between government forces and the Liberation Tigers of Tamil Eelam, hate campaigns against Muslims have grown, escalated, and expanded (LTTE). Consequently, widespread and overt assaults against Islam are a more recent phenomenon, and critics contend that the word "Islamaphobia" should be used to describe this change as hatred.[46]

3.4 Christian Extremism and Terrorism

Theocratic worldviews are shared by Christian and Muslim radicals, who consider their ideals to be better and must take all means necessary to disturb the status quo and impose their views. They hold the opinion that the ends justify the methods. In Christianity, faith is not to blame for extremism as it is in Islam. As active Muslims and evangelical Christian pastors, they both share this opinion.

In a recent study for the Southern Baptist Convention, LifeWay Research found that about half of Protestant pastors stated they often hear individuals support conspiracies in their congregations.[47] The event that occurred on March 15, 2019, at the Christchurch mosque in New Zealand illustrates the heinousness of

[44]Ibid
[45]Xavier, M. S. (2021). Sacred spaces and the making of Sufism in Sri Lanka 1: Between violence and piety. In *Routledge Handbook on Islam in Asia* (pp. 225-240). Routledge.
[46]Ibid
[47]Scott, B. M. (2021). *Reasons for the Rise in Power and Influence of (White) Christian Nationalism and Why It Matters* (Doctoral dissertation, University of Colorado at Denver).

this extremism, which led to two mass shootings at mosques that occurred during Friday Prayer consecutively. At around 1:40 p.m. and 1:52 p.m., a lone gunman entered the Al Noor Mosque in the Riccarton suburb and the Linwood Islamic Center, respectively. He was responsible for the 51 deaths and 40 injuries that took place. Brenton Harrison Tarrant, a 28-year-old Australian from Grafton, was the perpetrator.[48]

4. Religious Extremism and Terrorist Activities in Bangladesh

A religious militancy dilemma has plagued Bangladesh for the last few decades. The people of Bangladesh were frightened by terrorist acts, including bombings, murders, house burnings, and the destruction of temples and dwellings of people of different faiths. Terrorists have used Islam to shield their horrible actions.[49] Both domestic and foreign aspects of terrorism are present in Bangladesh. Before the late 1990s, the majority of Terrorist attacks in Bangladesh were carried out by ultra-leftist organizations within the framework of a world order that the Cold War shaped.[50] Most of the terrorist attacks in Bangladesh have been instigated by religious extremism.

In 1999, the local Islamist organization Harkat-ul Jihad al-Islami Bangladesh (HuJI) said that they were responsible for an attempt to murder the secular poet Shamsur Rahman that was not successful.[51] In addition, the organization blew off a bomb during a cultural event in Jashore, which caused the deaths of ten people. In addition to the assault on an Awami League rally in 2004 targeted at the current Prime Minister Sheikh Hasina, the organization was responsible for attacks in Sylhet, Dhaka, Akhaura, Bagerhat, and Khulna, the majority of which occurred between 1999 and 2005.[52]

[48]El-Nawawy, M., &Hasan, B. A. (2022). Terrorism, Islamophobia and White supremacy: Comparing CNN and the BBC coverage of the Christchurch mosque shooting. *Journal of Arab & Muslim Media Research*, *15*(1), 65-85.
[49]Siddika, A. (2018). Terrorism in the name of Islam: Bangladesh perspective. *Philosophy and Progress*, 109-124.
[50]Ibid
[51]Ahmed, I. (2018). Terrorism and Counter-terrorism in South Asia: Understanding the Dynamics of Actors, Networks and Conflicts. New York: Routledge.
[52]Jahan, R. (2015). Bangladesh: Promise and Performance. New Delhi: Pentagon Press.

On August 17, 2005, another prominent Islamist organization known as Jamaat-ul-Mujahideen Bangladesh (JMB) exploded 459 explosives throughout 63 of 64 districts, causing the deaths of two individuals and injuries to around 100 others.[53] The atrocity at the Holey Artisan bakery in July 2016 was the most high-profile terrorist incident to date. The members of neo-JMB were responsible for carrying out the attack; nevertheless, the Islamic State in Iraq and Syria (ISIS) claimed blame for the killing.[54] These attacks are seen as efforts to undermine Bangladesh's secular culture.[55] A rise in religiously motivated terrorist activities in Bangladesh has also corresponded with a rise in global terrorist activity. In many instances, local terrorist groups have openly pledged allegiance to transnational terrorist organizations such as ISIS and Al Qaeda in the Indian Subcontinent (AQIS) or proclaimed themselves as their local branch.[56]

5. Findings

The findings of the study reveal that there is a clear nexus between religious extremism and terrorist activities. This nexus is driven by a range of factors, including political and economic grievances, religious tensions, and a desire to impose extremist views on others. The study highlights that Islamic extremism is the most significant threat globally, with groups like ISIS and Al-Qaeda responsible for numerous acts of violence and terrorism. However, there has also been a rise in other forms of religious extremism, including Hindu and Buddhist extremism. In addition, the study found that the nexus between religious extremism and terrorism is particularly pronounced in countries like

[53]Ahmed, R. (2019). Terrorism in Bangladesh: A Review of Recent Trends. Studies in Conflict & Terrorism, 42(10), 864-879. https://doi.org/10.1080/1057610X.2017.1364324

[54]Rahman, M. Z., & Iqbal, S. (2019). Holey Artisan Bakery Attack in Bangladesh: An Examination of ISIS's Claim of Responsibility. Studies in Conflict & Terrorism, 42(7), 637-654. https://doi.org/10.1080/1057610X.2017.1374056

[55]Roy, S. (2019). Terrorism in Bangladesh: A Historical Overview. South Asian History and Culture, 10(2), 205-221. https://doi.org/10.1080/19472498.2018.1494381

[56]Riaz, A., & Parvez, S. (2018). Bangladeshi militants: What do we know? *Terrorism and political violence*, *30*(6), 944-961.

Bangladesh, where there has been a surge in extremist groups and a rise in acts of violence and terrorism.

The study also highlights the importance of developing effective strategies for preventing and countering violent extremism. These strategies should include a range of measures, such as intelligence gathering, law enforcement action, and community-based initiatives aimed at countering radicalization and promoting social cohesion. Overall, the findings of the study underline the urgent need for a comprehensive understanding of the nexus between religious extremism and terrorist activities and the development of effective strategies for preventing and countering violent extremism.

6. Recommendations

Based on the findings of this study, the following recommendations are suggested:

i. Develop a better understanding of the root causes of religious extremism and terrorism: Governments and researchers should focus on understanding the underlying causes of religious extremism and terrorism in different parts of the world. This requires an in-depth analysis of the political, social, economic, and cultural factors that contribute to the spread of extremist ideologies.

ii. Encourage interfaith dialogue and tolerance: Governments, religious leaders, and civil society organizations should promote interfaith dialogue and tolerance as a means of countering extremist views and promoting social cohesion. This can help to create a more inclusive and peaceful society, where different religious and ethnic groups can coexist peacefully.

iii. Strengthen law enforcement and intelligence capabilities: Governments should invest in strengthening their law enforcement and intelligence capabilities to effectively counter the threat of religious extremism and terrorism. This includes enhancing surveillance, intelligence gathering, and interagency coordination to prevent and disrupt terrorist activities.

iv. Develop effective counter-messaging strategies: Governments and civil society organizations should develop effective counter-messaging strategies to challenge extremist narratives and promote moderate voices. This can be achieved through social media campaigns, community outreach, and other targeted interventions.

v. Invest in education and youth development: Governments should invest in education and youth development programs to provide young people with the skills and opportunities they need to succeed. This can help to prevent radicalization and provide an alternative to extremist ideologies.

Finally, preventing and countering religious extremism and terrorism requires a comprehensive understanding of the root causes of this phenomenon and the development of effective strategies to address it. The recommendations outlined above can help to promote social cohesion, strengthen law enforcement and intelligence capabilities, and prevent radicalization, ultimately contributing to a more peaceful and stable society. It is important to note that these recommendations should be tailored to the specific context of each country and region, taking into account local cultural, political, and social factors.

7. Conclusion

In conclusion, the nexus between religious extremism and terrorist activities is a complex and multifaceted phenomenon that requires a comprehensive and nuanced approach to understand and address. This study has highlighted the significant threat that religious extremism and terrorism pose to global security and stability, particularly in countries like Bangladesh, where these phenomena have become increasingly prevalent in recent years. The study has shown that religious extremism and terrorism are driven by a range of factors, including political and economic grievances, religious tensions, and a desire to impose extremist views on others. While Islamic extremism remains the most significant threat globally, there has also been a rise in other forms of religious extremism, including Hindu, Buddhist, and Christian extremism.

Effective strategies for preventing and countering religious extremism and terrorism should include a range of measures, including intelligence gathering,

law enforcement action, and community-based initiatives aimed at countering radicalization and promoting social cohesion. Governments, religious leaders, and civil society organizations should also work together to promote interfaith dialogue and tolerance, develop effective counter-messaging strategies, and invest in education and youth development programs. This study underscores the urgent need for a comprehensive understanding of the nexus between religious extremism and terrorist activities and the development of effective strategies for preventing and countering violent extremism. Only by working together and adopting a holistic approach can we hope to address the complex challenges posed by religious extremism and terrorism and create a more peaceful and stable world. This study also examines some terrorist incidents in Bangladesh that occurred based on religious extremism, and the extremist groups are active in Bangladesh. Thus, it is time for the Bangladeshi Government to adopt preventative steps against religious terrorism. Preventative actions are always preferable to post-terror measures.

Effectiveness of Environmental Laws in Protecting Natural Resources of Bangladesh: An Overview

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Abstract: Bangladesh grapples with immense challenges in safeguarding its natural resources from activities jeopardizing its ecological balance. Natural resources, encompassing air, water, minerals, forests, wildlife, etc., underpin both human existence and economic progress. Their mismanagement or overexploitation can result in environmental degradation, jeopardizing sustainability and biodiversity. Delving into the conservation framework for natural resources, the study finds that, while the nation has a comprehensive legal framework in place, the enforcement of these laws is often impeded by ambiguities in legal provisions, the absence of by-laws, institutional and policy shortcomings, technical barriers, wavering political will and so on. The study also shows that, though the state has launched several strategies, such as reforestation, wetland preservation, promoting sustainable farming, water conservation, banning plastic bags, endorsing renewable energy, and more, a noticeable disconnect lingers between the law's intent and its implementation. Addressing this disconnect necessitates community participation and heightened public consciousness.

Keywords: Environmental laws, Natural resources, Sustainability.

1. Introduction

Bangladesh is a highly populated country that significantly depends on its natural resources, particularly agriculture, fisheries, and forestry, for economic development. Millions of people in this country rely on these natural resources as a source of income. However, these natural resources are being quickly degraded by a variety of human activities such as growing urbanization,

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industrialization, and deforestation, thus endangering the country's ability to sustain its environment. A comprehensive legal framework for environmental protection has been established by the government of Bangladesh to address these issues, including the Bangladesh Constitution, the Bangladesh Environmental Conservation Act 1995, the Bangladesh Environment Conservation Rules 1997, The Environment Court Act, 2010, the Bangladesh Environmental Policy 2018 and other sectoral laws.

These environmental laws and regulations seek to safeguard the nation's natural resources from the negative effects of human activity, including deforestation, air and water pollution, and biodiversity loss. The government has worked hard to create an effective legal framework for environmental preservation and conservation, but there are still substantial obstacles to the implementation and enforcement of these laws

Such deterioration of Bangladesh's natural resources has a big impact on the sustainable development of the nation, especially on the livelihoods of the poor, who are most at risk from the negative effects of environmental deterioration. Furthermore, social problems including land disputes, water sharing, and forest use can be exacerbated by environmental deterioration, which further increases poverty and inequality in the nation. As a result, it is essential to evaluate how well environmental laws are preserving the nation's natural resources, identify any gaps or difficulties, and suggest solutions to improve their application and enforcement.

2. Literature Review

Numerous studies have examined the implementation and effectiveness of Bangladesh's environmental laws, but there has been limited research specifically focusing on the protection of the country's natural resources. In "Application and Reform Needs of the Environmental Laws in Bangladesh[1]," Syeda Rizwana Hasan highlights that while Bangladesh has many

[1] Syeda Rizwana Hasan, 'Application and Reform Needs of the Environmental Laws in Bangladesh, (2005) 9:1&2 Bangladesh Journal of Law https://www.biliabd.org/wp-content/uploads/2021/08/Syeda-Rizwana-Hasan.pdf

environmental laws, they often go unenforced due to a myriad of reasons such as limited knowledge at the operational level, low awareness about environmental duties, uncertainties in legal provisions, non-existence of by-laws, conflicts with traditional rights and practices, uncertainty over the legal status of resources, issues with resource surveys and records, the lack of long-term policies in some sectors, and a lack of political commitment. Hasan emphasizes that just introducing new laws without addressing these challenges, especially the negligence of the implementing agencies, won't bring about the needed environmental improvements. There's a pressing need for strict accountability, effective sanctions, and widespread awareness campaigns.

Shubhra Bhattacharjee et al in their piece "Groundwater governance in Bangladesh: Established practices and recent trends" [2]state that Bangladesh's groundwater is seriously affected by pollution, encroachment, and overexploitation. Despite being pivotal legal frameworks, the National Water Policy (1999) and Bangladesh Water Act (2013) fall short of providing effective guidelines for permission, extraction limits, monitoring, and quality protection. The existing institutions are further hampered by ongoing crises, politics, corruption, lack of public participation, coordination failures, mismanagement, and inadequate empirical assessment. M Z Ashraful, in his research titled "Application of the Principles of International Environmental Law in the Domestic Legal System of Bangladesh: A Critical Study on the Legal Framework and the Position of Judiciary"[3] argues that while the principles of international environmental law should be integrated into Bangladesh's domestic legal system for environmental benefits, the country struggles due to insufficient legal mechanisms. However, the judiciary can assist by interpreting these principles in line with existing laws. The article also highlights while Bangladesh is making efforts to incorporate such principles through legal

[2] Shubhra Bhattacharjee and others, 'Groundwater governance in Bangladesh: Established practices and recent trends'(2019) 8 Groundwater for Sustainable Development69,https://doi.org/10.1016/j.gsd.2018.02.006accessed 07 August 2023

[3] M Z Ashraful, 'Application of the Principles of International Environmental Law in the Domestic Legal System of Bangladesh: A Critical Study on the Legal Framework and the Position of Judiciary' (2014) 19(5) IOSR Journal of Humanities and Social Science18https://ssrn.com/abstract=3156552 accessed 07 August 2023

amendments or new legislation, the progress remains underwhelming. Lastly, in "Law-Enforcement Challenges, Responses and Collaborations Concerning Environmental Crimes and Harms in Bangladesh"[4] by Sarker Faroque and Nigel South, the authors point out that existing laws are lenient, with limited penalties for most crimes, excluding the killing of tigers and elephants. The public often downplays environmental offenses, viewing them as routine and of little consequence. There's a widespread lack of understanding about the ecological and economic implications of these crimes. Additionally, these issues aren't prioritized in law enforcement, leading to sparse investigations and prosecutions, and while the media occasionally covers such topics, their reporting often lacks comprehensive insights.

3. Methodology

The study on the effectiveness of environmental laws in protecting Bangladesh's natural resources has utilized a mixed-methods approach to enhance the reliability of the findings. Primarily, the study has used a qualitative research approach, but quantitative data has also been used where applicable. It has provided a comprehensive and detailed analysis of the effectiveness of environmental laws in protecting Bangladesh's natural resources and identified ways to strengthen environmental governance and promote sustainable development. Data has been collected from both primary and secondary sources. Primary data has been collected through various sources, including international conventions, national legislation, policies, and judicial decisions. Secondary data has been collected from relevant reference books, journal articles, research reports, and official publications.

4. Conceptual Aspects of Environment and 'Natural Resources of Bangladesh

The term "environment" can be defined as the physical, chemical, biological,

[4] Sarker Faroque and Nigel South, 'Law-Enforcement Challenges, Responses and Collaborations Concerning Environmental Crimes and Harms in Bangladesh' (2022) *66*(4) International Journal of Offender Therapy and Comparative Criminology 389https://doi.org/10.1177/0306624X20969938 accessed 07 August 2023

and social factors that surround and interact with living organisms, including humans. This definition is reflected in both Bangladeshi and international laws.

In Bangladesh, the definition of "environment" is provided in the Bangladesh Environmental Conservation Act 1995, which defines environment as "all elements of the surroundings of human beings, whether affecting directly or indirectly their physical, chemical, biological, or social well-being"[5]. This definition includes air, water, land, flora, and fauna, as well as the interrelationships among these elements.

Internationally, the definition of 'environment' is reflected in various legal instruments, among them the United Nations Framework Convention on Climate Change (1992) defines the environment as 'the physical, chemical, and biological systems, including the ecological complexes of which they are a part'[6].

Typically, the phrase "natural resources" serves as a general descriptive phrase following a list of specific words in a statute, such as air, water, land, and other natural resources or oil, natural gas, minerals, and all other natural resources.[7] Under the Bangladesh Water Act 2013, natural resources are defined as "water, soil, air, land, forest, wildlife, minerals, and other elements or components of the environment that are of value to human beings and other living organisms"[8].

In legal interpretation, referencing "natural resources" in such a context exemplifies the principle of ejusdem generis, meaning "of the same kind or class." Interpreted thus, the definition of "natural resources" is influenced by the specific items listed before it.

For instance, in the first scenario, "natural resources" might refer to wildlife, trees, and various elements of the natural environment. In contrast, in the

[5] Bangladesh Environmental Conservation Act 1995, s 2(1)
[6] United Nations Framework Convention on Climate Change art1
[7] Paul Frisman, 'Definition of natural resources (2003) OLR Research report https://www.cga.ct.gov/2003/olrdata/env/rpt/2003-R-0296.htm accessed on 07 August 2023
[8] Bangladesh Water Act 2013, s 2(12)

second scenario, "natural resources" could encompass naturally occurring economic assets like oil, timber, minerals, fish, or wildlife.[9]

This split between a materialistic and an esthetic/recreational view of the environment is reflected in the two definitions of natural resources in Black's Law Dictionary (Seventh edition, 1999). Black's first definition is "any material from nature having potential economic value or providing for the sustenance of life, such as timber, minerals, oil, water, and wildlife." The second definition is "environmental features that serve a community's well-being or recreational interests, such as parks."[10]

In simple terms, Natural resources are the components of the natural environment that are utilized by humans, such as water, air, forests, minerals, and wildlife.

5. Aspects of Natural Resources in Bangladesh and their State of Degradation

Bangladesh is richly endowed with a wide spectrum of natural resources. From subterranean minerals and fossil fuels to diverse biological life, the nation's resources are both a boon and a responsibility. Rivers, forests, minerals, and a vast array of flora and fauna contribute significantly to the country's socio-economic fabric. Although Bangladesh has a diverse legal framework relating to the protection and preservation of its natural resources, the degradation of natural resources in the country is increasing at an alarming rate day by day. Here's a deeper exploration of Bangladesh's natural resources

Forests: Forests in Bangladesh are under severe threat due to deforestation, illegal logging, and land use changes. According to the FAO, Bangladesh lost an average of 0.3% of its forested area per year between 2010 and 2020. As of 2020, the country's total forest cover was estimated at 2.4 million hectares or about 7.4% of its total land area[11]. The majority of these forests are

[9] Frisman (n 7)
[10] Ibid
[11] Food and Agriculture Organization of the United Nations, "The State of the World's Forests 2020," (2020) 47.

concentrated in the Chittagong Hill Tracts region and the Sundarbans mangrove forest. The Sundarbans, a UNESCO World Heritage Site, is the largest mangrove forest in the world and home to a variety of unique wildlife, including the Bengal tiger[12]. However, this ecosystem is also threatened by various human activities, including deforestation, shrimp farming, and oil spills.

Wildlife and Biodiversity: Bangladesh has a rich biodiversity, with a variety of flora and fauna, including 106 species of mammals, 628 species of birds, and 156 species of reptiles and amphibians[13]. However, many of these species are under threat due to habitat destruction, poaching, and other human activities. According to the IUCN, 29 of Bangladesh's mammal species are threatened with extinction, including the Bengal tiger, Asian elephant, and Hoolock gibbon.[14] Similarly, 36 of its bird species are threatened, including the critically endangered spoon-billed sandpiper. The country has established several protected areas, including national parks and wildlife sanctuaries, to conserve its biodiversity, but enforcement of these measures is often weak.

Fisheries: Fisheries are an important source of livelihood and nutrition for millions of people in Bangladesh. However, overfishing and destructive fishing practices are threatening the country's fish stocks and marine ecosystems. According to the FAO, marine fishery production in Bangladesh declined from 509,364 metric tons in 2000 to 397,813 metric tons in 2019.[15] The country has taken some steps to address overfishing; including implementing a ban on fishing during the breeding season and promoting sustainable aquaculture practices, but enforcement of these measures is often weak.

Soil: Soil degradation is a major problem in Bangladesh due to various human activities, including deforestation, intensive agriculture, and urbanization. According to the World Bank, 46% of the country's land area is affected by soil

[12] UNESCO, 'The Sundarbans', accessed 28 February 2023, https://whc.unesco.org/en/list/798/.
[13] Department of Environment, Government of the People's Republic of Bangladesh, "Bangladesh Biodiversity Conservation Strategy and Action Plan (2016-2021)," (2016) 10
[14] International Union for Conservation of Nature, "The IUCN Red List of Threatened Species," accessed February 28, 2023, https://www.iucnredlist.org/.
[15] Food and Agriculture Organization of the United Nations, "Fishery and Aquaculture Country Profiles: Bangladesh," accessed February 28, 2023, at http://www.fao.org/fishery/facp/BGD/en.

erosion, and 25% of its cropland is degraded.[16] Soil salinity is also a major problem in the coastal areas, where rising sea levels and saltwater intrusion are affecting agricultural productivity.

Water: Water pollution has been significantly raised in Bangladesh due to industrial and domestic waste disposal, agricultural runoff, and other sources. According to the World Bank, about 88% of the country's surface water is polluted, and 98% of its groundwater is contaminated with arsenic, a toxic substance that can cause cancer and other health problems.[17] This has significant impacts on public health, as millions of people in Bangladesh rely on contaminated water sources for drinking and irrigation.

Air: Air pollution is a major environmental and public health issue in Bangladesh. According to a recent report by the Global Alliance on Health and Pollution, air pollution is responsible for 27% of all deaths in Bangladesh.[18] The data collected by the Department of Environment shows that the levels of pollution in Bangladesh have been consistently above national and international standards. For instance, the annual average concentration of PM10 in Dhaka, the capital city of Bangladesh, was 197 micrograms per cubic meter in 2019, which is almost four times the WHO's guideline value of 50 micrograms per cubic meter. Similarly, the annual average concentration of NO2 in Dhaka was 88 micrograms per cubic meter, which is almost twice the WHO's guideline value of 40 micrograms per cubic meter.

Climate: Climate change is also a significant challenge for Bangladesh, as it is a low-lying delta region that is highly vulnerable to sea-level rise, floods,

[16] World Bank, "Bangladesh: Reversing Land Degradation and Rural Poverty," accessed February 28, 2023, at https://www.worldbank.org/en/results/2019/05/23/bangladesh-reversing-land-degradation-and-rural-poverty.

[17] World Bank, "Bangladesh: Priorities for Climate Change and Environment," accessed February 28, 2023, at https://www.worldbank.org/en/country/Bangladesh/brief/Bangladesh-priorities-for-climate-change-and-environment.

[18] Global Alliance on Health and Pollution, "The Toxic Truth: Pollution Kills Millions in Bangladesh, India, and Pakistan" (Global Alliance on Health and Pollution, 2019). https://www.gahp.net/wp-content/uploads/2019/11/GAHP-Toxic-Truth-Report.pdf, accessed February 28, 2023.

cyclones, and other extreme weather events. According to the Climate Risk Index 2021, Bangladesh is the seventh-most affected country in the world by climate change, and it is projected to be severely affected in the future.[19] The sea level around Bangladesh has risen by about 3 millimeters per year (mm/yr) over the past decade, and it is projected to rise by another 1.0-1.5 meters by 2100.[20]

The statistical evidence here shows that the natural resources of Bangladesh, such as forest, wildlife, biodiversity, fisheries, soil, water, air, and climate, are degrading day by day at a concerning rate, irrespective of the comprehensive legal and policy framework present here. It indicates that these laws and policies are not properly implemented and did not turn out to be as effective as expected.

6. Legal and policy framework for environmental protection and conservation of natural resources in Bangladesh

Given Bangladesh's vulnerability to natural disasters and the widespread effects of environmental degradation on public health and the economy, environmental protection is a critical issue. To address environmental issues, the country has a comprehensive legal and policy framework that has evolved significantly over time. At present, there are more than 200[21] enactments relating to the environment in Bangladesh. Among them, the Bangladesh Environment Conservation Act 1995 (hereinafter called BECA), the Bangladesh Environment Conservation Rules 1997, and the Environment Court Act 2010 are considered to be the fundamental legal framework for environmental protection and natural resource management in Bangladesh. The basic environmental laws along with some important laws relating to the conservation of forests, air, water, and fisheries are evaluated here.

[19] Climate Risk Index 2021, Germanwatch, 2021, p. 13

[20] "Bangladesh," Climate Action Tracker, accessed 28 February 2023 https:// climateactiontracker.org/countries/bangladesh/.

[21] Mohiuddin Farooque and S. Rizwana Hasan, 'Laws Regulating Environment in Bangladesh' (2004) Bangladesh Environmental Lawyers Association (BELA) Dhaka,

6.1 Constitution of the People's Republic of Bangladesh

Even after 45 years of independence, there was no constitutional guarantee or commitment to the preservation and protection of the environment in the constitution of Bangladesh. Finally, a non-justifiable article in the part of Fundamental Principles of State Policy was added in 2015 by the 15th Amendment of the Constitution. It says,

'The State shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests, and wildlife for the present and future citizens.'[22]

This article being part of the Fundamental Principles of State Policy is not judicially enforceable.[23] Nonetheless, this pledge is essential to Bangladesh's governance. It will guide the State in legislating, aid in interpreting the Constitution and other Bangladeshi laws, and serve as the foundation for the endeavors of both the State and its citizens.[24]

6.2 The Bangladesh Environment Conservation Act, 1995

The BECA is the primary legislation governing environmental protection in Bangladesh. It aims to conserve and improve the environment while controlling and mitigating pollution. The Act includes provisions for declaring ecologically critical areas[25], regulating industries and development activities, setting standards for air, water, noise, and soil quality, and formulating environmental guidelines. The Department of Environment implements the Act, and the Director General has powers to identify and investigate environmental issues, close down harmful activities, and declare areas affected by pollution as ecologically critical. Operators of industries and projects must report pollution incidents, and new projects must obtain environmental clearance from the Director General.

[22] The Constitution of the People's Republic of Bangladesh, Art. 18A
[23] Ibid, 8(1)
[24] Ibid, 8(2)
[25] Section 5(1) states that, if the Government is satisfied that an area is in an environmentally critical situation or is threatened to be in such a situation, the Government may, by notification in the official Gazette, declare such area as an ecologically critical area and take necessary steps for improvement of the critical situation immediately.

However, like any law or policy, it is not without criticism. The act is frequently criticized for being inconsistently enforced. The government has limited resources to enforce the Act, and as a result, many companies and individuals do not follow the rules outlined in the Act. The Act focuses mainly on pollution control and thus ignores other crucial environmental issues like deforestation, land degradation, and biodiversity preservation. Again, penalty provisions[26] of the Act are not severe enough to prevent companies and individuals from engaging in environmentally harmful activities. Apart from these, the Act does not encourage active participation from local communities, who often have the most knowledge and understanding of the local environment. This has resulted in a lack of engagement and participation from local communities in environmental protection initiatives.

6.3 The Bangladesh Environment Conservation Rules, 1997

The Bangladesh Environment Conservation Rules 1997 establishes guidelines for environmental impact assessments, environmental clearance certificates, and pollution control. The rules set national environmental quality standards for ambient air, water, industrial effluents, emissions, noise, and vehicular exhaust. They require industries and development projects to obtain environmental clearance before beginning any construction or operation. The rules also provide for the declaration of ecologically critical areas and set restrictions on activities that can be carried out in these areas. The Department of Environment is responsible for implementing and enforcing the rules, and non-compliance can result in fines or imprisonment. Sometimes, it is argued that the Rules are ambiguous and lack clarity, making it difficult for stakeholders to understand and implement them effectively. This has created confusion and hindered the effective implementation of the rules.

6.4 The Environment Court Act, 2010

Since 2000, after the enactment of the Environment Court Act 2000 (ECA), a specialized environmental court system has been introduced in the legal system

[26] According to section 15, the maximum punishment provided in the Act is imprisonment not exceeding 10 years or a fine not exceeding 10 lac or both.

of Bangladesh.[27] Given the various limitations, a new ECA was passed in 2010 and the Act of 2000 was repealed. The Act provides for the establishment of special courts to handle environmental cases. Section 4 of the Act has empowered the government to establish one or more Environment Court/s in each district, which shall have its seat at the District headquarters but if more than one Environment Court is established in any district the Government shall by notification in the official gazette specify the territorial jurisdiction of each such court, with a Joint District Judge and the said judge shall in addition to his ordinary function dispose of the cases that fall within the jurisdiction of an Environment Court. This is clear that the Act has not mandated for separate or independent environmental court.[28] Section 5 of the ECA 2010 also provides for the establishment of one or more Special Magistrate Courts with the Magistrates of the first class or Metropolitan Magistrates in each District.

The Act sets out procedures for filing complaints, conducting investigations, and prosecuting offenders. It allows for the appointment of special public prosecutors and the imposition of fines and imprisonment for environmental offenses. The Act also provides for the creation of an Environment Appellate Tribunal, which has the power to hear appeals against the decisions of the Environment Court.

However, the court's jurisdiction is limited to only certain types of environmental offenses, and it does not cover all aspects of environmental protection. This limits its effectiveness in addressing environmental challenges. Another important limitation is the court can impose the maximum penalty of taka ten lac both for natural and juristic persons irrespective of the gravity of the offence or torts. The NGTA of India provides for a maximum penalty of 10 crores and 25 crore rupees for a natural person and a legal person respectively. The Act is also being criticized for making CPC, 1908 and CrPC, 1898

[27] Imtiaz Ahmed Sajal, 'Common people's access to the environment courts of Bangladesh: an appraisal', [2015] Bangladesh Law Digest <///E:/Environmental%20Law/Environment/Environment%20Court%20Act%202010/Criticims%20on%20Bangladesh%20Environment%20Cout%20Act%202010%20ahmed%20sajal.html>

[28] Ibid

applicable to the trial and disposal of environmental suits and cases but these procedural laws are inaccessible, non-participatory, protracted, and expensive.

6.5 Laws relating to the conservation of forest

Basic laws relating to the conservation of forests in Bangladesh are The Wild Life (Conservation and Security) Act 2012 and The Forest Act 1927. Among them, The Wild Life (Conservation and Security) Act 2012 provides for the conservation and safety of biodiversity, forest, and wildlife of the country.[29] It includes provisions restricting hunting, and fishing, and establishing protected areas like wildlife sanctuaries and national parks, eco-park, etc. by the Ministry of Environment and Forests. The law emphasizes the management, conservation, and security of wildlife and includes provisions for a wildlife advisory board and scientific committee. It also provides for the declaration of eco-parks, community conservation areas, special wildlife areas, national heritage, and national parks. The law includes a provision for the right to information and outlines offenses and punishments related to wildlife protection. Finally, the law requires permission from the chief of the ward of any area for scientific experiments related to wildlife.[30]

On the other hand, The Forest Act of 1927 provides for the conservation and management of forests through the establishment of "reserved forests" (RF) and "village forests." The Forest Department (FD) manages the RFs, and prohibited activities within these forests aim to protect biodiversity. The Act also includes provisions for joint forest management, where local communities can participate in forest management to a limited extent. The Act outlines penalties for violating forest laws and includes provisions for the preservation of wildlife.

Here it is mentionable that, the Forest Act of 1927 is criticized for its top-down approach, limited community participation, and narrow focus on revenue generation at the expense of long-term ecological and social sustainability. These criticisms have led to calls for a more inclusive and participatory

[29] Long title, Wild Life (Conservation and Security) Act 2012.
[30] Wildlife (Conservation and Security) Act 2012 (Bangladesh) s. 28(2)

approach to forest management, which recognizes the importance of local communities and their traditional knowledge and practices.

Other important laws in this regard are the Private Forest Ordinance of 1959[31], the Attia Forest (Protection) Ordinance of 1982,[32] and the Forest Industries Development Corporation Ordinance of 1959[33].

6.6 Laws relating to the conservation of Fish & Fisheries

The legal framework for protecting and conserving fish and fisheries in Bangladesh is mainly based on the Protection and Conservation of Fish Act of 1950, the Protection and Conservation of Fish Rules 1985, and the Marine Fisheries Act of 2020. The Protection and Conservation of Fish Act of 1950 provides provisions for the protection and conservation of fish in the inland waters of Bangladesh. The Act allows the government to introduce rules to protect inland waters that are not under private ownership. The Act also allows the government to prohibit the catching, carrying, transporting, offering, exposing, or possessing of any fish below the prescribed size of any prescribed species throughout Bangladesh or any part thereof for sale or barter. The Act includes a provision that prohibits the manufacture, import, market, storage,

[31] The Private Forest Ordinance of 1959 is aimed at the conservation and protection of wildlife and their habitats and seeks to regulate hunting, poaching, trade, and transportation of wildlife. It also requires permits and licenses for certain activities related to wildlife and imposes penalties for violations of its provisions. Additionally, the Act establishes a Wildlife Conservation Trust Fund to support conservation activities and provides for the appointment of Wildlife Magistrates to enforce its provisions. [Private Forest Ordinance, 1959 (Bangladesh), s. 2]

[32] The Attia Forest (Protection) Ordinance of 1982 focuses on safeguarding Bangladesh's forests. It regulates the felling, transport, and disposal of forest products and prohibits unauthorized harm to forests. Violations lead to penalties, including fines and jail time. The ordinance also creates Forest Magistrates for enforcement and permits the seizure of unlawfully obtained forest produce and related equipment.

[33] The Forest Industries Development Corporation Ordinance of 1959 was enacted to promote the growth of Bangladesh's forest industry. It founded the Forest Industries Development Corporation (FIDC) to manage and operate forest-based industries. The FIDC can acquire land, set up factories, and conduct R&D in this domain. The ordinance permits transferring government-owned forests to FIDC for management and industrial growth. It also details the appointment and roles of a managing director and board of directors for the FIDC's supervision.

transport, ownership, possession, or use of current jars. Overall, the Act aims to conserve and protect fish in Bangladesh's inland waters.[34]

The Protection and Conservation of Fish Rules of 1985 prohibit destructive practices such as using explosives, guns, bows, or arrows to destroy fish, as well as poisoning water or depleting fisheries through pollution or trade effluent.[35]

On the other hand, in 2020, the Marine Fisheries Act was passed to upgrade the regulation of fisheries resources in Bangladesh's marine waters. The Act primarily addresses the issuance, renewal, suspension, and termination of licenses and permits, as well as their conditions, concerning fishing in Bangladesh's marine territories and by Bangladeshi vessels in international waters. The 2020 Act also includes significant provisions about the establishment and execution of management measures, specifying offenses and their respective penalties, appeals, and other administrative processes related to fishing rule violations. Before the 2020 Act, the Marine Fisheries Ordinance 1983 governed these aspects within the marine fisheries sector.[36] Significantly, the Act fails to include the internationally acknowledged principles and practices of fisheries management, a lapse considering Bangladesh's international commitments. Additionally, the legislation makes no mention of ecosystem-based fisheries management, capacity building for pertinent governmental bodies, or community involvement.[37] Beyond the aforementioned issues, the 2020 Act exhibits several administrative flaws. Notably, it bestows an abundance of responsibilities and considerable authority on the Director of the Marine Fisheries Division without setting up an appropriate system of checks and balances.[38]

[34] Protection and Conservation of Fish Act, 1950 (Bangladesh), S. 3, 5, 8
[35] Protection and Conservation of Fish Rules, 1985 (Bangladesh), r. 8
[36] Abdullah Al Arif and Md Saiful Karim, 'Marine Fisheries Act 2020 of Bangladesh: A Missed Opportunity for Sustainability and Collaborative Governance' (2022) 37 *the International Journal of Marine and Coastal Law* https://brill.com/view/journals/estu/37/2/article-p337_7.xml?language=en&ebody=full%20html-copy1
[37] Ibid
[38] Ibid

Other laws discussed in the article include the Private Fisheries Protection Act of 1889[39], the Fish and Fish Products (Inspection and Quality Control) Ordinance of 1983[40], the Fisheries Research Institute Ordinance of 1984[41], the Bangladesh Fisheries Development Corporation Act of 1973[42], and the Fish Hechary Act of 2010[43].

6.7 Laws Relating to Conservation and Management of Water Resources

The key law regulating the conservation and management of water resources in Bangladesh is the Water Act of 2013, which replaced the earlier Water and Air

[39] The law aims to safeguard private water bodies from unauthorized fishing activities. Private water bodies are defined as bodies of water that are owned exclusively by an individual or where an individual holds the exclusive right to fish, and may also include open waters. The law prohibits fishing, as well as the installation, placement, maintenance, or use of fixed fishing equipment in private water bodies or the introduction of any substances into these waters that are intended to catch or harm fish, without obtaining permission from the individual who holds the right to fish in that particular water body. The term "fish" used in this law includes turtles and shellfish.

[40] This Act aims to regulate the quality and safety of fish and fish products for human consumption. The law establishes a system for inspection and certification of fish and fish products, to ensure that they meet certain quality and safety standards. The law covers all fish production, processing, and marketing aspects, including fishing vessels, fish markets, and processing plants. It also establishes penalties for non-compliance with the law and empowers government officials to enforce the law through inspections and other measures. The law is intended to promote public health and ensure the quality and safety of fish and fish products in Bangladesh.

[41] This Ordinance set up the Fisheries Research Institute (FRI) in Bangladesh to oversee research, training, and technical support in fisheries. Tasked with scientific research on fish and their habitats, the FRI also offers technical assistance to various stakeholders in the fisheries sector. The law delineates FRI's structure, leadership appointments, a dedicated research fund, and the publication of findings, aiming to foster sustainable fisheries growth through science and training.

[42] This Act founded the government-backed Bangladesh Fisheries Development Corporation (BFDC) to bolster the nation's fisheries industry. The BFDC is mandated to manage fishing vessels, process, and market fish, and boost fisheries research. This legislation defines BFDC's organizational structure, leadership, a dedicated development fund, and industry regulations, with the overarching goal of advancing sustainable fisheries development in Bangladesh via BFDC's initiatives.

[43] The Act to ensure the desired and sustainable development of fish resources in the country, enacting provisions for the establishment of fish and shrimp hatcheries and their proper management and related matters, for the production of quality-rich rice, post-larvae, and pona.

Pollution Control Act of 1974. This Act provides a legal framework for the sustainable management and conservation of water resources, including surface water, groundwater, and wetlands. The Act establishes water quality standards and regulations, provides for the establishment of water management institutions, and outlines penalties for non-compliance. Additionally, the Bangladesh Environment Conservation Rules of 1997 provide specific guidelines and standards for water pollution control measures, including discharge limits for industries and monitoring requirements. However, The Conservation of All Playgrounds, Open Spaces, Gardens, and Natural Wetlands of the All-City Corporations Act, 2000[44], The Water Resource Planning Act 1992[45], and The Ground Water Management Ordinance 1985[46] are also mentionable in this regard. The Department of Environment and the Bangladesh Water Development Board are responsible for enforcing these laws and regulations in Bangladesh.

6.8 Laws relating to the prevention of air pollution

The key law regulating the maintenance of air quality in Bangladesh is the Environmental Conservation Act of 1995. This Act includes provisions related

[44] This Act aimed at the conservation of public open spaces, such as playgrounds, gardens, and wetlands, within city corporations. The act prohibits the conversion, occupation, or transfer of any open space designated by the government; except for certain permissible uses It also establishes a process for designating and notifying public open spaces and penalties for violations of the act. The main purpose of the act is to promote sustainable development and ensure the availability of public open spaces for the use and enjoyment of citizens.

[45] The 1992 Water Resource Planning Act of Bangladesh seeks to streamline water management by endorsing integrated planning for both surface and groundwater. It establishes a national council for water resource coordination and mandates the creation of water resource plans at multiple levels, including local. The Act also sets up a water management board in every administrative district, encourages public involvement, and provides mechanisms for conflict resolution. Essentially, it emphasizes sustainable and efficient water use throughout Bangladesh.

[46] This law provides a legal framework for the management, conservation, and protection of groundwater resources in Bangladesh. The ordinance establishes guidelines for the exploration, exploitation, and utilization of groundwater and provides for the protection of recharge areas, water quality, and aquifer sustainability. It also outlines procedures for the licensing of groundwater use and drilling of wells and sets penalties for unauthorized exploitation of groundwater. Overall, the ordinance aims to ensure the sustainable use and management of groundwater resources in Bangladesh.

to controlling air pollution, such as regulating vehicles that emit harmful smoke[47], requiring environmental clearances for projects, controlling industrial emissions through discharge permits[48], and enforcing standards for air quality, water quality, and noise levels. Additionally, the Bangladesh Environmental Conservation Rules of 1997 provide specific guidelines and standards for air pollution control measures, including emission limits for various industries and vehicles, monitoring and reporting requirements, and penalties for non-compliance. However, The Brick Burning (Control) Act, of 1989[49] is also mentionable here. The Act aims to regulate the brick manufacturing industry to control air pollution caused by brick burning. The Act prohibits the use of traditional kilns and mandates the use of environment-friendly zigzag kilns for brick burning. It also sets standards for the emission of smoke, dust, and other pollutants from the kilns and establishes penalties for non-compliance. The Act empowers the Department of Environment to monitor and enforce compliance with its provisions.

7. Weaknesses of the Legal and Policy Framework for Environmental Protection in Bangladesh

As was mentioned, Bangladesh has a comprehensive legal and policy framework for environmental protection, but its implementation and enforcement have been hindered by several weaknesses, which pose significant challenges to effective environmental governance. Here, some of the key weaknesses of the legal and policy framework for environmental protection in Bangladesh and their impact on the implementation and enforcement of environmental laws are discussed.

Inadequate enforcement: Despite the existence of several environmental laws and regulations, their enforcement remains weak due to a lack of political will, inadequate institutional capacity, and corruption. As a result, many industries continue to pollute the environment with impunity.

[47] Bangladesh Environmental Conservation Act 1995, s. 7. a
[48] Environmental Conservation Act 1995, s. 15–16
[49] Brick Burning (Control) Act, 1989

Insufficient penal policy: The penal provisions provided in the environmental laws regarding environmental offenses are very nominal. The highest punishment that an environment court can pass is 10 years of imprisonment and a fine not exceeding 10 lac taka.[50] This is inadequate and improper in respect of the actual damages caused by environmental offenses.

Ambiguous and uncertain provision: The provisions relating to the powers, functions, authorities, and jurisdiction of the administrative and judicial bodies under environmental laws often create complexities because of their uncertainty and ambiguity.

Insufficient integration of environmental concerns into development policies: Environmental concerns are often not adequately integrated into national development policies, leading to conflicting goals between economic development and environmental protection.

Absence of internationally recognized principles: Principles of international environmental laws[51] such as the polluters pay principle, and prevention principle are not properly incorporated and acknowledged in our legal framework.

Limited public participation: There is limited public participation in the decision-making process regarding environmental issues in Bangladesh. This limits the ability of affected communities to voice their concerns and engage in meaningful dialogue with decision-makers.

Inadequate monitoring and enforcement: Bangladesh lacks adequate monitoring and enforcement mechanisms for environmental protection. Environmental regulations are often not enforced, and violators are not punished, leading to continued environmental degradation.

These weaknesses have significantly impacted the effectiveness of environmental laws in Bangladesh. Addressing these weaknesses will be critical

[50] The BECA s. 15.
[51] Stockholm Declaration on the Human Environment (1972); Rio Declaration on Environment and Development (1992).

for the effective implementation and enforcement of environmental laws and ensuring sustainable environmental protection in Bangladesh.

8. Observations

Implementing and enforcing environmental laws in Bangladesh is critical for protecting the country's natural resources and promoting sustainable development. Here are some recommendations that can help achieve this goal:

i. Establishing separate environment courts: To enhance the efficiency and effectiveness of environmental law enforcement, there's a need to amend Section 4 of the ECA to establish separate specialized environmental courts in every district. Such dedicated courts can fast-track environmental cases, ensure uniformity in interpreting laws, and strengthen the enforcement of environmental regulations

ii. Amending outdating laws: Outdated laws and provisions, such as the Forest Act of 1927, which is often critiqued for its top-down structure, lack of community involvement, and a predominant focus on revenue, should be reviewed and amended to reflect the changing socio-economic dynamics of the country.

iii. Improving the scope of punishment: The penal provisions need to be broadened in their scope. For grave environmental transgressions, the harshest penalty should be a life sentence, and the imposed fines should have no cap. Moreover, the fine structure should differentiate between individuals and legal entities. To reflect these changes, an amendment to Section 15 of the BECA is imperative.

iv. Incorporating and implementing the common principles of international environmental law: Common principles of international environmental law established by the international instruments have to be incorporated into our legal framework and their effective implementation has to be ensured. To this end, amendments to sections 10 and 14 of the ECA are necessary. Such revisions will pave the way for the court to integrate fundamental principles of international environmental laws when delivering judgments.

v. Strengthening institutional capacity: The Department of Environment, the Department of Forest, and other related agencies face a shortfall of skilled and trained personnel. They also lack a robust information management system with a comprehensive data bank to support planning, policy formulation, and monitoring tasks. Additionally, there's an absence of consistent training initiatives for staff enhancement. The government could bolster the capabilities of its environmental bodies by boosting funding, offering training and resources, and recruiting competent personnel.

vi. Improving public participation: Encouraging public participation in environmental decision-making can help increase accountability and transparency in environmental governance. This can be achieved through public consultations, awareness campaigns, and stakeholder engagement.

vii. Encouraging alternative dispute resolution: Alternative dispute resolution mechanisms, such as mediation and arbitration, can be used to resolve environmental disputes more efficiently and cost-effectively.

viii. Promoting international cooperation: Bangladesh can learn from other countries experiences and best practices in environmental governance by engaging in international agreements, attending global conferences, collaborating on research with global institutions, leveraging capacity-building programs, adopting technological solutions from advanced nations, working with international NGOs, adhering to global environmental standards, seeking international peer reviews, and accessing global environmental funding.

ix. Providing incentives for environmental compliance: Providing incentives for businesses and individuals to comply with environmental laws, such as tax breaks or subsidies for environmentally friendly practices can encourage compliance.

x. Increasing public awareness: Raising public awareness of environmental issues can help to promote environmental protection, create a culture of environmental responsibility, and increase public pressure on the government and private sector to address environmental issues.

xi. Promoting green technology and innovation: Encouraging the development and adoption of green technologies and practices can help reduce environmental impacts and promote sustainable development.

xii. Developing a national environmental monitoring system: Developing a comprehensive national environmental monitoring system can help to identify environmental threats and facilitate early warning and response measures.

xiii. Improving coordination among different sectors: Coordination between different government agencies, as well as the private sector and civil society stakeholders, can help to ensure a holistic approach to environmental protection and prevent conflicting policies and actions.

9. **Conclusion**

From the above discussion, it may be concluded that the effectiveness of environmental laws in Bangladesh in protecting the country's natural resources is a complex issue. While the country has made significant progress in enacting environmental laws and policies, the implementation and enforcement of these laws have been inadequate. This has resulted in the continued degradation of the country's natural resources, including its forests, water bodies, and air quality, among others. The root causes of this problem are multifaceted and include institutional weaknesses, lack of resources, corruption, and lack of public participation in decision-making. However, there are potential strategies that can be adopted to improve the implementation and enforcement of environmental laws, including strengthening institutions and regulatory frameworks, increasing public awareness and participation, and improving accountability and transparency. Ultimately, the protection of Bangladesh's natural resources requires a comprehensive and collaborative effort from all stakeholders, including government agencies, civil society organizations, and the private sector. By working together and implementing effective strategies, Bangladesh can protect its natural resources, mitigate the impact of climate change, and promote sustainable development for the country's future generations.

Status of Service Delivery of AC Land Offices: A Case Study of Barishal District

Md. Sadekur Rahman* Sarder Kaisar Ahmed**

Abstract: Land offices, as a public service-providing body in field level institutional framework, provide various services to the citizens. The major land services and issues, people interact with most, include land surveys, mutation, registration, land development tax, khas land distribution, withdrawal of different documents, etc. However, the quality of the services rendered by the land offices and people's satisfaction and confidence in this sector has been a major research issue over the decade. Therefore, this study attempts to evaluate the present status of service delivery of the AC land offices of the Barishal district. It also studies the current administrative challenges, corruption, and irregularities in rendering quality service at AC land offices of the Barishal district. The major findings of this study are that the present disintegrated land administration system is mostly responsible for creating different problems in service delivery including lack of harmonization, complexity, inefficiency, corruption, and errors in ownership records.

Keywords: Land, Service delivery, AC land offices, Barishal district.

1. Introduction

1.1 Background of the Study

Land is the most treasured and priceless possession of mankind. Land as valuable property is skimpy, useful, and definite. Its significance in defining a human person's economic, social, and political status is worth mentioning. It is also an influential aspect of the economic expansion of a country. The social

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science of land economics is a systematic body of knowledge relating to the characteristics, utilization, and discussion of the use of land in such a way that will best serve in achieving the desired economic development of a country.[1] Therefore, the importance of land in determining a human person's economic, social, and cultural progress; and in the economic development of a country cannot be overlooked.

Bangladesh, a South Asian developing country, has a phenomenal high growth of population with limited land. It had the lowest land-to-person ratio in the world in 2018, which is calculated to 0.08 hectares per person.[2] Despite the lowermost land-to-person ratio, the land is thoroughly linked with our living, social standards, and economic accomplishments and plays a crucial role in the economic, social, and political proliferation of the country. Therefore, proper organization and supervision of this resource are imperative for the country's socio-economic progress. However, service delivery in the institutional frame of land organization and supervision is flawed by its anomalies, centrality, intricacy, bureaucracy, inadequacy, and corruption. Electronic and print media repeatedly publish reports on anomalies and corruption including bribery and usurpation of properties through the involvement of land officials, vested interest groups, and high-ranking people.[3] A survey conducted by TIB reports that 59% of households experienced corruption while receiving services from land offices.[4] Moreover, almost 60% of litigations arise from land-related issues.[5] In this background, land was acknowledged as one of the main concern areas of intrusion of the government in the 7th Five-Year Plan. To solve all these obstructions, the government has recently taken various policy measures

[1]Hammar, C., Renne, R., Woodworth, H., & Steele, H., "The Content of Land Economics and Research Methods Adapted to Its Needs: Discussion" (1942) 24(1) *Journal of Farm Economics*, 247-255. Retrieved from http://www.jstor.org/stable/1232307

[2] World Development Indicators, 2020

[3] TIB, "Land Management and Services in Bangladesh: Governance Challenges and Way-forward" 2015, p 1

[4] TIB, National Household Survey on Corruption 2012, pp 16, 18

[5] Md. Abubakkor Siddik, Md. Ashiqur Rahman and Md. Moniruzzaman, "Causes and Consequences of Land Disputes in the Coastal Area of Bangladesh", (2018) XXIV (2) *Eastern Geographer*, pp. 7-15

to restructure, digitalize, and update the age-old land organization and supervision system to improve the service delivery of land offices.[6]

Given the importance of this sector, this study attempts to evaluate the present status of service delivery of land offices. It also tries to find out the prevailing administrative challenges, corruption, and irregularities in rendering quality services, and people's satisfaction in getting services from land offices.

1.2 Research Objective

This study attempt-

i. To evaluate the present status of service delivery of the AC land offices of the Barishal district.

ii. To identify the current administrative challenges, corruption, and irregularities in rendering quality service at AC land offices of the Barishal district.

1.3 Research Methodology

This study mainly focuses on the AC land offices of the Barishal district. As primary data and information, quantitative data and information are collected from 6 different AC land offices of the Barishal district by fieldwork using social survey tools and techniques. The sample is determined through convenience sampling on the base of ease of access to the AC land offices by the data collectors. The sample number is determined based on heterogeneity, available resources, and budget allocation. A structured questionnaire was used for the survey.

Secondary data and information were collected through extensive studies of other relevant research reports, features, books, expert works and commentaries, annual reports, survey reports, academic and professional works, etc. The descriptive analysis method is used for analyzing the collected data.

[6] TIB (n 3)

2. Conceptual Note

The concept of service is very difficult to articulate. But we can reach a consensus from the observation of different scholars that it is about imparting something indefinable in a way that satisfies the consumer and that gives some value to that consumer. According to Philip Kotler, service is a performance that one party can tender to another which is indefinable and does not outcome in the possession of anything. Its manufacture may or may not be attached to a substantial result.[7] Reid and Bojanic defined service as the art of doing the best possible action at the best possible time, for the best possible person, and with the best possible result.[8] Like service, its professed quality is also complicated to describe and determine. According to Parasuraman, service quality is a gap between customers'expectations and their awareness of the service along the quality spectrum.[9] Service quality has a great effect on consumers' responsiveness to the service. Therefore, service can be characterised as all financial activities that are imprecise and entail close relationships between the service provider and the client.

3. Understanding the Contemporary Land Administration and Service Delivery System

The organization of the present-day land management and service delivery mechanism was introduced by the primeval Hindu rulers and also carries the deep impression of the elaborately modified system developed by the British rulers. They put high emphasis on a centrally controlled administration and supervision arrangement that was intended to uphold political dominance and establish a stable source of state income. The situationhas hardly been changed since the independence of Bangladesh. The present-day administrative organization of land supervision in Bangladesh mainly deals with three majorissues namely record keeping, registration, and settlement. These issues are accomplished either by the departments of the Ministry of Land (*hereinafter*

[7]Philip Kotler, *Marketing Management*, (10th edn, Pearson Education Canada: 2001)
[8] Robert D. Reid, David C. Bojanic, *Hospitality Marketing Management* (1st edn, Wiley: 2001)
[9]Parasuraman et al., "A Conceptual Model of Service Quality and its Implication for Future Research (SERVQUAL)", (1985) 49 *Journal of Marketing*, pp. 41-50

MOL) or by the department of the Ministry of Law, Justice, and Parliamentary Affairs (*hereinafter MLJPA*).

The MOL is authorized to deal with land surveys, collection of land development tax, and arbitration processes.[10] It has three departments namely the Directorate of Land Records and Surveys (DLRS), the Land Reform Board (LRB), and the Land Appeal Board (LAB). The DLRS is assigned with the duty of carrying out cadastral surveys, from which it produces mouza maps indicating the location of individual plots of land and Khaitan indicating ownership, area, and character of the land. Through Zonal Settlement offices and Upazila Settlement offices, it also carries out surveys and settlement procedures.[11] On the other hand, the LRB establishes and collects the Land Development Tax. Itupdates the maps and land records in between surveys. Furthermore, it is in the charge for the implementation of land reform laws, tenant rights, the management of khas land, abandoned and vested property. Union Tehsil Offices and Upazila Land Offices serve as the means by which LRB performs its duties. The LAB also acts as the final arbiter in cases involving khas land, record changes, plot demarcation, and taxation. It thus serves as the last link in a chain that ascends from the Assistant Commissioner (Land) and the Nirbahi Officer at the Upazila, to the Additional Deputy Collector (Revenue), and ends at the Deputy Revenue Collector at the District. On the other hand, the MLJPA mainly records land mutation and transfers.[12] It has only one department namely the Department of Land Registration (DLR). The DLR collects the immovable property transfer tax and keeps record of any land changes brought about by sales, inheritances, or other types of transfers. There are some other agencies including the Ministry of Forests, the Fisheries Department, the Directorate of Housing and Settlement, and the Department of

[10]Hossain Monzur, *Improving Land Administration and Management in Bangladesh*, Dhaka, 2015

[11] Aziz, M.A., "Land Record System in Bangladesh: An Analysis of Problems and Possible Solutions", (2003). Retrieved from http://www.google.com.bd/search?q=Land+Information+ System+in+ Bangladesh&hl=en&start=10&sa=N,

[12]Monzur (n 7)

Roads and Railways have a more minor part to play in the organization and supervision of land.

At the field level, the land administration is run by the Tahsil office at the union level, the Upazilla land office/AC land office at the Upazila level and the DC office at the district level. These offices offer various land services to service recipients within various institutional settings. The Tahsil offices identify and maintain records of khasland and retain land records within their jurisdictions. In addition to, the offices assist the AC land office conducting the mutation investigations, distributing the khas land to those who are landless, and gather land development tax (LDT) from tenants; The Upazilla land offices maintain current records of the changes brought about by the transfer of land for purchase, sale and inheritance, and the records of changes brought about by natural causes. Furthermore, the offices keep records of khas land, transmit proposals to the DC office for the distribution and leasing of khas land, water bodies, and hat bazaar, and issue certificates to LDT defaulters; Moreover, the management of land issues and the execution of governmental land policy at the district level falls completely under the purview of the DC offices. They operate a record room from which all certified copies of records of rights are given to service beneficiaries and tenants. The Directorate of Registration has Sub-registry offices at the upazila level to handle all types of registries for land transfers resulting from purchases and sales, inheritance, donations, etc.Moreover, land surveys can be carried out by Settlement Offices under the Directorate of Land Survey and Records (DLSR) at the upazila level.

4. Findings and Analysis

4.1 Data Source

This study was conducted in 6 (six) AC land offices of the Barishal district from January 2021 to December 2021. A total of one hundred (100) interviewees were interviewed.

4.2 Demographic Data

4.2.1 Gender of the Interviewees

During this study, a total number of 100 interviewees were interviewed. Out of the total sample population, 81% were male. On the other hand, only 19% of the interviewees were female. So the greater parts of the interviewees are male.

4.2.2 Age of theInterviewees

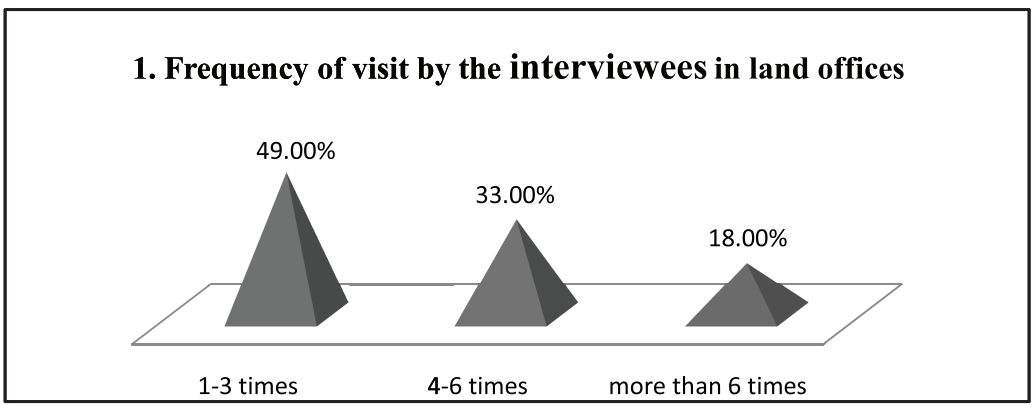
About 10% of the interviewees looking for services were aged below 30 years, 30% were aged between 31-40 years, 34% were aged between 41-50 years and 26% were above 50 years of age. The age group revealed that most of the interviewees looking for services in land offices are middle-aged people.

4.2.3 Level of Education of the Interviewees

Out of 100 interviewees, 11% have no formal education; 20% have attained primary education, 30% have attained secondary education, and 39% have attained post-secondary education. Here we see most of the interviewees are well-educated and are fully conscious of the services rendered by the land offices.

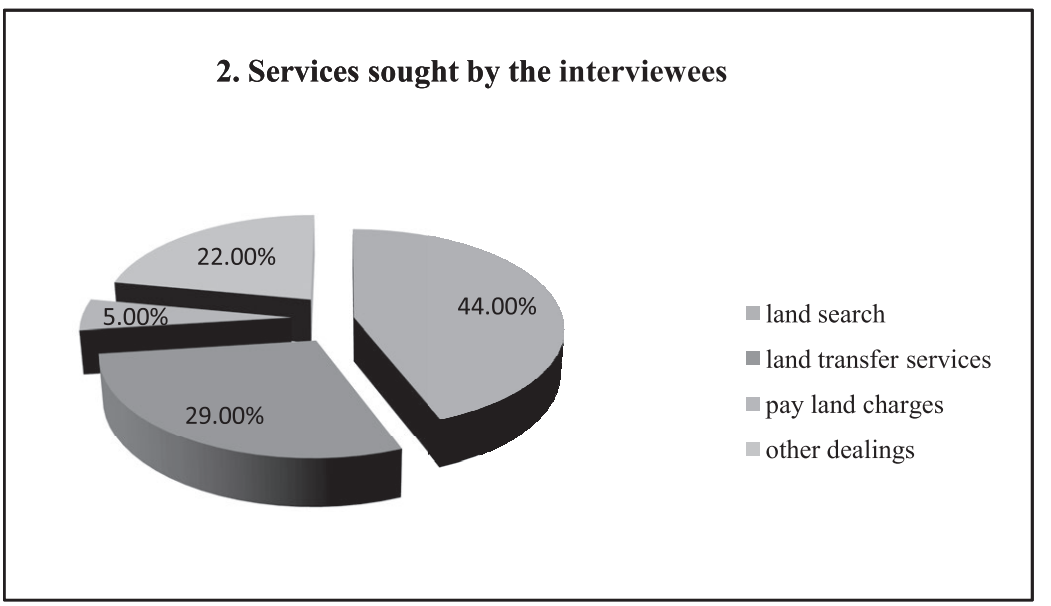
4.2.4 Frequency of Visits by the Interviewees in Land Offices

The majority of the interviewees had previous dealings with the land offices. Among the interviewees, about 49% had been to the land offices between 1-3 times while 33% of them had visited 4-6 times and 18% had dealt with land offices more than 6 times as shown in Figure 1 below.



4.3 Services Sought by the Interviewees

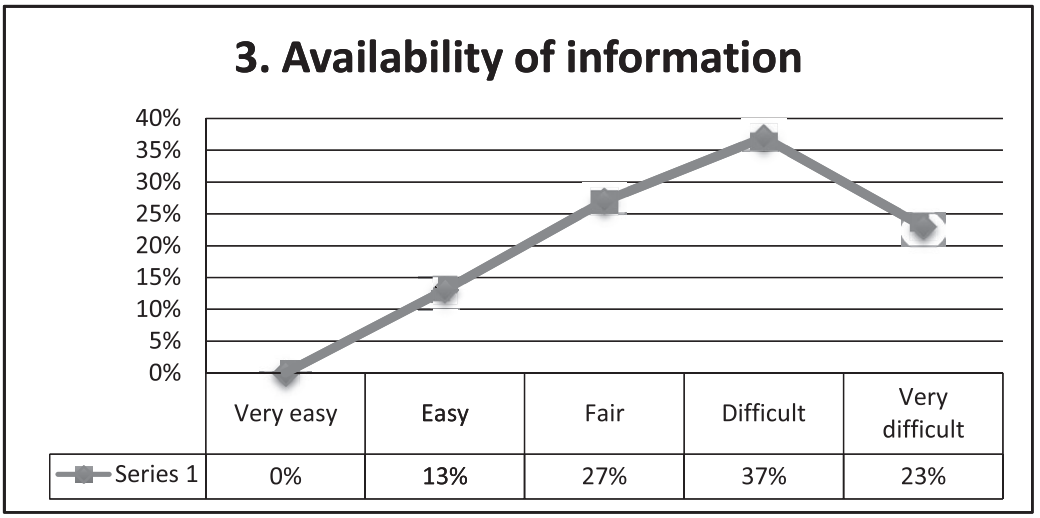
Nearly half of those surveyed, or 44%, had come to the land offices with a view to searching land. This circumstance may attribute the primary data on which other subsequent transactions are based. Figure 2 indicates that 29% of those surveyed visited land offices in search of land transfer services, 5 % wished to pay land charges, 22 % visited the office for other dealings, e.g. mutation and application for title deed.



4.4 Ranking of Services

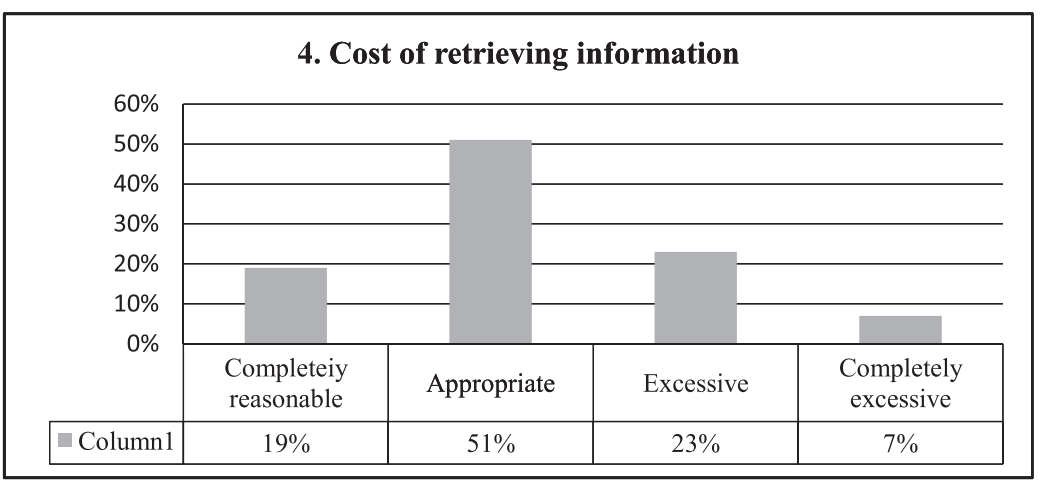
4.4.1 Availability of Information

Out of 100 interviewees, none of them ranked it very easy to get information from land offices. About 13% ranked it easy while 27% ranked it fair. Some 37% ranked it difficult and 23 % ranked it very difficult to get information from land offices as shown in Figure 3 below.



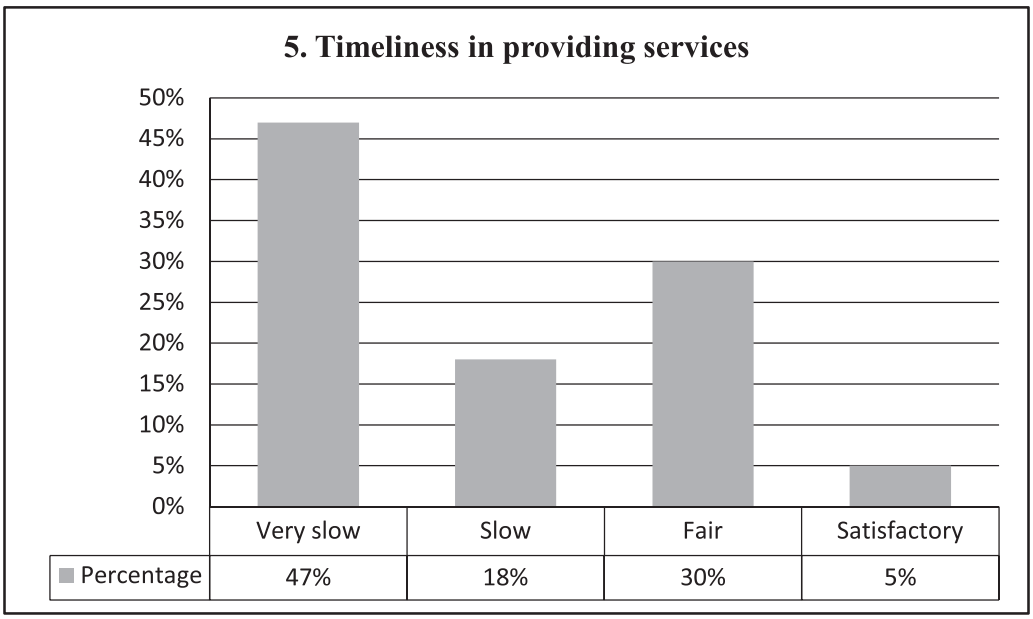
4.4.2 Cost of Retrieving Information

Figure 4 delineatesthe respondents' attitude about the cost of retrieving Information. More than half of the sample respondents or 51% thought the cost of transactions at land offices was appropriate. 23% and 7% of the respondents respectively thought that the cost of information access was excessiveand completely excessive. Only 19% of the respondentsthought that costs incurred at land registries were completely reasonable.



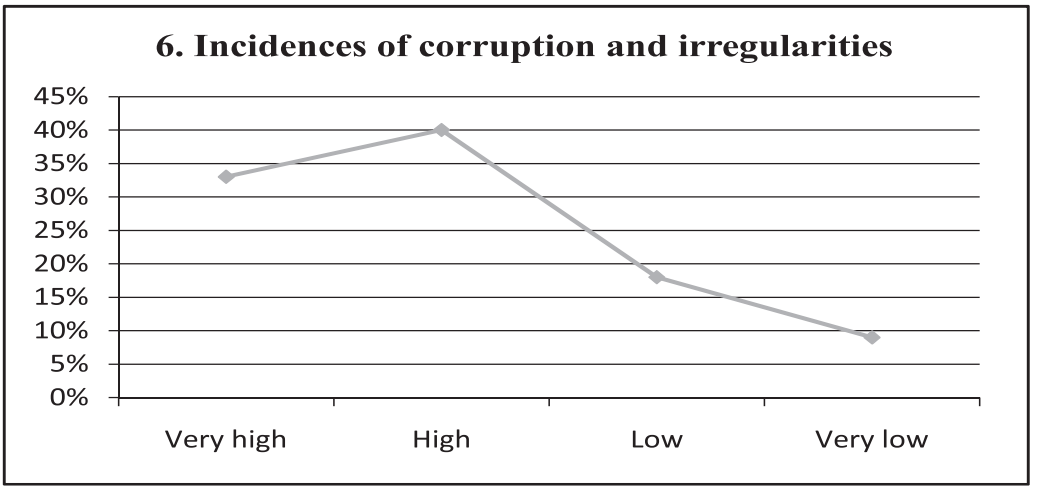
4.4.3 Timeliness in Providing Services

The majority of people are mostly dissatisfied with unnecessary delay ofproviding services at land offices.Nearly 18% of those surveyed gave timeliness a slow rating, while 47% gave it a very bad rating. Only 5% of those surveyed thought the transaction times at land offices were satisfactory, and only 30% thought they handled transactions fairly (Figure 5).



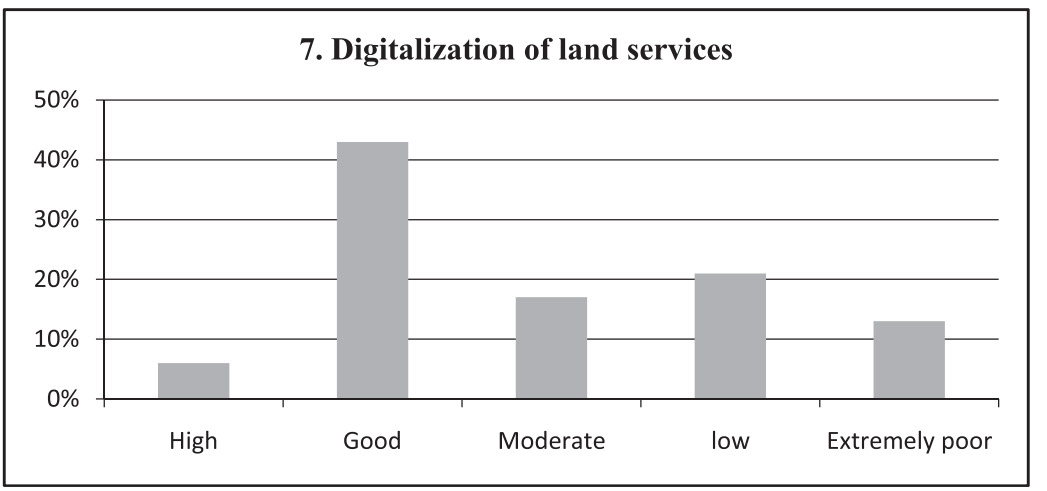
4.4.4 Incidences of Corruption and Irregularities

People's perception of corruption and irregularities in land offices is widespread. Just over half (73%) of the interviewees gave corruption occurrences and irregularities a high rating, with 40% giving it a high rating and 33% giving it a very high rating. Instances of corruption and irregularities were rated as low by 18% of those surveyed, and very low by 9% of respondents (Figure 6).



4.5 Digitalization of Land Services

Many people who were interviewed expressed their appreciation for the work made so far to achieve land digitalization. 43% of respondents gave the digitization process a good rating, 17% gave it a moderate rating, and 6% gave it a very high rating, making the process' overall satisfaction percentage of 66%. However, 34% of those surveyed gave it a below average rating, noting the fact that only Upazilla land offices are involved in the land digitalization process. Implementing land reform received low and extremely poor ratings, respectively, from 21% and 13% of respondents (figure 7).



5. Conclusion and Recommendations

The primary objective of the study is to assess the present status of service delivery and to identify the current administrative challenges, corruption, and irregularities in rendering quality service at AC land offices of the Barishal district. The findings of this study apply to other parts as the formation and structure of AC land offices are uniform across the country. As AC land offices are the largest public service-providing body in field level institutional framework, so findings of this study can help determine the existing status of service and identify the current administrative challenges, corruption, and irregularities in rendering quality service.

From the collected data it is clear that the present disintegrated system of land organization creates various problems in land supervision and service delivery including lack of coordination, complexity, inefficiency, corruption, and errors in ownership records. The steps that can be taken to make services available to a recipient easily at doorsteps are as follows:

1. IT-based systems for land organization and supervision may be developed to handle the inept and dismantled executive process of land administration.
2. A computer database can be introduced to preserve the updated record-of-right which may help to detect fictitious documents.
3. Trained, experienced, and educated persons are needed to be employed in survey and mapping works to make it flawless and less time-consuming.
4. A single parcel basis system of land registration could be introduced which will facilitate the creation of an efficient surveying, documentation, recording, and taxation system, which would provide transparent land administration of the government for the public.
5. The functions of record keeping and registration can be brought within a single executive process at the field level.
6. A rigorous and constant monitoring system could be introduced to guarantee transparency and effectiveness of the land officials.

Use and Development of Restorative Justice Mechanism in Criminal Justice System of Bangladesh: A Magic Lamp for Quick Delivery of Justice

Md. Abdur Rahim* Md. Mofazzal Hossain**

Abstract: The administration of criminal justice in Bangladesh mainly inherits its legacy from the British regime which was a colonial government and the main purpose of its administration was to govern the locals. The laws and judicial administration were made purposely coercive and pro-governmental. The age-old criminal judicial system is hopelessly futile to fulfill the ends of justice. In an independent and welfare state like Bangladesh the administration of criminal justice which was introduced by the British colonial Ruler has become incompatible with dispensing proper justice to the parties of criminal cases. It needs overall reformation and improvement in consonance with the ideological change of state nature. Restorative justice where the victim and the offender are actively involved in the trial process may be the best possible option for improvement of the existing criminal justice system. The restorative justice system emphasizes on the grievances and expectations of the victim rather than the mere punishment of the accused. The restorative justice formula involves the victims more actively than the conventional system where the victims are often ignored and thus, with the direct presence of victims, the court can deliver justice more effectively within a short period.

Keywords: Administration of Criminal Justice, Proper Justice, Restorative Justice, Victim, Accused, Effectively.

1. Introduction

Restorative justice (RJ) is a unique movement comprised of an aged notion. According to this concept, those who harm others must "make right" their wrongdoing by compensating the sufferer for their losses. It assumes that most offenders and non offenders, whether perpetrators, victims, or both,

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fundamentally share intrinsic humanity.[1] RJ prioritizes the recognition of the humanity of both the offender and the victim for the sake of the restoration of social relationships and peace rather than seeking revenge or punishment. The idea has become popular in many criminal justice systems as it hands a little piece of power back to the ordinary people to aid the justice delivery system. Restorative justice involves engaging the conflicting parties to address and minimize the adverse effects of a conflict fostering peaceful resolution, patience, inclusivity, respect for variety and responsible community practices.[2] One of the critical constraints that our criminal judiciary faces is a huge case backlog in the criminal trial practice.[3] The following statistics show the terrible condition of the pending cases in lower and also in higher judiciary.[4]

Divisions/ Courts	Number of Judges	Pending Cases	Cases per Judge
Appellate Division	5	15225	3045
High Court Division	91	452963	4,923
Sub-ordinate Courts	1700	34.65 lakh	2,038

According to Anisul Huq[5], as of January 2022, the number of pending cases in both the higher and lower courts of the country is 3.9 million.[6] The pending cases are increasing day by day and our lower and higher judiciary could not afford the efficient mechanism to resolve the cases.

[1]Howard Zehr and Harry Mika, 'Fundamental Concepts of Restorative Justice' (1998) 1 Contemporary Justice Review 47. Reprinted in Restorative Justice. Declan Roche (2003), ed. Pp. 73-81. The International Library of Essays in Law & Legal Theory, Second Series.

[2]United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes (Criminal Justice Handbook Series, 2006).

[3]<Ashutosh Sarkar, 'Courts hamstrung by judge shortage: No new appointments to fill vacant positions; case backlog rising' (The Daily Star, 16 Sep. 2021) https://www.straitstimes.com/singapore/courts-hamstrung-by-judge-shortage >accessed 6 April 2023.

[4]www.lawlab.com Accessed on 31st December, 2020

[5]Minister for Law, Justice and Parliamentary Affairs, The Government of the People's Republic Of Bangladesh.

[6]<https://bdnews24.com/bangladesh/chief-justice-siddique-sets-sight-on-combating-court-case-backlog-crisis> Accessed on 25th March 2023.

The accumulation of pending cases is significantly straining the court system as well as impeding the fundamental objectives of the criminal justice system of Bangladesh. In this situation, RJ could have played a quite vital role in decreasing the backlog of cases in the formal court system. It has come to the fore globally at a time when many are realizing that the traditional justice system is failing to fulfill the purpose of the rule of law and access to justice. In contrast to allocating key roles exclusively to the government and the offender, restorative justice involves the active participation of victims and communities in resolving conflicts. Instead of solely involving the government and the offender, restorative justice (RJ) incorporates the participation of the concerned victims and communities in resolving conflicts. Additionally, RJ uniquely evaluates performance, concentrating on the quantity of harm corrected or avoided rather than the severity of the punishment administered.[7]

2. Methodology

The paper is mainly based on the analytical approach of the existing laws, policies, and practices of the prevalent criminal justice system of Bangladesh. Both primary and secondary data are used in the preparation of the report. Existing laws and practices are analyzed critically to identify the crux of the current untoward situation in the justice delivery system along with a discussion of the feasibility of the use and development of a restorative justice model to make an overhaul in the administration of criminal justice.

3. Statutory Laws relating to restorative justice in Bangladesh

The Code of Criminal Procedure, 1898 (Cr.P.C.) is a principal procedural statute governing almost all aspects of a criminal case filed in a court of law. Apart from other special criminal procedural laws, it provides every step of a criminal proceeding ranging from filing a case to punishment and acquittal of the accused. This very law encompasses the idea of restorative justice in many

[7] Restorative Justice Briefing, For Justice and Reconciliation at Prison Fellowship International, May 2005, Washington DC 20041. <https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/rj%20brief.pdf> Accessed on 20 March 2023.

of its sections in the forms of compounding offense, withdrawal of the case, and compensation to the victim.

The special penal laws like Nari-O-Shishu Nirjaton Daman Ain 2000 (Women and Children Oppression Prevention Act), Acid Oporadh Daman Ain 2002 (Acid Crime Control Act), and Children Act, 2013 also emphatically encourage the active involvement of the victim and provide the payment of fine money to the victim as compensation which is one of the important features of restorative justice.

The UNDP has developed 'A best practice Handbook for members of the criminal justice system in Bangladesh' where transformation to a restorative justice system is highly encouraged.[8]

4. Meaning of Restorative Justice

To address criminal behavior, restorative justice strikes a balance between the needs of the offender, the victim, and the community. It entails a procedure of determining criminal activity that focuses on repairing the harm inflicted upon victims, ensuring accountability for offenders and frequently involving the active participation of the community in finding a resolution for the conflict.[9]

Restorative justice is applied as an alternative approach to resolving conflicts between parties. Based on the fundamental principle that the actions of one person victimizing another have broader implications, it affects not only the victim directly but also his/ her dependent family, in the wider sense the concerned community, and even the state as a whole. In restorative justice initiatives all parties with an interest in a specific offense get together to decide, how to determine the best course of action for addressing the consequences and long-term impact of the offense.[10] With the assistance of a trained facilitator,

[8]<https://www.undp.org/sites/g/files/zskgke326/files/migration/bd/Access-to-Justice-in-Bangladesh-Situation-Analysis--2015-f.pdf> Accessed on 20 March 2023.
[9]United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes (Criminal Justice Handbook Series, 2006).
[10]Zenaida P. Paloma, *Beyond Qualified Reclusion Perpetua:Restorative Justice and Alternatives to the Death Penalty: Proceedings of the Roundtable Discussion.* Manilla, Institute of Human Rights, University of the Philippines Law Center. <https://lawcat.berkeley.edu/record

this program creates a secure and controlled environment that enables victims and offenders to reach a mutually beneficial agreement aimed at addressing wrongdoing and preventing its recurrence. The focus of RJ is on achieving a "win-win" outcome for both parties.

5. Approaches of Restorative Justice

Unlike the conventional justice system where the main objective is to punish the convicted offender following the theory of retribution, the restorative justice system aims at the restoration of victims, maintenance of peace and tranquility in society and reconciliation between offender and victim.[11] In principle, the proposed system avoids some formalism of the traditional justice system allowing the victim and the accused to engage in discussion and dispute settlement facilitated by a trained professional.

The restorative justice system encompasses four key components: mediation, reconciliation, restitution and compensation. The main types of programs within this framework include (i) victim-offender mediation, (ii) community and family group conferencing, (iii) circle sentencing, (iv) peacemaking circles, and (v) reparative probation as well as community boards and panels.

The primary methods frequently used in restorative justice include:[12]

i) Redirecting cases away from the formal legal system by facilitating mediation between the victim and the offender.
ii) Requiring individuals found guilty of minor offenses to provide compensation to the victim instead of imposing fines or imprisonment.
iii) Sentencing individuals to engage in community service, such as working at a hospital, school or similar institutions as an alternative to fines or imprisonment.

/89331?ln=en> Accessed on 20th March 2023.

[11]Braithwaite, John. "*Restorative Justice: Assessing Optimistic and Pessimistic Accounts*." *Crime and Justice*, vol. 25, 1999, pp. 1–127. *JSTOR*, http://www.jstor.org/stable/1147608. Accessed 6 March 2023.

[12]Gordon Bazemore and Mark Umbreit, '*A Comparison of Four Restorative Conferencing Models'*, Symposium Training Manual, U.S. Department of Justice, Office of Justice Programs, 1997, p.1-20

The advantages of these approaches within the criminal justice system are quite evident. Restorative justice methods:[13]

i) Divert cases away from the formal criminal justice system relieving the workload on courts.
ii) Ensure victims receive compensation for their injuries and losses without the need for a separate civil trial.
iii) Aid in reducing prison overcrowding by expediting case resolutions, thereby reducing the number of pre-trial detainees and by utilizing alternatives to incarceration.
iv) Alleviate the burden on the police, who spend less time tracking witnesses, arranging their presence in court and providing testimony during trials.

6. The purview of Restorative Justice in the Legal System of Bangladesh

Restorative justice concepts are not new and have various names in different regions. In India it is commonly referred to as 'Punchayath' while in Pakistan and Afghanistan, it is known as 'Pukhtoon Jirga'. In the Middle East it is called 'Sulaha' and in Bangladesh, it is known as 'Shalish.' In the context of Bangladesh, 'Shalish' denotes the practice of arbitration or mediation where a select group of community members convenes with the victim, offender and community to resolve both civil and criminal disputes. Restorative justice is also observed through the existence of village courts of Bangladesh which has a longstanding tradition of informal dispute resolution through the 'Shalish' or village court system.

The people of Bangladesh are already acquainted with several restorative justices through traditional Shalish practices, non-governmental organizations (NGOs), and other participants in the informal judicial system where they handle minor offenses. Moreover, certain aspects of the current criminal justice

[13] *Criminal Justice in Bangladesh: A best practice Handbook for members of the criminal justice system,* 2015, Justice Sector Facility UNDP, Bangladesh.

system in Bangladesh also incorporate the guiding principles of restorative justice.[14]

i) The Code of Criminal Procedure 1898[15]

Section 345 of the Code of Criminal Procedure permits the 'compounding' of several offenses, meaning they can be settled between the involved parties without the need for the Court's decision. Compounding involves one party agreeing to provide compensation to the other party for the harm caused and the distinction is made between offenses that can be compounded without Court permission and those that require permission. This compounding process can take place at any stage of the legal proceedings, serving as a form of diversion that allows for the timely resolution of cases without burdening the Court. Importantly, this approach affiliates with the principles of restorative justice as it focuses on compensating the victim rather than imposing fines or imprisonment on the accused.

ii) The Children Act 2013[16]

The Act also incorporates diversion and various restorative justice methods. As stated in Article 48 of the Act, diversionary measures can be employed for children involved in conflicts with the law. Under the Act, children can be conveyed from the formal criminal justice system, starting from the time of arrest and continuing throughout the trial process. Instead, they are placed under the supervision of Probation Officers for monitoring. Additionally, a new inclusion in the Act is the utilization of family conferencing as a diversionary measure.[17]

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[14]Md. Abdul Kader Miah, Mahmuda Akter, Md. Kamruzzaman '*The Effectiveness of Restorative Justice Practice in Bangladesh: An Analysis,*' Humanities and Social Sciences. Vol. 5, No. 5, 2017, pp. 176-183. doi: 10.11648/j.hss.20170505.13

[15] Act No. V of 1898.

[16] Act No. 24 of 2013.

[17]Imman Ali, '*A Brief Commentary on the Children Act 2013,'* Bangladesh Legal Aid and Services Trust (BLAST) and Penal Reform International (PRI), 2014, p.1-36.

iii) The Village Courts Act 2006[18]

The Village Courts Act of 2006 and the Village Courts Rules of 1976 establish guidelines for the establishment, jurisdiction and operation of an ad hoc forum designed to resolve minor disputes or conflicts in rural areas. While the Village Court operates within a legal framework, it incorporates principles of restorative justice as outlined in the Act and Rules. The Village Courts process is predominantly informal, with active community participation ensured through nominations by both parties, including a representative from the community. According to the Act, the Village Courts possess exclusive jurisdiction to adjudicate all disputes specified in a schedule attached to the Act (section 3(1)). In the event of a dispute falling within the scope of this legislation, either party involved can seek remedy by applying to the Chairman of the Union Parishad (UP) for the formation of a Village Court. A village court comprises the UP chairman and four members, with two individuals nominated by each party, preferably from the Union Parishad. However, with the chairman's approval, the disputing parties may nominate individuals who are not Union Parishad members. Typically, the UP chairman serves as the chairperson of the Village Court. The Village Court is established and possesses jurisdiction to hear a case only when the parties involved reside within the boundaries of the corresponding union where the offense occurred or the cause of action originated. As per section 7 of the Act, the village court is empowered to issue an order for compensation, not exceeding twenty-five thousand taka, for the criminal offenses listed in Part I of the Schedule.

iv) Nari-O-Shishu Nirjaton Daman Ain 2000[19]

In the wake of the increasing rate of crimes against women and children in Bangladesh, Nari-O-Shishu Nirjaton Daman Ain 2000 (Women and Children Oppression Prevention Act) was passed incorporating relatively harsh punishments for offenders including a high amount of fines. Section 16 of the Act lays down the provision of payment of fine money to the victim of the

[18] Act No. 19 of 2006.
[19] Act No. 8 of 2000.

crime. Moreover, section 22 of the Act provides the recording of the statement of victims by a judicial Magistrate after the occurrence of the offense. This advanced provision highlights the significant participation of the victim in the judicial proceedings.

v) Acid Oporadh Daman Ain 2002 (Acid Crime Control Act)[20]

If any fine is imposed upon the convicted offender in a trial for acid crime, the above-mentioned Act stipulates that the fine shall be delivered to the victim instead of depositing in the government treasury.

vi) **Probation of Offenders Ordinance, 1960**[21]

The above-mentioned law can be linked with the ideological foundation of restorative justice where attempts are taken to restore the victim and make a reconciliation between victim and convicted offender. The Ordinance provides that the convicted offender may not be sent to jail for imprisonment, the sentencing judge may order to send him to the custody of a probation officer under certain conditions. During the probation period, the convicted offender may be required to work for the victim of the case which would be a compensatory measure for the victim.

7. Formalisms of Conventional Criminal Justice in Bangladesh

The majority of criminal laws in Bangladesh were enacted during the period of British colonial rule whose principal objective was to do business in the resourceful Indian sub-continent.[22] The criminal legislations were aimed at suppressing the common people of this area so that they obeyed the colonial government and did not dare to revolt against the foreign ruler. Consequently, the laws were anti-people and pro-government in nature. Besides, some provisions were directly imported from the European context to Indian society and people of the latter were not adaptable to the new system. The common

[20] Act No. 2 of 2002
[21] Ordinance No. XLV of 1960.
[22] S. M. Hasan Talukder,' *Law and Judiciary in Bangladesh: An Appraisal',* Bangladesh Law Research Centre, Dhaka, 2011, p. 39.

people were detached from the new criminal judicial system due to some complexities of court formalisms. After the departure of the British Ruler in 1947 the people of Bangladesh were left in the hands of some of the leaders of West Pakistan who were completely different from the demographic character of East Pakistan and they purposely ignored the overall development of this area including the legal arena. The administration of criminal justice during the two periods was nothing but an instrument to strengthen state power and oppress common people so that there would not be any revolt against the government. After liberation in 1971, there has not been much development in the administration of criminal justice. Some formalisms in the court proceedings stand as barriers for common people to get justice. For better realization of the lacunae of the traditional justice system and substituting them with the suitable provisions of restorative justice, it is advisable here to shed light on the different stages and formalities of the existing criminal justice system in Bangladesh.

i) Criminal courts in Bangladesh:

At a glance following courts are available in Bangladesh to adjudicate criminal cases:[23]

A. Supreme Court of Bangladesh

i) Appellate Division
ii) High Court Division

B. Subordinate Courts (For district only)

i) Court of Sessions
a) Sessions Judge
b) Additional Sessions Judge
c) Joint Sessions Judge

ii) Magistrate Courts
a) Chief Judicial Magistrate
b) Additional Chief Judicial Magistrate
c) Senior Judicial Magistrate
d) Judicial Magistrate

[23]www.judiciary.org.bdAccessed on 15 March 2023

Subordinate Courts (For metropolitan areas only)

i) Court of Sessions
a) Metropolitan Sessions Judge
b) Additional Metropolitan Sessions Judge
c) Joint Metropolitan Sessions Judge
ii) Magistrate Courts
a) Chief Metropolitan Magistrate
b) Additional Chief Metropolitan Magistrate
c) Metropolitan Magistrate

Apart from these regular criminal courts, there are some other special criminal courts and tribunals dealing with criminal cases like the International Crimes Tribunal, Speedy Trial Tribunals, Women and Children Oppression Prevention Tribunals, Special Courts and Cyber Crime Tribunals.

iii) Different stages and formalities of criminal cases in Bangladesh

Normally in all criminal cases, the State is a party as prosecutor and from filing to the final disposal of a case the State is required to conduct it while the judiciary plays the role of umpire. Broadly, a criminal case may be filed in two ways: i) filing the case in a police station (General Register or G.R. case) and ii) filing a complaint directly to the courts of Magistrates (Complaint Register or C.R. case).

Life of a G.R. case: Pre-trial, trial and post-trial. (All criminal cases irrespective of severity are initially filed and managed by the assigned Magistrates at the pre-trial stage and after completion of the pre-trial the case is transferred to trial courts.)

Pre-trial of GR Case

i) Filing an allegation to a police station
ii) Entry by police into prescribed form (First Information Report)
iii) Arrest of suspected accused by police
iv) Referring the case and arrestee to the nearest Judicial Magistrate (After the separation of judiciary in 2007 there are two types of Magistrates a) Judicial Magistrate for adjudicating criminal cases and b) Executive Magistrate for maintaining law and order situation.)

v) The arrestee may be released on bail sent to jail custody or remanded to police custody for a particular period not extending 15 days.
vi) Investigation by police
vii) Submission of investigation report by police
viii) Taking cognizance of cases on police reports or orders for further investigation.
ix) Transferring the case docket to the trial court

Pre-trial of C.R. Case

i) Filing a complaint to the Judicial Magistrate
ii) Examination of complaint, complainant, and witness by the Magistrate
iii) Taking cognizance of the case (there will not be any investigation)
iv) The magistrate may send the case to the police station or a Judicial Magistrate or any person for investigation or inquiry.
v) Taking cognizance of the case upon investigation report
vi) Transferring the case docket to the trial court

Trial

The procedures of trial by Sessions court and trial by Magistrate courts are more or less identical.

i) Charge hearing (the accused in the police report may be charged or discharged)
ii) Framing of charges
iii) Conviction of admission
iv) If not admitted the prosecution (state) is required to produce evidence of both witness and document
v) If guilt is not proved the accused is acquitted
vi) If guilt is proved the accused is asked to produce evidence on his behalf.
vii) Finally, the accused is either convicted or acquitted.

Post-Trial

i) An appeal can be filed to a higher court both by the accused and the prosecution
ii) Revision can be filed after the exhaustion of the appeal

If finally convicted the convicted person is sent to jail which is regulated and maintained by the Government.

8. Drawbacks of the Existing System and Untoward Consequences

As the present criminal justice system inherits its origin from the British colonial regime, it is not properly suitable for the present Bangladesh which people are no more under the colonial government.

Despite the transformation of Bangladesh into a welfare state, governed by elected representatives with the primary goal of advancing the nation's overall welfare, the criminal justice system has not kept pace with this ideological shift. The existing criminal justice system in Bangladesh exhibits noticeable shortcomings and weaknesses. Which are:

i) **Adversarial Trial System:** As Bangladesh belongs to the common law legal system its criminal justice adheres to an adversarial trial procedure where the judge merely plays a third-party role in a legal battle between two parties. Despite knowing the fact the judge is not allowed in principle to interfere with the arguments of lawyers. A party may be defeated for incompetency of lawyers although he has substantial merit in the case. Since the judge plays a passive role in the legal battle like an umpire, facts may not be discovered in a case.[24]

ii) **Investigation by Police:** All criminal cases filed under the GR module are investigated by the police of the local police station and the police are also entrusted with the duty of collection of evidence of criminal cases. The police department of Bangladesh has to perform multifarious assignments like maintenance of law and order situation, VIP protocol, prevention of crimes, investigation of criminal offenses, collection and production of evidence and witnesses in criminal proceedings and so on.

[24]Dr. Justice V.S. Malimath and Others, Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, March 2003, Volume 1, p.22-23. <https://www.mha.gov.in/sites/default/files/2022-08/criminal_justice_system%5B1%5D.pdf> Accessed on 15 March 2023.

It is tough for the police department to dedicate time to the investigation of a criminal case and make a proper investigation report. In sensational cases with political involvement, it is often alleged that investigation courses are frequently manipulated by interested quarters.[25] Due to direct control of the political government in power, the investigation of some special cases is concluded within an abnormally short period while some cases face inordinate delays to investigation report stage. If the investigation of a criminal case is not conducted properly, timely and impartially the trial must produce faulty judgment.

iii) **State-run Prosecution:** The state bears the primary responsibility for upholding peace and order in society, and consequently, it is involved as a party in all criminal cases. In Bangladesh the trial of criminal cases is conducted by the Public Prosecutors (PP) and Assistant Public Prosecutors (APP). The government appoints public prosecutors to conduct criminal cases on behalf of the government. It is common practice in Bangladesh that PPs are appointed purely on political considerations without any formal screening process and the remuneration is very low 500 (Approximately. USD 6) per day for a PP (The Code of Criminal Procedure, S 492). As the PPs are utterly partisan person and regulated by the executive government it is a far cry to get justice in the cases where political issues are involved.

iv) **Complex Procedure:** Court procedures and formalisms are not easy to understand for the non-law litigants as the procedural laws were imported from abroad during the British regime. Hence general litigants have to depend on the vested middleman and remain aloof from the hearing of the case.

v) **Absence of Victim:** In a criminal proceeding especially in a GR case the police make an investigation and submit a police report to the court and state-run prosecution presents the case in trial. The victim of the offense is not actively involved with the proceeding except as a witness.

[25] Hussain Mohmmad Fazlul Bari,20'5, "*An Appraisal of Criminal Investigation in Bangladesh: Procedure and Practice*,' Journal of the Asiatic Society of Bangladesh,2015, Vol. 60(2), p. 152

Resultantly, in the period the victim loses interest in the case and the case does not come to an end due to the non-persuasion of the victim and state as well.

vi) **Fine:** In principle, if an accused person is finally convicted the court may penalize the convicted offender with a monetary fine along with other forms of punishment like death and imprisonment. However, the money for fines is deposited to the government treasury instead of payment to victims of the offense. Although the offender is given monetary punishment the victim gets nothing and the victim's financial loss due to the occurrence if any is not cured anyway.

vii) **Presumption of Innocence:** In the common law legal system the accused is considered innocent if he denies an allegation brought against him during the trial session. Now the prosecution is asked to bring proof against him and prove his guilt beyond reasonable doubt. But practically it is quite tough for the prosecution to prove the case beyond doubt. Within our common law system, offenders are granted an increased set of procedural rights, granting them a more active and influential role within the judicial process.[26]

viii) **Corruption:** The administration of justice in Bangladesh is commonly blamed for rampant corruption and irregularities. Apart from parties of the case many actors are involved in the justice delivery system and often subsidiary actors tend to get involved with corruption as they are free from any authoritative supervision and control. Generally, people are not confident enough about the fair procedure of courts.

ix) **Case Log:** Currently, the criminal courts are facing a significant burden with a substantial volume of cases, and this situation is deteriorating with each passing day. Lower courts are confronted with approximately 1.328 million pending civil cases and 1.725 million pending criminal cases.[27] The substantial backlog of criminal cases in both the higher and

[26]M. Shah Alam, *Bangladeshe Ainer Sangsker o Ain Commission* (*Legal Reforms in Bangladesh and Law Commission),* New Warsi Book, Dhaka, 2016, p. 122.

[27]<https://www.thedailystar.net/country/news/more-3582-lakh-cases-now-pending-law-minister

lower judiciary of Bangladesh is impeding the public's expectation of timely justice. The number of pending cases in the country's higher and lower courts has reached 3.9 million as of January 2022, and this figure continues to rise.[28]

x) **Faulty Jail Administration:** The prison system in Bangladesh continues to operate based on outdated laws established during the British colonial era in the 19th century. These archaic statutes primarily focused on imprisoning and securely detaining individuals using repressive and punitive measures. Unfortunately, there have been no substantial revisions to the jail code, and the essential recommendations put forth by the Jail Reform Commission have not been implemented.[29] The jail administration of Bangladesh is blamed for corruption and center of different kinds of crimes, especially drug-related offenses. Though the ulterior objective of jail administration is to bring reformation into the behavior of convicted inmates it cannot perform its goal. Rather, a minor offender turns into a harder criminal in jail coming into association with other serious offenders.

9. Use of Restorative Justice for Redemption

As previously discussed, implementing restorative justice can serve as a viable solution for upgrading the current criminal justice system. Under the restorative system, the victim of an offense will actively participate in the process, ensuring that their grievances are duly addressed before court proceedings. Whatever the decision of the court may be, the victim's rights and issues will be protected along with upholding the concern of the state namely maintenance of law and order situation by punishing offenders.

Public confidence in the criminal judiciary may be increased through the use of a restorative justice system because the interests of both the victim and accused

-bangladesh-1758820> Accessed on 20 March 2023.

[28]<https://bdnews24.com/bangladesh/chief-justice-siddique-sets-sight-on-combating-court-case-backlog-crisis> Accessed on 25th March 2023

[29]Pushpa Fariya, Prison System Of Bangladesh, Academia, <https://www.academia.edu/11653887/Prison_System_Of_Bangladesh> Accessed on 15 March 2023.

are protected in the system. At present the criminal justice system of Bangladesh is seriously lacking public confidence with only 13 percent of people prefer going to courts while the rest would rather have community leaders solve their disputes.[30]Restorative justice is essential for rebuilding public trust in the justice system by safeguarding the innocent and the victim while ensuring the appropriate and firm punishment of the offender.

Through massive use of the restorative justice system, the administration of justice may get rid of notorious corruption and establish good governance in justice delivery mechanisms. As the victim and witness actively participate in the proceeding with the supervision of judicial officers the vested subsidiary actors may be excluded from the scene which may ultimately result in minimizing corruption in the judiciary. The more influence of vested interested group is controlled the chance of eradication of corruption is increased.

As regard the untoward huge backlog of criminal cases pending in the courts may be reduced by the frequent use of the restorative formula of the justice delivery system because some formalism of criminal courts are curtailed in the proposed system. There will not be any lengthy examination and cross-examination of witnesses and lawyer's argument in the new system and the court may reach the conclusion based on allegation and admission of the parties. If the victim and accused are left in a controlled environment to share their feelings it would be easy for the presiding officer of the court to conclude the dispute within a relatively short time emphasizing on lawful demands of the parties.[31]

The fine is one of the important forms of punishment in the criminal justice system of Bangladesh but it does not play any role in recovering the financial loss of the victim. In the restorative justice system, if the guilt of the convicted person is established, they will be required to provide compensation to the

[30]<https://www.thedailystar.net/round-tables/news/digital-transformation-justice-system-bangladesh-3065971 > Accessed on 15 March 2023.
[31]Md. Abdul Kader Miah, Mahmuda Akter, Md. Kamruzzaman. The Effectiveness of Restorative Justice Practice in Bangladesh: An Analysis, *Humanities and Social Sciences*. Volume 5, Issue 5, September 2017, pp. 176-183. doi: 10.11648/j.hss.20170505.13.

victim as a penalty instead of depositing to the government treasury. This formula serves not only the ultimate philosophy of punishment which is deterrence to other liked minded offenders but also contributes to restoring and rehabilitating the victims of crimes. A writ petition was lodged with the Madras High Court, and the court acknowledged the petitioner's request for compensation to be awarded based on the actual damages incurred.[32] General people of society can directly notice the result of the proper functioning of justice administration when they find the victim's grievance is adequately addressed. Monetary compensation mitigates the agony of the victim more efficiently than the deposit of fine money to the government.

10. Major Findings

i) Generally, it is not possible to attain the ulterior goal of a welfare state through the judicial mechanism introduced by a colonial ruler;

ii) The administration of the criminal justice system of Bangladesh is too clumsy and excessively formalistic;

iii) The current mechanism of the criminal justice delivery system is hopelessly defective and unfruitful because a large number of criminal cases are pending in the different courts and tribunals in Bangladesh.

iv) The traditional punishment practice in Bangladesh presumably fails to achieve the ulterior goal of the penal theories;

v) The participation of the victim is insignificant in the whole process of the prevailing justice delivery system resulting in incremental depression in the minds of victims over time;

vi) Due to the gradual erosion of public confidence in the administration of the criminal justice system, crime rates and public lynching are increasing day by day in Bangladesh.

[32] *R.Gandhi v.Union of India* [2010] 6 S.C.R. 857 <https://main.sci.gov.in/pdf/Supreme Court Report/2010_v%206_piv.pdf> Accessed on12 March 2023.

11. Recommendations

i) It is highly imperative to amend the existing criminal laws in Bangladesh including the Penal Code and the Code of Criminal Procedure, 1898;

ii) In restorative justice system the victim's active participation is highly encouraged to be the best-suited possible solution for the quick delivery of justice to the parties. The restorative justice system actively engages the victim of the case and thus assists the courts to unearth the mystery of the case within a short period.

iii) Involvement of the victim in the trial process and sentencing stage may play an important role in mitigating the grievance of the victim against the accused thus enhancing public confidence in the judiciary.

iv) The provisions of the laws should be tailored in such a manner that the judges can play an active role in the investigation and trial procedures to avoid the distance between the parties and the presiding officers of the courts.

v) The judges, lawyers, law academics, and stake holders should be made aware of the benefits of the restorative justice system.

12. Concluding Remark

The legal system of a country needs to be changed keeping pace with the change of society. The Society of Bangladesh experienced two overhauling within the last few decades-independence through a bloodless event in 1947 and independence through a blood shedding event in 1971 but the laws and justice administration have not been made adaptable to the new situation. It is alleged that the administration of criminal justice in Bangladesh hopelessly fails to dispense justice to common people at a satisfactory level. For such an untoward situation our age-old laws and judicial system are to be blamed because these were made not to serve but to curb people by detaining them in jail. Now as the citizens of an independent and welfare state, the people of Bangladesh have the legitimacy to claim reformation of existing law and legal system. The

restorative justice system may be regarded as the optimal alternative to the existing criminal justice system, which often fails to meet the expected standard of satisfaction.

By the proposed system both the victim and offender of a case are given priority and decision is taken to predominantly uphold the interest of the parties. This innovative approach to justice delivery has gained global acceptance and is widely employed worldwide. It would be prudent for us to seriously consider implementing this system in our criminal justice system, as it has the potential to facilitate easy access to justice for the people.

Domestic Enforcement of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Bangladesh: A Compliance Audit

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Abstract: Bangladesh became a signatory of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) back in 1998; however, it took two decades to reaffirm its commitment to submit the initial report. The lingering to comply with the CAT Convention's reporting requirement may be attributable to successive ruling administrations' refusal to end impunity for all acts of torture. In the concluding observation, the Committee while recognizing the beneficial implications of ratifying the CAT convention on a number of positive legislative and policy changes, it has expressed its deepest concerns about reports of widespread and routine torture and ill-treatment at the hands of law enforcement agencies (LEA) in Bangladesh as well as the slow progress of the torture cases brought against LEA under the Torture and Custodial Death (Prevention) Act of 2013. Moreover, Bangladesh has been marred by persistent allegations of torture in the report of a number of national and international NGOs'. In line with the context this article analyzes the success of Bangladesh's efforts to reform its laws and policies in accordance with the convention. Furthermore, it explores the root causes and contextual factors that contribute to the prevalence of torture in Bangladesh. The paper ends with a call for concerted efforts from the government, civil society, and international actors to ensure full compliance with UNCAT provisions, thereby creating a safer and more just society for all.

Keyword: Torture, Ill-treatment, Law Enforcement Agencies (LEA), Investigation, Victim

1. Introduction

Over the past few decades, worldwide legal consensus on the absolute

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prohibition of torture has been strengthened. Torture, however, was a common form of punishment in ancient times, especially for those who did not conform to community norms, including slaves, outlanders, internees, and those who were part of diverse ethnic and theological outcasts.[1] Over time, the practice grows common against all persons, citizen or non-citizen, primarily in response to their participation in crimes. One thing that has been consistent across all of the many forms of torture was the extraction of information or confession from the alleged offenders in response to their involvement in crimes. Yes, the perpetrators of crimes must be held accountable; nevertheless, under no circumstances may torture be used to prove their involvement in the crime. In light of this, the global community takes action to eradicate all manifestations of torture under any conditions. The first attempt was made in 1948 while the very first global declaration comprehending the rights of people was being created. The declaration unequivocally asserted the complete prohibition of torture and other manifestations of mistreatment towards any person. However, there is a growing prevalence of torture as an unconventional means of interrogation employed worldwide. In response to the worldwide upheaval, the United Nations (UN) issued a non-binding resolution in 1975 known as the 'Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'. The Declaration provides a comprehensive framework for all nations aiming to resist the practice of Torture.[2] Nevertheless, the endeavor proves to be fruitless. The international community contended that it was imperative to embrace a Convention that would carry legal obligations. Thus, in 1984, the UN General Assembly adopted the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishments (CAT). The Convention came into effect on June 26, 1987. The principles articulated in the 1975 Declaration are adhered to as a guiding framework for the Convention. The primary goal of the Convention is to prevent and end the heinous crimes of torture while also affirming to bring the perpetrators before a court of law.[3] In addition, the Convention references a globally acknowledged meaning of torture (Article 1) and establishes a binding treaty commitment for state parties to undertake all requisite legislative,

[1]Christopher J. E Inolf, 'The Fall and Rise of Torture: A Comparative and Historical Analysis' (2007) 25(2) Sociological Theory 101.

[2] Universal Declaration of Human Rights 1948, Article 5.

[3]The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

administrative, judicial, and other suitable actions to debar acts of torture (Article 2).[4]

While Bangladesh is a signatory to UNCAT and has taken steps to comply with its obligation, the specter of torture casts a long and troubling shadow, and allegations of torture continue to raise prime concerns. Hence, the key objective of this paper is to look into the legislative efforts of Bangladesh to combat the practice of torture and evaluate the measures that have been successful in upholding international standards. The paper has been split into seven parts, including an introduction and a conclusion, allowing it to attain the intended objective. The legal requirements to establish the crime of torture have been the exclusive subject of the conceptual comprehension phase (Part 2). The analysis of the requisites is done in light of potential international standards. Part 3 of the paper has concentrated on the international legal norms on the prohibition of torture. This section has outlined and delved into five UNCAT obligations towards the signatory state. Part 4 examined Bangladesh's national legal regime on the prohibition of torture and its compliance with international standards. While analyzing the national standard on the prohibition of torture, the paper has identified the gap between international and national legal regimes. The prevalent challenges in implementing the Anti-Torture Act of Bangladesh have been dissected in Part 5. This section has argued that the prime causes for continued acts of torture are noncompliance with arrest and investigation procedures, the appalling conditions of the detention facility, insufficient legal protection, ineffective police regulations, and the statutory provisions of police impunity. In light of the aforementioned challenges, Part 6 offers a list of recommendations for bettering the repulsive situation. The paper ended by urging the appropriate body to respond right away to correspond with the outlined measures and thereby establish a secure and violent-free atmosphere.

2. Conceptual Understanding of the Term 'Torture'

The Convention[5] as well as its General Comment[6] specifically urges that state parties shall structure their national statutory norms in line with the stipulated requirements of the Convention. Hence, the requirements need to be assessed first. The most rigorous and widely-cited exposition of torture as defined by the

[4] ibid.
[5] The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment 1984
[6] CAT, General Comment 2.

Convention[7] encompasses four additive elements: (a) the intensity of pain or suffering; (b) the requirement of intent; (c) the requirement of specific purposes; and (d) the engagement of a public official.[8]

The first requirement requires the intensity of suffering must be taken into account to constitute any act or omission as 'torture'. However, the treaty is silent about any forms of conduct that are severe enough to satisfy the threshold for torture. Hence, the requirement raises two prime concerns, one is the status of pain or suffering outside the ambit of severity, and the other is the standard yardsticks measuring the severity of infliction. In the said contexts, the embargo against 'other forms of ill-treatment' is relevant. The Convention responds by stating that any conduct that does not meet the requirements of torture due to the absence of one or more of the prerequisite elements may nonetheless be subject to the prohibition outlined in Article 16 of the Convention. Yet, the Convention does not offer any precise guidelines of what constitutes 'cruel, inhuman, or degrading treatment'. However, a series of case laws and recognized principles have been established to conceptualize the perimeter between the two such as 'minimum threshold of severity', 'hierarchical' interpretation, distinctions criteria, etc. The European Court of Human Rights by initiating the idea of the 'minimum threshold of severity' cited that the distinction must be measured based on "all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age, and state of health of the victim, etc."[9] On the other hand, the degree of seriousness of the treatment is the mainstay in the 'hierarchical' interpretation approach.[10] Besides, several jurisprudential analyses have summarized the following aspects to be taken into consideration while defining the act of torture: the

[7] UNCAT 1984, Article 1: The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions

[8] Guide on Anti-Torture Legislation (Association for the Prevention of Torture, 2016) <https://www.apt.ch/en/resources/publications/guide-anti-torture-legislation-2016> accessed 13 April 2023.

[9] Selmouni V France [2000] 29 EHRR 403

[10] citing David Weissbrodt, 'The Absolute Prohibition of Torture and Ill-treatment' (2006) 6 LONG TERM VIEW 22.

powerlessness of the victim,[11] the severity of the treatment,[12] and the purpose of the ill-treatment.[13] The UN Special Rapporteur on Torture has enlisted a detailed catalog of severe atrocities constituting the instance of torture including 'beating; extraction of nails, teeth, etc.; burns; electric shock; suspension; suffocation; exposure to excessive light or noise; sexual aggression; administration of drugs in detention or psychiatric institution; prolonged denial of medical assistance; total isolation and sensory deprivation; threats to torture or kill relatives; and total abandonment'.

The second essential prerequisite to qualify the act of torture is the 'intention' of the perpetrator.[14] The use of the term "intentional" underscores that torture involves a deliberate and purposeful act, not a negligent or accidental one.[15] In legal systems around the world, including those that have ratified UNCAT, torture is a criminal offense that requires proof of intent and purpose. Negligence, which refers to the failure to exercise reasonable care or caution, does not meet the threshold for the crime of torture.[16] Instead, torture involves acts that are knowingly and intentionally inflicted on individuals to cause them severe physical or mental suffering.[17] Hence, if the prison officials negligently leave any prisoners without any food and thereby suffer severe pain will undoubtedly constitute a violation of human rights norms, but the action falls

[11]Ireland V United Kingdom [1978] 5310/71 ECHR 1.

[12]Danemark V Greece [1970] 3321/67 ECHR 1.

[13]Selmouni V France [2000] 29 EHRR 403.

[14] UNCAT 1984, Article 1. Also, see – 'Torture in International Law A guide to jurisprudence' (2008) APT and CEJIL <https://www.apt.ch/sites/ default/files/publications/ jurisprudenceguide.pdf> Accessed 04 September 2023.

[15] Juan E. Mendez, 'How International Law Can Eradicate Torture: A Response to Cynics' (2016) 22 Southwestern Journal of International Law 257. Also, see - David Weissbrodt and Cheryl Heilman, 'Defining Torture and Cruel, Inhuman, and Degrading Treatment (2011) 29 LAW & INEQ 386

[16] CAT, 'Discussion of Denmark: Summary Record of the 757th Meeting' (8 May 2007) CAT/C/SR/SR.757 UN Doc.35 Citing – 'Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies' (2009) The United Nations Voluntary Fund for Victims of Torture. Also, see - 'Jurisprudence of the CAT Committee' World Organization Against Torture <https://www.omct.org/site-resources/legacy/ handbook4_eng_04_part4_ 2020-12-11-144643.pdf> Accessed 04 September 2023.

[17] Manfred Nowak, 'What Practices constitute Torture?: US and UN Standards' (2006) 28 Human Rights Quarterly 809-841. ("For example, when a detainee is forgotten by prison guards and slowly starves to death, the detainee certainly endures severe pain and suffering, but the conduct lacks intention and purpose and, therefore, can "only" be qualified as cruel or inhuman treatment.").

short of the requisites of torture because of the absence of intentional behavior.[18] Yet, the negligent act covers the international standard of 'cruel and inhuman treatment'.[19]

The third component of torture is the purposive element of infliction.[20] The requirement of malicious purpose is attached to the motivation of the transgressor behind their wrong deeds.[21] The UNCAT enlisted several purposive elements of the torture inflicted:[22] extracting a confession, obtaining from the victim or third person information, punishment, intimidation, coercion, or discrimination.[23]

The last requirement of torture is the status of the perpetrator.[24] The status of the perpetrator and its liability can be examined from two perspectives: (a) the direct involvement and liability of the state actor, and (b) the state actor's passivity regarding the participation of the non-state actor in the crime of torture. In the latter case, the liability of the public official springs up in the following two circumstances co-jointly, one is the awareness of the private actors' acts of torture, and the other is the failure of taking appropriate action to prevent the evil.[25]

3. International Legal Standard on the Prohibition of Torture: Analysis from the Perspective of State Party Obligation under the UNCAT and other International Legal Instruments

3.1 State Party Obligation under UNCAT

[18] Ibid

[19] UNCAT 1984, Article 16. Also see - Nowak (n 17)

[20] Sarah Joseph and others, *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies* (Boris Wijkström, World Organisation Against Torture, 2006)

[21] Nigel Rodley and Matt Pollard, 'Criminalisation of Torture: State Obligations Under The United Nations Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment or Punishment' (2006) 2 European Human Rights Law Review 124.

[22] Manfred Nowak, Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary* (2nd ed, Oxford University Press, 2019).

[23] Kidus Meskele, 'Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies' (2014) 5 Beijing Law Review 49.

[24] Inolf (n 1).

[25] Inolf (n 1) 18.

At the very beginning, the Convention imposes upon state parties an obligation to 'take effective legislative, administrative, judicial or other measures to prevent acts of torture' within their jurisdiction. This general obligation is further followed by several specific obligations like (a) criminalization of torture under penal laws, (b) adoption of the exclusionary clause under national legislation, (c) creation of universal jurisdiction over alleged torturers, (d) prompt, and impartial investigation, and (e) victim's right to redress and reparation.

3.1.1 Criminalization of the Offence of Torture

The UNCAT prescribed an obligation upon state parties to enact separate and specific legislation by criminalizing the offense of torture as well as other ill-treatment.[26] State parties while drafting their legislation must be constructed in line with all the requirements specified in the Convention.[27] Furthermore, while punishing for the offence of torture the 'gravity of the crime' shall be taken into consideration.[28] The Convention does not, however, stipulate a formal time limit for punishments. On the flip side, the Committee has stressed that it shall incur the heaviest punishments, and be assessed similarly to other grave criminal acts of national law.[29] The Convention further requires that state parties in their statutory legislations explicitly affirm the absolute nature of the prohibition of torture including ousters of all kinds of state-created defenses like 'state of war or emergency, internal political instability, military or superior orders, and so forth'.[30]

3.1.2 Adoption of Exclusionary Clause under National Legislation

A torturer cannot be permitted to take benefit from his offense; as such the Convention obligates state parties to negate all kinds of evidence elicited by

[26]UNCAT, Article 4.
[27] CAT, General Comment N°2
[28] UNCAT 1984, Article 4; See also CAT, General Comment N°2
[29]J. Herman Burgers and Hans Danelius, The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Dordrecht: M. Nijhoff, 1988).
[30] UNCAT 1984, Articles 2; See also CAT General Comment N°2; See also J. Herman Burgers and Hans Danelius, The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (M. Nijhoff, 1988) 124.

unlawful means: coercion, force, physical compulsion, and all that jazz.[31] On the second point addressing the issue of the onus of proof in instances of an allegation of torture, the onus shifted upon the state authorities.[32]

3.1.3 Universal Jurisdiction

International law recognizes the universal jurisdiction over the offense of torture. Thereby, it alleviates the preference for 'safe havens' for the perpetrators from the savor of prerogative in any region. Under the principle, a state can either initiate its legal proceedings or ensure its liability through the extradition process.[33] Besides, through active and passive nationality principles state parties establish jurisdiction over the perpetrators of its national as well as the victim who is a national of the concerned state.[34] The Convention also calls for designing the state's jurisdiction on all areas over which it has *de jure or de facto* command.[35]

3.1.4 Prompt and Impartial Investigation

In *Blanco Abad v. Spain*[36], the CAT Committee underlined the importance of conducting a speedy and fair investigation into any allegations of torture. First, it is crucial to make sure that these actions end right away. Secondly, the physical upshot of the abuse melted away fast, consequently, depriving the victim of any tangible proof that could be needed to substantiate their allegation.[37] To serve the said obligation, state parties are required to install an independent and impartial forum to carry out investigation procedures.[38] The investigating agency should be separated from the law enforcement authorities.[39] The Convention does not specify any formal investigation

[31] APT (n 8) 27; See also UNCAT 1984, Article 15; See also Non-Admission of Evidence Obtained by Torture and Ill-Treatment: Procedures and Practices, (CTI 'UNCAT Implementation Tools', 2020)
[32] CAT, P.E. v. France (19 December 2002), UN Doc. CAT/C/29/D/193/2001
[33] UNCAT 1984, Articles 5, 7, and 8.
[34] UNCAT 1984, Article 5.
[35] CAT, General Comment N°2; See also CAT, J.H.A. v. Spain, UN Doc. CAT/C/41/D/323/2007 (21 November 2008)
[36] CAT 59/96
[37] *Blanco Abad V Spain* [1998] Communication No. 59/1996, U.N. Doc. CAT/C/20/D/59/1996.
[38] UNCAT 1984, Article 12.
[39] Ibid.

procedure. However, there is a manual called the 'Istanbul Protocol Manual[40] that includes guidelines and criteria that are accepted internationally on how to identify and record signs of torture so that the documentation can be used as evidence in court. Another essential prerequisite for prompt investigation is that it should be completed as early as possible. Several jurisprudential guidelines have evolved over the period as to the investigation timeline for torture charges. For instance, in *Halimi-Nedzibi v. Austria*[41], the fifteenth-month delay in starting the investigation into a torture claim was counted contrary to the requirement of 'prompt' investigation, whereas, in the *Blanco Abad*[42] case, failure to initiate the investigation within eighteen days constituted a breach of the investigation norms.[43]

3.1.5 Victim's Right to Redress and Reparation

The Convention affirms the rights of the victim to file a complaint before a competent forum with no fear of retaliation. The Convention further declared that the affected have a right to equitable and fair redress.[44] Besides the above, the Committee has precisely outlined five forms of reparation to the victim of torture: (a) restitution, (b) compensation, (c) rehabilitation, (d) satisfaction, and (e) guarantee of non-repetition.[45]

3.2 National Preventing Monitoring Body under OPCAT

The Optional Protocol of the Convention (OPCAT) has introduced two categories of preventive monitoring systems: the Subcommittee on Prevention of Torture (SPT) at the international level and the National Preventive Mechanisms (NPM) at the national level. The NPM inspects the treatment of prisoners. It also takes the initiative to strengthen the protection mechanisms of the detainee against any kind of custodial ill-treatment. The protocol further stipulated that the NPMs should be furnished with recommendatory functions. It can make recommendations to the concerned authority to improve the standard of living of the prisoners as well as submit proposals and observations on

[40] UN Office of the High Commissioner of Human Rights, Professional Training Series, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
[41] CAT8/91
[42] Blanco Abad v. Spain (CAT 59/96)
[43] Ibid.
[44] UNCAT 1984, Articles 13 and 14
[45] CAT, General Comment 3.

existing or draft legislation. In addition, the NPMs encompass four major functions: visiting function, advisory function, educational function, and cooperation function. Examples of NPMs are the Human Rights Defender's Office in Armenia, the National System to Prevent and Combat Torture in Brazil, and the Parliamentary Ombudsman in Denmark.

3.3 Code of Conduct of Law Enforcement Agencies

One of the striking features of torture is that it requires the involvement of a person having an official capacity. Here, the person having an official capacity indicates those who are accountable for protecting the law and order of a nation, Law Enforcement Agencies. Therefore, the international community attempts to frame effective guidelines for their duties in several non-binding instruments. These include the Code of Conduct for Law Enforcement Officials, 1979; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990; the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, 1988; 10 Basic Human Rights Standards for Law Enforcement Officials prepared by Amnesty International; and the Basic Principles for the Treatment of Prisoners (1990). These instruments specify the code of conduct of law enforcement officials from three prospects: (a) guidelines during the time of investigation, (b) duties at the time of arrest and detention, and (c) duties as to the treatment of prisoners.

4. National Legal Regime on the Prohibition of Torture and its Compliance with International Standard: Bangladesh Perspective

The Constitution of Bangladesh stands as a shield against torture and other forms of ill-treatment.[46] This safeguard is recognized as a fundamental right from which there cannot be any deviation.[47] However, the specific definition of torture is absent in the Constitution. Bangladesh ratified the Convention (UNCAT) on 05 October 1998. Yet, the adoption of statutory legislation on torture, which is the prime obligation under the UNCAT towards state parties, takes a decade after its ratification. In 2013, Bangladesh finally enacted the Anti-Torture Act, Torture and Custodial Death (Prohibition) Act, 2013.[48]

[46] Constitution of Bangladesh 1972, Article 35(5).
[47] Constitution of Bangladesh 1972, Article 47.
[48] Act No. 50 of 2013.

4.1 Analysis of the Definition of 'Torture' under National Regime

The Anti-Torture Act adopts a definition largely similar to that in Article 1 of the UNCAT. The Act defined torture 'as any physical or psychological act or omission that causes pain'. The Act also indexed the purpose behind the acts of torture: (a) collection/extortion of information or confession from any person or about another person; (b) punishment of the suspected person or any accused person; (c) intimidation of any person or any other person through him; and (d) incitement or provocation of someone, based on discrimination of any kind, by or with the consent and authorization of a government official.[49]

Whilst making a comparison the UNCAT standard discloses that the definition falls short of three essential components: (a) the intensity of pain inflicted, (b)gender-based outrages, and (c) the recognition of non-state actors' transgression.

The 'severity' of pain and suffering is one of the crucial elements of torture. More specifically the requirement is needed for two specific purposes, one is to establish a distinction between torture and other inhuman or ill-treatment, and another one is to penalize the offender based on the nature of gravity of the crime. Bangladesh Anti-Torture Act further excludes private actors' commission of torture and only covers situations in which government officials are directly involved. For instance, where there is domestic abuse the inaction of the government official indirectly falls under the purview of international standards.[50]

4.2 State Party Obligations: Critical Examination of National Laws and its Loopholes

Bangladesh ratified the Convention in 1998, hereby, it has agreed to uphold the obligations of the Convention. This part of the paper assesses how far Bangladesh is successful in addressing its commitment under the UNCAT:

4.2.1 Criminalization of the Offence of Torture

The Anti-Torture Act of Bangladesh criminalizes the offense of torture as well as establishes a competent forum, the Court of Session Judge, to try the

[49] Torture and Custodial Death (Prohibition) Act 2013, Article 2(IV)
[50] UNCAT 1984, Article 1: 'acquiescence of a public official'.

offense.[51] Yet, the criminalization of other forms of ill-treatment is absent from the Act 2013. It further formulates the punishment section in the following manner: (a) punishment for the person who committed the offense of torture, (b) punishment in case the victim dies as a result of inflicting torture, and (c) punishment for the complicity of the offense.[52] The sanctions for the aforementioned categories of offense range from a minimum of two years imprisonment to life imprisonment, as well as fines ranging from twenty thousand to one hundred thousand takas.[53] The Court of Session judge is invested in trying the offense of torture under the Act.[54] Further, the Act also recognizes the absolute nature of the prohibition of torture by excluding any defense of justification, e.g. state of war, threat of war, internal political instability, or any public emergency.[55] However, the extra-territorial jurisdiction particularly on-board a ship or aircraft in Bangladesh is missing from the Act.[56]

4.2.2 Adoption of Exclusionary Clause under National Legislation

The UNCAT provides the exclusionary rule of torture. The aforesaid principles oblige the state party that confessions and any evidence obtained by torture are inadmissible in legal proceedings. Besides the above, the doctrine is intended to guarantee the right against self-incrimination. The Constitution of Bangladesh guarantees the self-incrimination rights of the accused. Article 35 (4) of the Bangladesh Constitution states that an accused of any offense shall not be compelled to be a witness against himself. Besides the above, the Evidence Act implies while interrogating a suspect the questioning must not be coercive or too intimidating, and any evidence recovered through coercion or intimidation shall not be admissible in court.[57] In addition, the Evidence Act prohibits the court from admitting any statement as evidence if made before a police officer.[58] The underlying reason is that this would protect the accused person against third-degree methods to extract information or confession by the police during the investigation procedure.

[51] TCDA 2013, s13 and 14: (a) Attempts to commit, (b) Assists or provoke; or (c) Conspires in committing
[52] TCDA 2013, s 15
[53] Ibid.
[54]TCDA 2013, s 14.
[55]TCDA 2013, s 12.
[56] TCDA 2013, s 18: The provisions of extradition are available under the Act.
[57] Evidence Act 1872, s 25, 26 and 27
[58] EA 1872, s 25

4.2.3 Prompt and Impartial Investigation

The investigation of the allegation of torture under the Anti-Torture Act 2013 has been initiated either by the order of the superior police officer[59] immediately after recording the complaint in court or the court may direct to hold a judicial inquiry.[60] As to the former one, the trial court initially records the complaint of the complainant. Then the court forwards the complaint copy to the higher official of the police within its jurisdiction to initiate the investigation procedure.[61] The court directs to conduct of the investigation by a police officer superior to the officer accused of torture.[62] In the latter instance, if the court is satisfied with the application of the aggrieved that a fair and partial investigation is not possible by the police, a judicial inquiry may be held upon the order of the cognizable court. In both instances, an independent body should always be the authority to convey the investigation or inquiry; otherwise, there is a possibility of the investigation being biased, evidence distorted, and ultimately the proceeding being delayed. Further, the Act stipulates the investigation timescale amounts to a maximum of 90 working days starting from the day of complaint.[63] However, the court may extend the time not exceeding 30 days with reasonable grounds.[64]

4.2.4 Victim's Right to Redress and Reparation

As per the Anti-Torture Act of 2013, the victim's reparation is categorized under two circumstances: (a) compensation amounting to twenty-five thousand takas where the victim is alive, and (b) compensation amounting to two hundred thousand takas where the victim dies in consequence of torture.[65] The compensation for victims under the statutory legislation in Bangladesh is very low as well and the provision relating to witness and victim protection from further threat is absent in the Anti-Torture Act 2013. In addition, the Act makes no provision for rehabilitation of the victim. Also, the Committee (CAT) in its

[59] TCDA 2013, s 5
[60] TCDA 2013, s 5
[61] ibid.
[62] TCDA 2013, s 5 proviso
[63] TCDA 2013, s 8 (1)
[64] TCDA 2013, s 8
[65] TCDA 2013, s 8 and 15

concluding observation condemns the low levels of compensation for victims and its improper practical implications.[66]

4.3 Code of Conduct of the Law Enforcement Officials/Agencies (LEA)

Law Enforcement Agencies (LEAs) are assigned with the functions of maintaining law and order in a society. They are mainly responsible for protecting the peace of the community from any kind of violence. Citizens of a nation feel free to do their daily work in the presence of an effective, intelligent, and non-corruptive group of law enforcement officials. Bangladesh is not out of it. In Bangladesh, LEAs are the Police, Rapid Action Battalion, Border Guards of Bangladesh, Customs, Immigration, Criminal Investigation Department (CID), Special Branch, Intelligence Agencies, Ansar VDP, Coast Guard, and any other state agencies engaged in enforcement and implementation of law in the country.[67] However, LEAs in Bangladesh are often recorded to be involved in the torturous acts of the accused in custody or out of custody. Sometimes their actions lead to the death of the accused. The statutory legislation, as well as the Supreme Court of Bangladesh, plays a proactive role against the engagement of LEAs in torturous acts in lawful custody, as such the Supreme Court sets guidelines to that effect. The Police Act 1861 enshrined some guiding principles as to the duties of police officials to maintain law and order in our society such as 'to collect and communicate intelligence affecting the public peace, to prevent the commission of offenses and public nuisances, to detect and bring offenders to justice, to apprehend all persons whom he is legally authorized to apprehend, to keep law and order in a public place, and to maintain peace in assemblies and processions'.[68] The Act further stipulates that neglecting the duties of the officials will be liable to a 'penalty not exceeding three months' pay, or to imprisonment with or without hard labor, for a period not exceeding three months, or to both'.[69] Besides the above, the Supreme Court in the leading case of *Bangladesh and others vs. BLAST and others*[70] set seven

[66] Committee (CAT), 'Concluding Observations on the Initial Report of Bangladesh' (26 August 2019) CAT/C/SR.1781 and CAT/C/SR.1782

[67] TCDA 2013, s 2; See also – Suraya Momtaz, 'Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies' (2013) 4(13) Mediterranean Journal of Social Sciences, MCSER Publishing 102.

[68] Police Act 1861, s 23 and 31

[69] Police Act 1861, s 29

[70] Civil Appeal No. 53/2004 (AD) (Judgment 24 May 2016)

specific guidelines as to the responsibilities of Law Enforcing Agencies.[71] The court further guided that the police department should develop a set of policing values that reflects its fraternity. These sets of values will be a 'springboard for a department's formulation'. In addition to that, *Nurul Huda*, former IGP of Bangladesh in his newspaper article[72] makes a code of conduct for police officials to maintain while performing their duties.

4.4 The Role of State Machinery and Institutions in the Prevention of Torture

The Court of Session judge is empowered under the Anti-Torture Act 2013 to take cognizance of the offense of torture.[73] In addition, the Magistrate of the first class under the Code of Criminal Procedure 1898 entertains criminal offense if any law enforcement official extracts information from the accused by causing hurt or grievous hurt.[74] On the other hand, the National Human Rights Commission invested with the power of investigating the complaints of human rights violations. It also empowered to visit prisons, medical service centers, and police custody, and to make recommendations for the improvement of the said places, if any miseries have been traced. However, the Committee criticized the indifferent attitude of the NHRC's duties concerning looking into

[71] Ibid; (i) Law enforcement agencies shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. (ii) In the performance of their duty, law enforcement agencies shall respect and protect human dignity and maintain and uphold the human rights of all persons. (iii) Law enforcement agencies may use force only when strictly necessary and to the extent required for the performance of their duty. (iv) No law enforcement agencies shall inflict, instigate, or tolerate any act of torture or other cruel, inhuman, or degrading treatment or punishment, nor shall any law enforcement agencies invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment. (v) Law enforcement agencies must not only respect but also protect the rights guaranteed to each citizen by the Constitution. (vi) Human life is the most precious resource, the law enforcement agencies will place their highest priority on the protection of human life and dignity. (vii) The primary mission of law enforcement agencies is the prevention of crime, it is better to prevent a crime than to the resources into motion after a crime has been committed.

[72] Nurul Huda, 'A citizens' expectation from the Police' *The Daily Star* (Dhaka, 4th February 2019)

[73] TCDA 2013, s 14

[74] Penal Code 1860, s 330 and 331; See also – Schedule of the Code of Criminal Procedure 1898

claims of torture carried out by State actors like the police, the military, and security agencies.[75] The prime difficulties the NHRC often faces are insufficient human and financial resources and political pressure.[76]

5. Evaluation of Challenges against the Anti-Torture Act of Bangladesh: Analysis of the Concluding Observation of the CAT and NGO Shadow Report

As per the state party obligation under UNCAT, the initial state party report is required within one year after the entry into force of the Convention.[77] However, it takes two decades for Bangladesh to submit the initial report. In 2018, the Committee against Torture served Bangladesh a letter reminding her of the overdue report to be submitted. The committee also informed its decision to proceed with a review even if no initial report is submitted. Meanwhile, on 22 June 2019, a shadow report was submitted to the CAT for consideration on behalf of a coalition of twenty citizens' organizations. Just one month later (23 July 2019), the initial report was submitted by the Government of Bangladesh before the Committee. In the initial report, Bangladesh displayed that its legal obligation under the UNCAT Convention has been fulfilled as such it has enacted the Anti-Torture Act 2013 named Torture and Custodial Death (Prohibition) Act 2013. Besides the above, the initial report makes detailed constitutional and statutory provisions protecting the rights of torture victims. On the flip side, the shadow report documented unprecedented violations of UNCAT obligations. And, the Committee (CAT) also while providing the concluding observation expresses its grave concern about the action of law enforcement agencies concerning their act of persistent torture and ill-treatment towards safety-seekers.[78] The following sections will dissect the observations made by the Committee as well as go through the stakeholders' assessments. Also, add a glimpse of the additional challenges associated with that.

5.1 Allegations of Widespread Use of Torture, Ill-Treatment, and Other Acts of Violence

The Committee in its concluding observations shows grave concern regarding the allegation of widespread use of torture and other forms of atrocities, e.g.

[75] The concluding observations of the Committee on Economic, Social and Cultural Rights of 2018 (E/C.12 /BGD/CO/1)
[76] ibid.
[77] UNCAT 1984, Article 19.
[78] CAT/C/SR.1781 and CAT/C/SR.1782 (CAT, 8 August 2019)

violence against minorities and other vulnerable groups; assault against human rights defenders; outrages against women; trafficking; child abuse and severe penalties of children.[79] The Committee urged that the state party publicize the update of cases filed under the Anti-Torture Act of 2013 and expressed disappointment that no cases brought under the Act of 2013 had been completed since its inception. Also, the NGO shadow report has accounted for the LEAs for the extrajudicial killings of 1297 people happening at the time of the inaugural of the Anti-Torture Act and 2019.[80] The report also documented that 346 prisoners (both undertrial and convicts) have reportedly died in jail custody.[81] In line with the shadow report, the Committee further expressed deep concern about the prevalence of acts of violence: police officers' involvement during the attack on the Santal indigenous community on 28 July 2019; unlawful detention of Hindu activist and lawyer Palash Kumar Roy resulting in his death; rape and sexual assault of two teenage women in the Chittagong Hill Tracts by members of the army in January 2018 and the disappearance on 9 April 2019 of the indigenous rights activist Michael Chakma.[82] The Committee censures the use of several legislations as instruments of torture against human rights defenders and journalists.[83]

5.2 Failure to Follow Proper Arrest and Investigation Procedures

The Constitutional and the statutory safeguard along with the Supreme Court's directives concerning the arrest and investigation procedure are welcomed by the Committee in its concluding observation of the state party's initial report.[84] The NGO shadow report also specifies the legal protection and judicial responses against unlawful arrest and arbitrary detention procedures.[85] Yet, the wrong practice is continued by law enforcement agencies ignoring the procedure of arrest and detention. NGO shadow report shows that when complaints are lodged against security personnel, they are not accepted or

[79] ibid.
[80] citing Documentation Unit, ASK. <http://www.askbd.org/ask/category/hr-monitoring/death-by-law enforcement/>
[81] citing Documentation Unit, ASK. <http://www.askbd.org/ask/category/hr-monitoring/death-in-jail-custody/>
[82] ibid 6.
[83] ibid 7.
[84] ibid 2.
[85] Human Rights Forum Bangladesh (HRFB), *Stakeholders' Submission to the United Nations Committee Against Torture* (Ain o Salish Kendra, 22 June 2019).

entertained.[86] The National Human Rights Commission of Bangladesh also documented a plethora of vicious forms of torture in police custody.[87] Besides, the NGO shadow report noticed the issue of ignoring the basic dicta of the arrest procedure, e.g. the communication of the grounds of arrest, avoiding medical examination, and rejecting the accused right to consult.[88]

Also, the Committee's (CAT) concerns reflect the issue that police officials often refuse to register complaints of torture or disappearance. The concluding observation of the Committee further echoed and criticized the state party's unwillingness to provide sufficient victim and witness protections rather they faced harassment, threats, and retaliation by the perpetrators.[89] From 2012 to 2019 the government received a total of 77 complaints of torture from the NHRC of Bangladesh. The Committee regrettably adds in its concluding observation that the outcome of the said complaints is still in the dark.[90]

5.3 Miserable Condition of Detention and Prison Center

The Committee in its concluding observation of the state party's (Bangladesh) initial report expresses grave concern about the deplorable condition of the detention and prison center. Overcrowding, ill-treatment, medical service deficiency, torture, and custodial death make the environment worsen.[91]According to a statistic, the inmate population in prison exceeds 200 percent plus poor conditions at the center, e.g. inadequate sanitary conditions, scarcity of food and drinking water, insufficient toilet and bathroom facilities and beds, and inadequate light and ventilation have created an unbearable and unprecedented situation. This resulted in 74 deaths in 2018, for which the Committee evokes deepest condolences.[92]

5.4 Lack of Adequate and Effective Legal Safeguards Against Custodial Torture:

[86]ibid 8-10.
[87]NHRC, 'The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment: A Study on Bangladesh Compliance' (2013) 43.
[88] HRFB (n 85)
[89] CAT (n 78) 3.
[90] Ibid.
[91]Ibid 8.
[92]Ibid.

In addition to the Anti-Torture Act 2013, statutory penal protections are also available against custodial torture in Bangladesh. For instance, voluntarily causing hurt to extort confession carries a punishment of up to seven years in prison and a fine, whereas for the same purpose if grievous hurt is caused punishment will be extended to ten years in prison.[93] The victim can file a criminal suit against law enforcement officials under the said provisions if they commit torture for extorting confession. However, the aforementioned safeguards are surrounded by multiple challenges such as nominal compensation for the torture victims,[94] absence of proper witness and victim protection mechanisms, vagueness regarding the judicial investigation forum, absence of credible mechanisms for accountability of LEAs, and corruption as well.[95]

5.5 Lack of Police Reforms:

The police service in Bangladesh is plagued by a plethora of challenges. To begin with, the old-fangled police regulation (Police Act 1861) has rendered the service structurally and functionally obsolete.[96] The Police Act of 1861 which is still in force broadly has encountered two prime problems, one is ignoring the professional aspect of crime control, and another one is completely based on the constabulary functions of the police.[97] Further, the lack of proper training and motivation; insufficient job security; over-burdened working hours; and an inadequate wage structure in comparison to their burdensome workforce have caused the profession infelicitous, resulting in a vulnerable sector.[98] Moreover, political pressure and insufficient accountability result in less qualified and dishonest police officers.

5.6 Police Impunity and Unfamiliarity with Policing Ethics:

The continued unethical practices of the LEAs, as well as the broad breadth of police impunity, have eroded public trust in the security forces. According to a

[93] Penal Code 1860, s 330 and 331.
[94] HRFB (n 85): 25,000 taka shall be paid to the victim or aggrieved person/s. This sum will be wholly inadequate to cover for example, the loss of an organ, or in case of keeping the victim in long custody where the victim is the only bread earner of the family, or to cover pain and suffering. Furthermore, the Act does not refer, whatsoever, to rehabilitation.
[95] ibid
[96] 'Need for Police Reforms in Bangladesh' (Assignment Point)
[97] Ibid
[98] Ibid

statistic, the number of departmental actions and criminal charges filed against LEAs between 2015 and 2021 was 1.17 lakh (55 percent of the total force) and 1,692, respectively.[99] The complaints include bribes, ill-treatment during the investigation in the name of remand, coercion to extort confession, harassment, and wrongful confinement, to name just a few. A handful of the complaints (2,388) have resulted in severe repercussions, e.g. termination, suspension, or demotion, while 17,966 members received lesser sanctions such as warnings, reprimands, or temporary wage cuts.[100] The consequences they incurred were minor in proportion to the severity of their crimes and negligent behavior. Aside from the foregoing, LEAs are incentivized to engage in unethical business partly because of impunity clauses ('institutionalized phenomenon' as per the HRW report).[101] For instance, the indemnity clause of the Constitution of Bangladesh (Article 47) indemnifies any state officials for any act done to maintain or restore order, as well as to lift any sanctions imposed on this individual.[102] Additionally, government approval is required to initiate a criminal proceeding against public officials, if the offense is committed while the officer is acting or purporting to act in his official capacity.[103] Furthermore, the impunity clauses enshrined in Special Power Actv1974, Military Laws, and Armed Police Battalions Ordinance 1979 have widened the scope of unethical engagement for the LEAs.[104]

6. Exploring the Root Causes of Torture and Ill-treatment by LEAs and Crafting Certain Recommendations

Nothing happens in isolation, crime is not out of it whether it is done by common people or law enforcement officials. Hence, custodial torture, ill-treatment, or unethical practices conveyed by LEAs involve multiple causes. *Suraya Momtaz*[105] identified ten specific causes for security officials' engagement with custodial torture and unlawful practices against justice

[99] Shariful Islam and Muntakim Saad, 'Errant cops: Leniency lends them impunity', The Daily Star (Dhaka, 2 October 2022)

[100] ibid

[101] Henrik Alffram, Ignoring Executions and Torture Impunity for Bangladesh's Security Forces, Human Rights Watch (New York, 18 May 2009)

[102] The Constitution of Bangladesh, Article 47.

[103] Code of Criminal Procedure 1898, s 197(1).

[104] Alffram (n 100); Also see - Meenakshi Ganguly, 'Allegations of Bangladesh Police Torture, Illegal Detentions', Human Rights Watch (New York, 3 February 2023)

[105] Suraya Momtaz, 'Human Rights Violations in Bangladesh: A Study of the Violations by the Law Enforcing Agencies' (2013) 4(13) Mediterranean Journal of Social Sciences 101.

seekers. Her specifications are mostly connected to the poor police management system,[106] whereas *Badsha Mia*[107] account for low job security for security officials. *Human Rights Watch*[108] spotted causes based on the impunity of LEAs. After analyzing the existing literature on torture and prevalent challenges (Chapter 5) of the Anti-Torture Act of Bangladesh author has detected four broad causes for LEAs' involvement with custodial violence and other ill-treatment: (a) administrative inefficiency,[109] (b) inadequate job security,[110] (c) impunity of LEAs,[111] , and (b) political pressure and corruption. Thus, to address the prevalent challenges and after dissecting multiple causes of torture committed by LEAs following counter-measures are recommended:

a) The meaning of law enforcement agencies provided in the Anti-torture Act 2013 should be broadened to encompass all sorts of security staff, e.g. the Department of Narcotics Control and the Anti-Corruption Commission.

b) The criminalization of other forms (fall short of the requirement of torture) of treatment and punishment should be inserted within the ambit of the Anti-torture Act 2013.

c) The compensation as specified in the Anti-torture Act 2013 for torture victims should be enhanced. And it should be calculated based on the severity of injuries. Further, the amount of compensation should be given directly to the torture victims.

d) A specific and separate investigation department should be established to ensure the independence of the investigation procedure.

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[106] ibid

[107] Badsha Mia, 'Custodial Torture: Laws and Practice in Bangladesh' (2020) 2(II) Electronic Research Journal of Social Sciences and Humanities 232.

[108] HenrikAlffram, Ignoring Executions and Torture Impunity for Bangladesh's Security Forces, Human Rights Watch (New York, 18 May 2009)

[109] Excess Power of Police without Effective Accountability Mechanisms, Lack of Proper monitoring system, Failure to Ensure Good Governance, Infrequent Human Rights Training to Field level personnel, Defects in Recruitment Procedure, Lack of Scientific facilities, Absence of Community Policing.

[110] Low Salary Structure of Police, Inhuman Life of Police, Frequent Transfer, Departmental Corruption for Job Prospects

[111] Continuous Denial of Engagement with Crimes by LEAs, Uncontrolled Widespread Police Corruption, Refusal to Accept Complaints, Denial of Effective Investigation Procedure, Nominal and Insignificant Sanctions for the Accused, Multiple Indemnity Statutory Clauses

e) The Act 2013 should be amended by inserting provisions relating to the protection mechanism for witnesses and victims. For instance, ensures rehabilitation for the victims of torture, provides temporary living expenses until the end of the protection period, legal and medical assistance for the sufferer, furnishes psychosocial rehabilitation assistance, and so forth.

f) The guidelines and directions bestowed by the Appellate Division of the Supreme Court of Bangladesh for LEAs should be strictly followed.[112]

g) Establish an autonomous monitoring body with a mandate to monitor and report on the work of LEAs.

h) The impunity statutory clauses that impede torture victims from lodging complaints against public officials should be revised in such a way that cannot make a bar to initiating court proceedings against the LEAs.

i) Regular training and motivation sessions should be arranged on a mandatory basis for the LEAs. The session should include awareness against torture and other forms of ill-treatment, basic human rights standards, arrest and detention guidelines, maintaining good relationships with the public, and so forth.

7. Conclusion

The evaluation of challenges to the Anti-Torture Act of Bangladesh reveals a state of affairs that is extremely unsettling. The delay in submitting the initial report to the Committee against Torture (CAT) and the subsequent submission twenty years later indicate a lack of urgency in addressing torture and ill-treatment problems in the country. Both the CAT study and the NGO shadow reports underscore the pervasiveness of torture and abuse against a range of vulnerable communities and human rights activists. Along with police impunity, the failure to follow correct arrest and investigation procedures exacerbates the plight of justice-seeking citizens. Moreover, the appalling condition of detention and prison facilities raises severe human rights concerns. Several factors, including administrative inefficiency, inadequate employment security, impunity, political pressure, and corruption, contribute to the persistence of custodial violence. To address these challenges, the article proposes a series of

[112] Bangladesh VS BLAST and Others (2016) Writ Petition No.3806 of 1998, CIVIL APPEAL NO.53 OF 2004, Date of Judgment: 24th May, 2016

comprehensive recommendations, such as expanding the scope of the Anti-Torture Act, criminalizing other forms of ill-treatment, increasing compensation for victims, establishing an independent investigation department, and instituting regular training and motivation sessions for law enforcement agencies. Hence, it is essential that Bangladesh takes these suggestions seriously and steps quickly to reform its legislative framework, institutional procedures, and law enforcement practices.

Juvenile Justice System of Bangladesh: An Evaluation with Special Reference to the Children Act, 2013*

Md. Ahsan Kabir**

Abstract: Juvenile denotes a child who has not obtained a certain amount of age and in Bangladesh, it determines below 18 years of age. Previously the juvenile justice system was administered by the former Children Act named the Children Act, 1974. I have noticed that to some extent some were lacking in this Act, 1974. By this Act, a child means those who are under the age of 16 years of age are called children. After the enactment of the said Act, there was a Children Rules, 1976. With these two legal documents juvenile justice administration had been conducted. In addition, there were some discrepancies in the old Children Act of 1974. Later on, these discrepancies are addressed by the Children Act, 2013. This article aims to show who is a child under the law and as a whole a glimpse of the juvenile justice system in Bangladesh in the context of the Children Act, 2013, the historical development of the juvenile justice system in Bangladesh, and the weaknesses and the constraints of the present Act. For example, the Child Affairs Desk, the bar to give joint charge-sheet along with the adult, the jurisdiction of the juvenile court, the presumption as to the age of the children, safe custody of the children at the time trial, social inquiry report, dispute resolution, etc. has been discussed. Furthermore, the article also focuses on the problems of the administration of justice, including suggestions to rectify the issues.

Keywords: Juvenile Justice, Historical development, Characterises of the Children Act of 2013, Weakness of the Juvenile Justice Administration, Suggestions.

1. Introduction

The roots of juvenile justice system enactments in Bangladesh were enacted in the British period.[1] Nowadays, the juvenile administration of justice in Bangladesh is mainly based on the Children Act, 2013. Before that, this system was administered by

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[1]Absar Aftab Absar, Juvenile Justice System in Bangladesh – An Appraisal, International Journal of Law Management& Humanities, Volume 3, Issue 5, (2020)

the former Children Act, 1974. These acts are prepared by following the UN Convention. In the Act of 1974, some issues did not comply with the international standard of the juvenile justice system. As a result, it was pertinent to enact a new children's act to combat these issues. Finally, we have a new Act of 2013 to address these things by fulfilling the international standard of the juvenile justice system. So, here it has mentioned the shadow of the juvenile justice systemin Bangladesh by referring to the Children Act, 2013.

"Juvenile crimes are being portrayed as violent by the press. Society has no concrete plans. They just keep insisting that we abolish the Juvenile Act. Law isn't the problem. It's the system."[2] – Judge Kang

Juvenile justice denotes court-attached arrangements to address the juvenile who is accused of breaching the law of the land.[3]As part of the violating laws, juvenile courts hear those cases and scrutiny whether the juvenile violates or not, and if the court satisfies that then it shall proceed.[4] Later on, the State and correctional centers arrange correctional measures to rectify the delinquent.

2. Methodology

The components of this research will be conducted using some primary and secondary sources. The study will undertake a glimpse of the juvenile justice system in Bangladesh. In addition, this study defines the child by the legal aspect and the major characteristics of the latest Children Act, 2013. The primary focus of the plan is to discuss the characteristics of the Children Act, 2013 named Child Affairs Desk in the Police Station, the prerequisite of the charge sheet, the jurisdiction of the juvenile court, determining the age of the child by the Juvenile Court, social inquiry report, etc. Furthermore, in writing this study the author has taken help from scholarly articles and books as well.

3. Historical Development of Juvenile Justice System of Bangladesh

The first Children Act was enacted in Bangladesh in 1974 and later on in 1976, the Children Rules was enacted. Initially, the Children Act was enforced in Dhaka in 1976,

[2] https://korean-binge.com/2022/02/28/70-quotes-juvenile-justice-2022/ Accessed on 31 March 2023.
[3] The Annie E. Casey Foundation, What is Juvenile Justice? December 12, 2020, http://www.aecf.org/blog/what-is-juvenile-justice, Accessed on 31 March 2023.
[4] Ibid.

and from 1980, this Act was enforced in other parts of Bangladesh.[5] Gazipur was the first district where the juvenile court was introduced in 1978 at Tongi with correctional facilities for the boys. At that time, there were no other juvenile courts in Bangladesh except Gazipur. When the United Nations Convention on the Rights of Child was adopted in 1989 and came into force in 1990 then so many issues arose relating to the age limit. It is because as per UNCRC, 1989 children are treated below the age of 18 years. Bangladesh had its signatory status of this convention in 1990. Later on, many national and international human rights organizations, human rights activities, and NGOs raised their voice to comply with the international standards on child rights protection, reformative approaches when any juvenile is dealt with, and establishment of juvenile courts and correctional facilities in every district. Consequently, the two other correctional centers were established in Jessore in 1995 for male children and female children at Konabari, Gazipur in 2003. As per the gazette notification of June 23, 1999, Dhaka, Chittagong, and Sylhet divisions were under the juvenile court of Tongi, and Khulna, Rajshahi, and Barishal were under the juvenile court of Jessore. According to the present Children Act, 2013 there shall be a children's court in every district in Bangladesh. The historical development of the juvenile justice system has emerged by taking the following considerations. These are the enactment of laws for juvenile justice, establishment of correctional institutions, formulation of national plans and policies, and recent legal reforms.

4. The Children Act 2013 and the Juvenile Justice System in Bangladesh

Juvenile crime is not naturally born in the boy but is largely due either to the spirit of adventure that is in him, to his stupidity, or his lack of discipline, according to the nature of the individual.[6] There are some highlights of the juvenile justice system as mentioned in the newly enacted Children Act, 2013. These are stated as follows:

4.1 Who is a Child by Legal Aspect?

Before passing the Children Act, 2013, the definition of a child in terms of age was different among the different enactments of the country. As a result, legal institutions had to face a dilemma while giving verdicts. As per section 4 of this Act, child is

[5] Nahid Riyasad, Children in Conflict with Law: Juvenile Justice System in Bangladesh, NEWAGE, 1 December 2019, <https://www.newagebd.net/article/92235/children-in-conflict-with-law-juvenile-justice-system-in-bangladesh>Accessed on August 27, 2023

[6] Robert Baden Powell, https://www.brainyquote.com/quotes/robert_badenpowel l_753100?src=t_juvenile Accessed on 31 March 2023.

defined as "Notwithstanding anything contained in any other law in force, to serve the purpose of this Act, a child includes anyone up to the age of 18 years."[7] National Children Policy also states that Children shall include all individuals less than 18 years of age.[8] Presently if any conflict arises regarding the age of the child, then the Children Act, 2013 shall prevail. Now there is no confusion to define the age of a child.

4.2 The Desk to Deal with Child Affairs

There shall be a Child Affairs Desk, which is formed by the Ministry of Home Affairs in every police station and a designated police officer is responsible for dealing the juvenile issues.[9] It is further stated that if the female Sub-Inspector is available in the stated police station, she shall be given priority for the responsibility of the said child affairs desk.[10] Child Affairs Police Officer is named the officer who is in charge of the Child Affairs Desk.[11]

4.3 No Joint Charge Sheet against the Child and Adult Offender

It is the basic rule that juvenile offenses be dealt with by the juvenile courts. As a result, there shall be a separate charge sheet to be given by the police officer where in an offence child and adult jointly take part. It is not maintainable whatever is said in section 239 of the CrPC, 1898 or any other laws in Bangladesh which are in force, and for the commission of the same offense where the adult and child jointly have committed then a separate charge sheet shall be given by the police officer.[12]

4.4 Authority or Jurisdiction of the Juvenile Court

In terms of the authority here, it determines the jurisdiction of the juvenile court. While applying the jurisdiction of the juvenile court shall apply the powers of the Court of Sessions under the CrPC, 1898 and when issuing summons to the witnesses, ensuring their attendance, and producing relevant documents it shall entertain the jurisdictions of the Civil Court.[13] In dealing with the juveniles it judges those are to deal with the juveniles cautiously. It is pertinent to refer here the quotes:

[7]Section 4 of the Children Act, 2013.
[8]Rule 2.1, National Children Policy, 2011, Government of the Peoples' Republic of Bangladesh.
[9]Section 13 of the Children Act, 2013.
[10]Supra Note-8.
[11] Ibid.
[12]Section 15 of the Children Act, 2013.
[13]Section 18 of the Children Act, 2013.

"Juvenile judges deal with children. Our denial as juvenile judges affects them directly. Even if everyone denies them, we should not. Because we are the last line of defense for those kids"[14]– Judge Cha

The judges have to keep in mind that though the Children's Court is a special type of court the judges have to do the maximum beneficial interpretation in favor of the child because today's kids are the torchbearer of the state in the future.

4.5 Relevant Date for Determining the Age of a Child

Notwithstanding anything contained in any other law for the time being in force or any judgment or order of the court, the date of committing the offense, for this Act, is the relevant date for determining the age of the child.[15]

4.6 Presumption and Determination of the Age of the Child by the Children's Court

If any child, whether being charged with an offense or not, is brought before the Children's Court in connection with any offense, or if any child is brought before the court for a purpose other than of giving evidence, and it appears to the Children's Court that he is not a child, the court may hold a necessary inquiry and hearing to assess the age of that child.[16] The Children's Court shall record its findings with the help of its inquiry and hearing of the trial and finally determine the age of the child.[17] To determine the age of the child, the Children's Court will do these things. The Children's Court must scrutinize relevant documents, and registers, to get the information, and to hear the statement of any person or institution.[18] If the age of any juvenile is ascertained and determined by the juvenile court under this section that shall be treated as the actual age of the child. As a result, if any order or judgment is pronounced by the juvenile court it shall not be ineffective or invalidated by any later proof.[19] It is further stated that if someone declared not a child previously by the juvenile court later on it is proved by subsequent documented statements then the court may revise its previous

[14]https://korean-binge.com/2022/02/28/70-quotes-juvenile-justice-2022/ Accessed on 31 March 2023.
[15]Section 20 of the Children Act, 2013.
[16]Section 21 of the Children Act, 2013.
[17] Ibid.
[18] Ibid.
[19] Ibid, Section 21 (4).

ruling documentary evidence then the court may revise its previous ruling relating to the determination of the age of the child.[20]

4.7 Persons Who Are Allowed to Remain Present at the Time of the Trial of Children's Courts

Children's Court is a special type of court that has to maintain some basic characteristics. Those persons may present in the Children's Court as specified in the Children Act, 2013. Except for these, no one is allowed to present in the Children's Court while the trial is going on.[21] For example the accused child, their parents, in the absence of their parents the caregiver or his/her lawful guardian, the staff of the juvenile court, both parties of the case, the respective police officer, and the lawyers of the concerned case, the Probation Officer of concerned proceeding or those are authorized by the juvenile court to remain before the Court.[22]

4.8 Child must be kept in Safe Custody at the Time of Trial

At the time of the trial of juveniles, the court must keep the child in safe custody otherwise it may hamper the spirit to deal with juveniles. It shall be treated as the last resort for the child to be kept in safe custody at the time of trial.[23] In addition, the child shall be kept in safe custody for diversion within the shortest possible time.[24] If it appears before the court that the extreme necessity for keeping the child in safe custody then the children's court passes the order to send the child to a certified institute that is near the children's court.[25] It is further stated that in this way if a child is sent to any certified institute, they must be kept separate from the older children in the said institute.[26]

4.9 Social Inquiry Report

Social inquiry report plays a vital role in deciding a juvenile case by the Children's Court. Firstly, a child will be produced before the Juvenile Court, and within 21 days of

[20]Supra Note-15.
[21]Section 23 of the Children Act, 2013.
[22] Ibid.
[23]Section 26 of the Children Act, 2013.
[24] Ibid.
[25] Ibid.
[26] Ibid.

it, the Probation Officer must submit a social inquiry report before the Children's Court at the same time the Probation Officer sends a copy of it to the nearest Board and Department as well.[27] Secondly, after the conclusion of the local inquiry, it shall prepare the social inquiry report as stated above where the following description is addressed familial activities, social attachment, cultural and financial status, and mental health, ethnic and educational background of the children.[28] In addition, under which condition and the locality the offense has been committed by the child is pertinent.[29] This social inquiry report including the other reports shall be kept confidential.[30] Finally, the social inquiry report shall have great importance in determining the juvenile case by the Children's Court.

4.10 Use of Terminology When Passing Order

According to F. Douglas, it is easy to rectify strong children but difficult to repair broken adults. So, children are so much softened by nature and they have to handle it technically. At the time of the pronouncement of the verdict of a juvenile case, they must not use the terminology or words that are ordinarily used in any so-called cases. Case of the using terminologies those are used in ordinary courts like 'offender', 'convicted', or 'sentenced' by the Penal Code, 1860 are strictly prohibited by the Children Act, 2013.[31] So, we may say that terminologies like conviction or sentence cannot be used when a child has committed any offense.[32] Instead of using these terminologies, the Juvenile Court may use a person found guilty of an offense, 'finding guilty' or 'the order of finding guilty 'or such kinds of synonyms words as the Juvenile Court thinks fit to use.[33] So the following quotes are pertinent here to deal with the child.

"Love is the supreme form of communication. In the hierarchy of needs, love stands as the supreme developing agent of the humanity of the person. As such, the teaching of

[27]Section 31 of the Children Act, 2013.
[28]Supra Note-15.
[29] Ibid.
[30] Ibid.
[31]Section 36 of the Children Act, 2013.
[32]Kudrat-E-Khuda, Juvenile Delinquency, Its Causes and Justice System in Bangladesh: A Critical Analysis, J.S.AsianStud. 07 (03) 2019.109-118, https://www.researchgate.net/publication/340876896_Juvenile_Delinquency_Its_Causes_and_Justice_System_in_Bangladesh_A_Critical_Analysis Accessed on April 03 2023.
[33] Ibid.

love should be the central core of all early childhood curriculums with all other subjects growing naturally out of such teaching."[34]-Ashley Montagu

4.11 Dispute Resolution

If any conflict is resolved between the parties is called dispute resolution. In this way, it can be a major tool to settle the dispute without proceeding the case to the court.[35]Normally in any ordinary manner if a case continues then it may be even costly. In contrast, when a conflict is mitigated by way of dispute resolution, stopping the trial creates a comfort zone between the parties.[36] If it is opined by the Juvenile Court that any child commits any lesser gravity of the offense, then the Probation Officer may be directed by the juvenile court to take measures to mitigate the dispute between the parties.[37] In addition, here the provisions of section 49 of the Children Act, 2013 shall be applicable *mutatis mutandis*.[38] The Probation Officer shall have the duty to maintain the terms and procedures as may be prescribed by the Children's Court and proceed with this dispute resolution process with the help of the appropriate persons from the society and fix the rules of procedures for solving between the parties and as soon as he shall inform its update to the Juvenile Court.[39] After getting feedback from the Probation Officer, the Juvenile court shall make the necessary order to inform the Department relating to this matter.[40] In this way, the dispute resolution procedure may be performed by the Juvenile Court.

4.12 Information Relating to the Judgment and Acquittal

In the case of delivering the judgment, the Juvenile Court has the priority to maintain the time frame of the Children Act, 2013. After concluding the trial of the case, it is the duty of the Children's Court within 7 working days to deliver the judgment in writing

[34]https://www.vincegowmon.com/inspiring-quotes-on-child-learning-and-development/Accessed on 1 April 2023.
[35]https://www.lawbite.co.uk/resources/blog/what-is-dispute-resolution Accessed on 1 April 2023.
[36]Ibid.
[37]Section 37 of the Children Act, 2013.
[38] Ibid.
[39] Ibid.
[40] Ibid.

to the concerned party, to the caregiver or his lawful guardian if he/she is under his supervision, or the Probation Officer or his counsel.[41] If the allegation against the child seems no ground in the case he/she can be acquitted and the Juvenile Court can communicate with the concerned parties in the same manner, as stated above.[42] In dealing with the child the Juvenile Court pays maximum consideration for the benefit of the child and the said court also tries to make the child realize that if you commit an offense you have to pay for it. So, it is appropriate to say the following by the Juvenile Court to the child.

"We need to show them how harsh the law can be! We have to teach them that whenyou hurt someone, you have to pay the consequences"[43] - Shim EunSeok.

4.13 Appeal and Revision

Appeal may be preferred to the higher court other than the original capacity court if someone is aggrieved by the lower court's decision.It is a legal right of the party.If anybody is aggrieved by the decision of the lower court then the appeal may be filed. The appeal may be raised on a question of law and fact. The rules of procedure of appeal may vary from country to country. Furthermore, in preferring appeal it may depend on the case, nature of the case, and jurisdiction of the court. In contrast, revision means judicial scrutiny of the decision of the lower courts by the HC to be satisfied as to the legality, correctness, and regularity of the proceedings of the case. According to the Black's Law Dictionary, revision means a reexamination or careful review for correction or improvement of a case.Whatever is said in the CrPC, 1898, the appeal lies against the decision of the Children's Court to the HCD of the SC of Bangladesh within 60 days from the date of passing the order.[44] Provided further that the HCD of the SC of Bangladesh has no bar to have the revision of against order of the Children Court.[45] The application for appeal or revision before the High Court Division of the Supreme Court of Bangladesh shall be concluded within 60 days from the date of the application.[46]

[41]Section 40 of the Children Act, 2013.
[42]Supra Note-40.
[43]https://www.allkpop.com/article/2022/03/7-quotes-from-juvenile-justice-that-will-leave-you-in-deep-thought Accessed on 31 March 2023.
[44]Section 41 of the Children Act, 2013.
[45] Ibid.
[46] Ibid.

4.14 Arrest

The police can entertain its discretionary power to arrest children under a variety of laws.[47] Whatever the law says in any other law in force, a child under 9 years of age cannot be arrested or detained whatever the circumstance is.[48] In addition, a child shall not be arrested or detained by way of preventive detention.[49] When a child is arrested by the police officer, then the said officer must inform the designated Child Affairs Police Officer regarding the causes, place, and subject matter of arresting the child and then shall immediately informand after determining the age the officer shall record the file.[50] It is forbidden by the police officer to hand-cuff or ties up with a rope or cord around the waist of a child.[51] After that in determining the age of the child the police officer shall record the age of the child by finding out and verifying the birth registration certificate of the child or in the absence of these documents, the relevant school certificate or the date of birth which is given in the school at the time of admission.[52] Further stated that if it is in the opinion of the police officer that the person is a child but despite all necessary attempts, it is quite impossible to confirm the age of the child by any documentary evidence then the concerned person shall be treated as a child by the Children Act, 2013.[53] If in the concerned police station, there is no safe place, which is appropriate to detain the child the safe home may be used as for the detention until his production before the court.[54] Here it is noted that detaining the child in a safe home mustbe kept separate from the adults.[55]

4.15 Bail

Bail means to set free, liberate, or deliver the accused from arrest or out of custody. According to Black's Law Dictionary bail means security such as cash or bond, especially security required by the court for release from prison. So, bail denotes the

[47] Mohammad Bulbul Ahmed & Camellia Khan, Juvenile Justice System in Bangladesh: A Critical Appraisal, ASA University Review, Vol. 4 No. 1, January–June 2010.
[48]Section 44 of the Children Act, 2013.
[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.

'Security', usually a sum of money exchanged for the release of an arrested person as a guarantee of that person's appearance for trial. As per Sen Mitra's legal and commercial Dictionary bail is a security given for the due appearance of a person arrested or imprisoned to obtain his/her temporary release from legal custody or imprisonment. Here we may say that-

"*Bail is the release of the accused from the custody of an officer in law and entrusting of the accused to the private custody of the persons called his 'bail' who then become bound as sureties to produce him to answer the charge at a stipulated time or date."*- Wood Roffe

Whatever the law says about bail in the CrPC, 1898 or any other law for the time being forces, after arresting the child if not possible to release the child or send him for diversion or produce before the Juvenile Court and later on the Child Affairs Police Officer must release the child on bail with or without condition or surety to the parents of the child or in the absence of them the caregiver or the lawful guardian or the Probation Officer. Here irrespective of the concerned offence either bailable or non-bailable, the Child Affairs Police Officer shall release the child.[56] Provided that the offense which is committed by the child is severe or heinous by nature, or if the child's release on bail is contrary to the best interest of the child, or if any apprehension may arise after the release on bail of the child to contact with any notorious crime, then the Child Affairs Police Officer may refuse to grant the bail or may not grant bail.[57] If bail is not granted by the Child Affairs Police Officer, then he shall produce the concerned child to the nearest Children's Court within the specified time of 24 hours excluding the traveling time.[58] If the child is released on bail from the police station is placed in the Juvenile Court and this court may release him on bail or order to detain the child in a Safe Home or such other arrangements.[59]

4.16 Legal representation

It is mandatory to proceed with the trial with the help of a legal representative on behalf of the child.[60] The child shall have the right to convey the necessary observation

[56] Supra Note-47
[57] Ibid.
[58] Ibid.
[59] Ibid.

to the legal representative in his/her language and in case of necessity; he/she can take help from the interpreter.[61]

If the parents of the child are unable to appoint the lawyer or the caregiver or lawful guardian to do the same thing or if the child has no caregiver or lawful guardian or the child is not financially capable of appointing counsel in that case the Children's Court shall appoint the lawyer with the help of Legal Aid Act, 2000 and its rules take necessary steps to appoint the lawyers from the panel of the District Legal Aid Committee or when necessary then the Supreme Court Legal Aid Committee.[62]

5. Weaknesses and Constraints of the Children Act 2013

There are some problems with juvenile justice administration in Bangladesh. The author must find the problems of juvenile justice administration in Bangladesh. The drawbacks of the juvenile administration of justice are as follows:

(a) Sometimes it is noticed that some sort of confusion relating to the jurisdiction of the court whether the Juvenile Court or the ordinary Criminal courts is empowered to deal with a case.

(b) Not only that in some cases it may be the bargaining question whether the particular case is triable by the Juvenile Court or Nari-O-Shishu Nirjatan Daman Tribunal. There are so many leading cases relating to this matter.

(c) In some cases, it has been found that there is a lack of supervision of the Children's Court whether it is acting as the child-oriented court or not.

(d) The major problem is to establish the Juvenile Courts in every district and those courts will only conduct the juvenile issues. Presently the juvenile courts are doing their additional capacity in doing ordinary cases.

(e) In Bangladesh, we have witnessed that there is no separate prison for keeping juvenile delinquents and lack of a monitoring system, and corruption in the police department as well.[63]As a result, juveniles are being deprived of their rights as the Children Act, of 2013 specified.[64]

[60]Section 55 of the Children Act, 2013.
[61] Ibid.
[62] Supra Note-59

6. Suggestions

The Children Act, 2013 is the milestone for the juvenile justice system in Bangladesh. Nonetheless, the author finds some suggestions to perform this Act Children Act, 2013 properly. There is no confusion or contradiction in terms of jurisdiction of the courts among the laws if it is maintained by the Children Act, 2013. So, the Children's Court must act accordingly as the law says. In addition, cases that are the subject matter of Children Act, 2013 are tried by the Juvenile Court. It must be ensured that in every district of the country, we have to set up separate Juvenile Courts to administer the juvenile offenses.

7. Conclusion

After passing the new Children Act, 2013, we can mitigate the legal issues that were a major concern before. This new Act is far better than the previous Act of 1974. Furthermore, it is based on the international standard in terms of age which is now below 18 years of age.Those are minor. The updated act initiated some unique features by which the State can provide maximum safeguards for the children. Biologically, the children are very softened by nature. So it is important to deal with them technically. For example, they are given quality time by the parents, counselling may be the major tool to address them, good parenting education may play a vital role, and educational support and sheltering to the children may lessen juvenile delinquency by the children. Finally, we have maintained the mandate of the Children Act, 2013, especially those that are addressed then we will get a child-friendly juvenile justice system. As a result, the following quotes are mentionable here for a better juvenile justice system.

"Juvenile crime is not naturally born in the boy, but is largely due either to the spirit of adventure that is in him, to his stupidity, or his lack of discipline, according to the nature of the individual."- Robert Baden Powell

[63]Md. AktarulAlamChowdhury and Md. HasnathKabirFahim, BiLD Law Journal, Vol-4, N0-1 April (2019), https://bildbd.com/index.php/blj/article/view/49 Accessed on 30 March 2023.
[64] Ibid.

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