



Torture of Human Person at Pre, During and Post Trial Stage is Transgression of Human of Rights

Justice Md. Awlad Ali

Former Judge of High Court Division
Supreme Court of Bangladesh

The Human Rights are violated in various ways in every society for various socio-political reasons. The present writing will focus on the campaign against torture of human person at pre, during and post trail stage which is the need of the hour in the present day turbulent world where mankind the best creation of God, Almighty Allah, are facing innumerable problems with regard to their birth right, human rights and dignity of human persons male, female and children. Albeit there are numerous International instruments under the Universal Declaration of Human Rights under the umbrella of the United Nation General Assembly and the United Nations Charter. Torture of any kind physical or mental is an offence to human dignity.

What is the philosophy innate in human dignity?

For beuatification of the earth and His creation God has created different kinds of human persons at different places of the world and in different environment. Some of them are black, some are white, some are tall some are comparatively short and others have their different stature and color because of their genesis and environment. But God (Allah) has not made any classification among the mankind on the basis of religion or belief, race and color. There is only one classification of human being i.e. man and women. Every human being having soul in his body given by God (Allah) must be respected and must not be disrespected, and a person must enjoy his or her birth rights, the fundamental human rights and dignity which were incorporated in the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of United Nations Organization on 10th December, 1948.

It has been indicated in the said Declaration that all nation and Member states and every organ of society keeping the declaration constantly in mind shall strive to promote and foster for and rights and dignity contained in the declaration to secure their universal and effective recognition and observance among the peoples of member states themselves.

“In article 1 of the Declaration it has been provided that all human beings are equal in dignity and rights” Since the soul of human being are coming from the same origin, after birth every human person must enjoy his or her birth right and dignity in all stages of life. One of the fundamental principles of State Policy incorporated in the constitution of the People’s Republic of Bangladesh in Article 11 is that “The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed”. Every member states within their constitutional jurisdiction must adopt the principle to combat and eradicate torture and

other cruel inhuman treatment from the Society. Even in the battle field you can kill your enemy by bullet or bayonet, but after capturing any enemy you cannot torture him to death. After colonial rule was over in 1947 we cannot expect that our law enforcing agency and public officials could torture any person in custody at pretrial and under trial stage.

As a civilized nation, after the end of the colonial Rule, our main concern would be to protect all persons from being subjected to torture and other cruel or inhuman; or degrading treatment. In article 35(5) of our constitution, it has been clearly stated that “No person shall be subjected to torture or to cruel or inhuman; or degrading punishment or treatment. There is an International Instrument which is called the Declaration on the protection of all persons from being subjected to torture and other cruel inhuman or degrading treatment and punishment, 1975, adopted by General Assembly Resolution 3452 on 9th December, 1975.

Article 1 of the Declaration defines torture- which means any act by which severe pain or suffering whether physical or mental, is intentionally inflicted by or at instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. But it does not include pain or suffering arising only from inherent in or identical to lawful sanctions to the extent consistent with the Standard Minimum Rules for the treatment of prisoners.

Torture constitutes an aggravated and deliberate form of cruel, inhuman degrading treatment which is transgression to human dignity and as such violation of human rights proclaimed in the Universal Declaration of Human Rights.

When we speak about human rights and dignity of human persons male and female including children it has no territorial limitation because it is based on universal Declaration of Human Rights-1948. Therefore, each individual member state shall take effective measures to prevent torture and inhuman treatment from being practiced within its jurisdiction. The training of law enforcement agencies is essential to prevent torture and inhuman treatment of any person in custody.

Each individual member state shall keep systematic review of interrogation methods and practice for the custody and treatment of person in custody.

In the modern world with the development of Science and Technology and other kind of methodology- extraction of statement from the suspected offenders in custody by torture must be discarded by legal means since torture is a criminal offence and that should be dealt with in accordance with law. Under the declaration of 1975 any person who alleges that he has been subjected to torture or other cruel and inhuman treatment by police or any public official shall have the right to complain to the competent authority of the state concerned and that competent authority of the state shall promptly proceed to an impartial investigation and if the allegation is proved legal action should be taken by the appropriate authority without any delay.

Then came the Conversation against Torture and other Cruel, inhuman or Degrading treatment or punishment 1984 which was adopted and opened for signature ratification and accession by General Assembly resolution dated 10th December, 1984. This

Convention is open for signature by all states. The said convention is subject to ratification by the member states. The convention was adopted desiring to make more effective the struggle against torture and other cruel inhuman or degrading treatment or punishment throughout the world. To safeguard the human dignity the ratifying states must strictly follow the conventions of 1984. Each state party shall take effective legislative, judicial or other measures to prevent acts of Torture in any territory under its jurisdiction.

Bangladesh became signatory and ratified the Convention against Torture and other cruel Inhuman or Degrading Treatment or Punishment. 1984 on 5th of October 1988, and long thereafter enacted Law which is called “নির্যাতন এবং হেফাজতে মৃত্যু

(নিবারণ) আইন ২০১৩ published in the Bangladesh Gazette dated 27.10.2013, এই আইনের preamble এ ঘোষিত হইয়াছে যে যেহেতু গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ৩৫ অনুচ্ছেদ

নির্যাতন এবং নিষ্ঠুর, অমানবিক লাঞ্ছনাকর ব্যবহার ও দণ্ড মৌলিকভাবে নিষিদ্ধ করিয়াছে; এবং যেহেতু সনদের ৩৩

অনুচ্ছেদ নির্যাতন, নিষ্ঠুর, অমানবিক ও লাঞ্ছনাকর ব্যবহার ও দণ্ড অপরাধ হিসাবে বিবেচনা করিয়া নিজ দেশে

আইন প্রয়োগের দাবি করে; এবং যেহেতু বাংলাদেশ উপরিউক্ত সনদে বর্ণিত অঙ্গীকার সমূহের কার্যকরিতা প্রদানে আইনী বিধান প্ রনয়ণ করা সমতীন ও প্রয়োজন সেহেতু আইন করা হইল।

বাংলাদেশ স্বাধীন হওয়ার পর একটি স্বাধীন দেশের নাগরিক হিসাবে তাহাদের প্রত্যাপা ছিল যে উপনিবেশিক পুলিশ যেভাবে তাহাদের সঙ্গে আচারন করত তা বন্ধ হবে কিন্তু তা স্বাধীনতা পাওয়ার কয়েক দশক পরও সে প্রত্যাপা পূরণ হয়নি। অনেক দেহীতে প্রণীত হলেও বাংলাদেশের সকল শ্রেণীর জনগন এ ধরনের আইনকে স্বাগত জানাবে।

Now proper and effective implementation of this আইন necessary. Because enactment of law and implementation of it is quite different. In Bangladesh law is enacted for the benefit of all citizens, but after enactment the law remain unknown to the public for lack of publicity for long time. Therefore, it should be widely made known to the general people through proper publicity. So that the public can take shelter of this law.

Agencies for implementation of this আইন as stated in the Ain must be strong enough to implement the law effectively.

A writ petition was filed before the High Court Division of the Supreme Court of Bangladesh, by Bangladesh Legal Aid and Services Trust (BLAST) Ain-o-Sallish Kendra, Shammilita Shamajik Andolon, apprehending that a person suspected to have committed criminal offence may be subjected to torture or other Cruel, Inhuman

Treatment, by the police or any other public officials, against Bangladesh and others whereupon Rule was issued upon the government and others concerned authorities to show cause as to why they shall not be directed to refrain from abusive exercise of powers under section 54 of the Code of Criminal Procedure or to seek unreasonable remand section 167 of the code of Criminal Procedure and to strictly exercise powers of arrest and investigation within the limits established by the law and in view of the safeguards contained in **Article 27, 31, 32, 33 and 35** of the Constitution of the People's Republic of Bangladesh which deal with the Fundamental human rights and respect for the dignity and worth of human person. Eminent Jurist like Dr. Kamal and Barrister M Amir-ul-Islam and others appeared on behalf of the petitioners BLAST and other non-governmental organization.

The Hon'ble High Court Division comprising Mr. Justice Md. Hamidul Haque and Justice Salma Masud Chowdhury having scrutinized two sections of the Code of Criminal Procedure (Sec. 54 and 167) found that the provisions of these sections are to some extent inconsistent with the provisions of the constitution and require some amendments. To remove the inconsistencies the High Court Division made some recommendations and direction. The Rule was disposed of with direction upon the respondent government to implement the recommendations and direction within six (6) months. I cannot give the details about recommendation and directions here but those are mentioned in the judgment as Reported in 55 DLR (2003) page 363. (It is available in www.supremecourt.gov.bd).

The government of Bangladesh took an appeal to the Appellate Division against the judgment which is pending. BLAST is trying to expedite the hearing and disposal of the appeal. The said appeal is still pending and in the meantime the Ain “নির্ষাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ has come into force.

In Article 35(5) it has been enunciated that NO person shall be subjected to torture or to Cruel, inhuman or degrading punishment or treatment.

The Conventions Declaration proclaimed by the General Assembly of the United Nations organizations are inextricably linked to human rights related problems. Therefore, it has now become imperative to make the international law and conventions enforceable for safe-guarding the dignity of human beings.

In my graduation I studied philosophy as one of my subjects and there I studied both metaphysics and Islamic philosophy. In Islamic philosophy I studied the philosophy the great philosopher and poet of the subcontinent Allma Iqbal. In his philosophy the great philosopher made a distinction between ‘heart’ and ‘Deel’ and has been enunciated that if you can go deep into the heart you will find ‘Deel’ wherefrom emanates the love for mankind, kindness and forgiveness, the refined qualities of human being. For human Development you are to develop your ‘DEEL’ so that you can love human person and creature of God. If that can be done torture of human person will cease to exist.

In this regard I must say that let us be united and have stronghold to combat torture, cruel and inhuman treatment by the law enforcing agencies and other public official.

I have no idea, and it is not known to us that torture of any kind has got any judicial recognition in a civilized society. Strong Bar and Independent Judiciary is essential to curb and eradicate this vice and curse from our society.

Co-ordinated efforts of governmental agencies, non-governmental organizations and their collaboration with the Bar Association can bring such sensitive matter to the notice of the appropriate Authority for taking remedial measures.

