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# The Recent Role and Views of Bangladesh Judiciary in Enforcing Right to Life, Liberty and against Inhuman Punishment: A Study

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## Abstract

The judiciary is an important organ of the State assigned by constitutional laws and general laws to protect and enforce citizens' rights either fundamental or non-fundamental legal rights. The main objective of this paper is to determine the role of the judiciary in protecting citizens' rights special reference right to life, liberty and right against inhuman treatment or punishment in the recent years particularly in the period (2008-2016); another objective is to examine what judicial views have been developed on the said rights in the mentioned period; next is to find out what are reality for citizens regarding their rights; and lastly is to identify the problems which were really hampering the judiciary in protecting citizens' rights special reference to life, liberty and right against inhumane treatment or punishment. In this paper, it is found that the judiciary has upgraded its role in protecting citizens' rights special reference to life, liberty and right against inhuman treatment or punishment in the several judicial pronouncements in recent years particularly in the period (2008-2016). It is also found that the judiciary could not show better performance overall in the said period as its disposal rate of cases was lesser than filing of cases due to many existing problems (Identified in Problems' Section). The reality comes out that along with the trend of pending cases, the numbers of extra-judicial killings and enforced disappeared citizens are gradually increasing each year in the said period except one or two cases which are giving alarming message to the citizens regarding their right to life, liberty and right against inhuman treatment or punishment (See Real Scenario Section).

**Keywords:** Judiciary, Citizens' Rights, Separation, Subsequent Period (2008-2016).

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## **Introduction**

Judiciary is an important organ of the state assigned to protect, enforce citizens' rights and to establish the rule of law. Such organ is the custodian and protector of the citizens' rights including the right to life or liberty and right against inhumane treatment or punishment (8 SCOB AD1). The term 'Judiciary' refers to all courts and tribunals of a country. Bangladesh judiciary can be classified broadly into (i) the Supreme Court of Bangladesh (The Constitution of the People's Republic of Bangladesh, art.94) (hereinafter as the Constitution) and (ii) the subordinate courts (the Constitution, Art. 114); The Supreme Court is the highest court in Bangladesh having two Divisions (a) High Court Division (hereinafter as HCD) and (ii) Appellate Division (hereinafter as AD). The onerous responsibility of the Supreme Court is to protect citizens' fundamental rights including right to life, liberty and right against inhumane treatment or punishment enshrined in Part-III of the Constitution. The Supreme Court is empowered and guaranteed by the Constitution (Art. 44 & 102) to protect such rights. The subordinate courts are lower judiciary consisting of district civil, criminal or special courts. They are also assigned by the existing general laws of the country to provide remedies for protecting and enforcing citizens' non-fundamental legal rights relating to life, liberty or right against inhumane treatment or punishment. It is apt to state that generally the subordinate courts can give remedies available under the general laws for the infringement of non-fundamental rights and that the Supreme Court can enforce citizens' fundamental rights including right to life, liberty and right against inhuman treatment or punishment. It is also important to state here that the Supreme Court can also give remedies for the infringement of non-fundamental rights if all alternative remedies are exhausted (66 DLR 475). Therefore, it can be said that the higher judiciary can issue writ orders for the enforcement of fundamental rights as well as of non-fundamental legal rights [64 DLR (AD) 152]. Bangladesh Judiciary was officially separated in 1<sup>st</sup> Nov.2007. In the separation subsequent years particularly in the period (2008-2016) what is the role of the judiciary in protecting and enforcing citizens' rights special reference to right to life, liberty and right against inhuman treatment or punishment, a matter of research.

## **Objectives**

The objectives of the study are as under:

1. To evaluate the role of the judiciary in protecting and enforcing citizens' rights special reference to right to life, liberty and right

against inhuman punishment in the judiciary separation's subsequent time particularly in the period (2008-2016)?

2. To determine the reality in the society regarding citizens' right to life, liberty and right against inhuman treatment or punishment?
3. To identify the problems which are really hampering the judiciary in protecting citizens' said rights.

## **Methodology**

Qualitative and quantitative, both methods have been used in conducting this study. Data have been collected from both, primary and secondary sources. Primary data was collected from litigants, advocates and judges through questionnaires; in case of questionnaire, structured questionnaire, open-ended & close-ended questions were applied. Quantitative secondary data were collected from the registrar office of Bangladesh Supreme Court, from the websites of Bangladesh Supreme Court and Ain O Salish Kendra. Qualitative data were collected through content analysis, document study, case study, and observation method. In order to apply these collected data, analytical approach has been taken as methodology and such data have been presented through table, percentage with the help of MS Word.

## **Rationale of the Study**

The study is mainly focused on the role of the judiciary in protecting and enforcing citizens' rights special reference to right to life, liberty and right against inhuman punishment in the judiciary separation's subsequent time particularly in the period (2008-2016). Such study has been conducted in order to evaluate recent views of the judiciary on the mentioned rights in the mentioned periods and to determine the reality in the society regarding such rights; it is true that many scholars, jurists (as for example, Ahmed, 2001; Ahmed, 2003; Akkas, 2004; Alam, 2007; Biswas, 2012; Farooqui, 1996; Islam, 2014; Rahman, 2012; Razzaque, 2000 etc.) worked, or have worked on judiciary, factors of judiciary, citizens' rights or human rights. Under these circumstances, analysis of the recent role of Bangladesh Judiciary in protecting right to life, liberty or against inhuman punishment will create new knowledge. Besides, general people have also immense interest to know how the Judiciary performs in the separation subsequent period. By considering all these facts, this paper has been conducted which will be useful for the people of the society, especially for the litigants,

academicians, judges, advocates; it will be helpful for making policy to remove the obstacles which are hampering the judiciary in enforcing citizens' rights in Bangladesh.

### **Definition of Right to Life, Liberty and against Inhuman Punishment**

The people of a country as citizens are entitled to the rights declared by the supreme law and under general laws of the country where some rights known as citizens' fundamental legal rights; some known as non-fundamental legal rights. Whether citizens' fundamental or non-fundamental rights are recognized and enforced by laws of the country including the supreme law of the land, the citizens of a country as human being are morally entitled to claim human rights for their growth as human beings. But all human rights are not recognized and enforced by law in a country; the recognition, protection and enforcement of some human rights in the Constitution of a country turns them into citizens' fundamental rights or civil & political rights. Right to life, liberty and right against inhumane treatment or punishment right to movement, right to speech, right to association are examples of such rights; some human rights are also recognize in the constitution of a developing country like Bangladesh, India, Pakistan etc but they are not enforced; they only get priority in taking state policy.

Right to life may be said as the most important right of each citizen of a country as all other rights are accruing and surrounding it. It is an indispensable right of all human being whether he is citizen of a country or stateless people. The Universal Declaration of Human Rights, 1948, Article 3 declares that everyone has the right to life, liberty and security of person. International Covenant on Civil and Political Rights (ICCPR) 1966, Article 6(1) states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Such right is recognized and ensured to the citizens of Bangladesh under Bangladesh Constitution by Articles 31 and 32. Article 32 provides that no person shall be deprived of his life and personal liberties save in accordance with law. Lawful deprivation of life is only justifiable when it is needed to ensure safety, security and personal liberty in the society so that individual citizens can enjoy their life and liberty. Death sentence is valid when it is given to protect the lives of other citizens in the society (Islam, 2012, P. 271). A citizen cannot deprive of his right to life or liberty even in imprisonment or detention (*Ibid*, P. 261). And no action detrimental to life shall be taken except in accordance with law (Art. 31). No one can expect that the state should provide livelihood (means of living) rather citizens think that state should not take any action

or pass any unreasonable law containing inhumane punishment and causing detrimental to his livelihood as livelihood is covered by the term right to life (*Ibid*, P. 255).

The right to life is also explained in several judicial pronouncements by the Supreme Court of Bangladesh and the ambit of such right is being frequently expanded. In *BJMAS v. Ministry of Home Affairs* 2008 BLD 580 it is explained as ‘the right to life’ includes right to security of life which is interpreted as security against natural disasters like earthquake in another case (63 DLR 71). Before these two judicial pronouncements the terms ‘right to life’ was explained as ‘right to protection of health and normal longevity’ in a judicial pronouncement (48 DLR 438) and in another as ‘right to sound mind & health’ (52 DLR 413). Such right may be right to protection and improvement of environment (55 DLR 69); right to a decent and healthy way of life in a hygienic condition; it also means a qualitative life from environmental hazards (*ibid*). Another inclusion we found in ‘right to life’ in another judicial pronouncement as right to environment and ecology [65 DLR (AD) 181]. Personal liberty means the freedom of an individual to act as he or she wishes except lawful restraint by law (Black’s Law Dictionary). Each citizen has right to personal liberty for his smooth living in the society (Article, 9 ICCPR, 1966). Article 10, ICCPR, 1966 requires anyone deprived of liberty to be treated with dignity and humanity. If his right is wrongfully restrained by any other individual, group of people, law forces or by even State herself, he or she or his representative can take legal action. Even the HCD can *sou moto* interfere when it comes to its knowledge that liberty of a citizen had been taken away by the unlawful ground by the order of the subordinate court (64 DLR 462).

The constitution guarantees the citizens and non-citizens of Bangladesh from inhuman treatment and punishment as per Art.35 (5) by saying, “No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment”. The same view is reflected in Article 7, ICCPR, 1966. The higher judiciary also gave rule against torture or to cruel, inhuman treatment or punishment. In this point the HCD held that the very system of remand with a view to interrogation and seeking information by application of force is totally against the spirit and clear provision of the Constitution (55 DLR 363).

## **The Recent Role of Judiciary in Enforcing Citizens' Right to Life, Liberty and Right against Inhuman Treatment or Punishment**

The judiciary is assigned to protect citizens' rights (fundamental and non-fundamental legal rights) including right to life, liberty and equal protection of law under constitutional law (the Constitution, Articles 44 & 102) and general laws of the country and uphold the rule of law. It is rightly said that the Judiciary is the custodian and protector of the citizens' rights (8 SCOB AD1). A citizen can go to the HCD for the enforcement of his fundamental rights including right to life, liberty and equal protection of law directly under Article 102 (1) of the Constitution. He can also go for the enforcement of non- fundamental legal rights under Article 102(2) subject to exhaustion of all efficacious remedies available under general laws in lower judiciary (66 DLR 475). Even a citizen can bring a petition before the Court under Article 102 for the enforcement of fundamental rights though his rights are not directly and personally affected through public interest litigation.

In a case the Appellate Division gave an *obiter dictum* that when any violation of fundamental rights enshrined in the Constitution was alleged as the only ground and no violation of legal right or any provision of law protecting citizen's right was raised, only then resort may be taken to fundamental rights to protect any citizen of such right (61 DLR (AD) 28).

It is pertinent to mention that the higher judiciary cannot give remedies against the violation of rights by a private individual or private corporation, institution etc. In this case, citizens can seek remedies from subordinate district civil or criminal courts under general laws viz. Penal Code, Specific Relief Act. District criminal courts either session courts or judicial magistrate courts can try offences affecting citizens' right to life, liberty and right against inhumane treatment or punishment enshrined in the criminal laws existing in Bangladesh.

The above discussion conveys the theoretical approach regarding the role of the judiciary (both-higher and lower) in protecting citizens' rights where data based study will give a practical role of the judiciary on citizens' rights. Under this circumstance, a data based study regarding number of filing and disposal of cases in the District Session Judge Courts, Equivalent Special Criminal Courts & Tribunals and Judicial Magistrates' Courts in recent years particularly in the period (2008-2016) will convey an idea on the recent role of the judiciary:

**Table No.1: Number of Filing and Disposal of cases, in the District Session Judge Courts, (Equivalent Special Criminal Courts & Tribunals) and Judicial Magistrates' Courts in the Period (2008-2016)**

|              | <b>District Session Judge Courts<br/>(including equivalent special criminal courts &amp; tribunal)</b> |                          | <b>Judicial Magistrates Courts</b> |                          |
|--------------|--|--------------------------|------------------------------------|--------------------------|
| <b>Year</b>  | <b>Filing New Cases</b>  | <b>Disposal of Cases</b> | <b>Filing New Cases</b>            | <b>Disposal of Cases</b> |
| 2008         | 159403   | 131988                   | 7,58,578                           | 4,42,725                 |
| 2009         | 159290   | 125076                   | 5,92,008                           | 4,62,235                 |
| 2010         | 195618   | 149928                   | 7,41,838                           | 7,09,112                 |
| 2011         | 219226   | 161366                   | 7,06,069                           | 6,71,628                 |
| 2012         | 269785   | 198551                   | 8,00,282                           | 7,25,523                 |
| 2013         | 261792   | 191730                   | 7,51,180                           | 6,62,022                 |
| 2014         | 314624   | 219336                   | 7,92,433                           | 7,34,359                 |
| 2015         | 358697   | 265200                   | 7,76,181                           | 8,47,398                 |
| 2016         | 348995   | 278631                   | 7,32,049                           | 7,80,805                 |
| <b>Total</b> | <b>2382043</b>   | <b>1552981</b>           | <b>66,50,618</b>                   | <b>60,35,807</b>         |

Source: High Court Division, Supreme Court of Bangladesh,  
Annual Reports on Numbers of Cases of Bangladesh 2008-2016

It is revealed from the above table that within the period (2008-2016) total numbers of filing cases in all sessions' courts are 2382043 whereas the total number of disposal of cases in mentioned courts are 1552981. At the end of year-2016 the total pending cases in session courts stand as 647422 (excluding transfer cases) whereas it was 253832 (excluding transfer cases) in the beginning of the year-2008 (HCD, The Supreme Court of Bangladesh, 2008 & 2016). As a result, in the mentioned period (2008-2016) new pending cases stand as  $(647422-253832)=393590$  (excluding transfer cases) whereas it was 253832 (excluding transfer cases) from the year 1972-2007 for last 36 years (Annual Reports, 2008 & 2016, HCD, Supreme Court of Bangladesh). So the trend of pending cases in the said period (2008-2016) is about twice in comparison with previous period (1972-2007). It is also revealed that in the judicial magistrate courts 66,50,618 cases have been filed in the said period (2008-2016) but 60,35,807 cases have been disposed of in the mentioned period. At the beginning of year-2008 the total pending cases in the judicial magistrate courts were 618671 (excluding transfer cases) which have stood as 865536(excluding transfer cases) at the end of year 2016 (HCD, The Supreme Court of Bangladesh, 2008 & 2016). Therefore, within the said period (2008-2016) new pending cases have been increased as 246865.

This new pending cases have been added to the old list of pending cases in the judicial magistrate courts like session courts. Such data analyses regarding pending cases in criminal courts convey the message that the judiciary has not shown better performance in ensuring the criminal justice to the citizens comparatively in the recent years. As a result, it can be said that affected citizens whose right to life or liberty under threat or pressure or violated have not got quick relief under general criminal laws from the criminal courts in the recent years particularly in the period (2008-2016).

Right to life, liberty and right against inhumane treatment or punishment are citizens' fundamental rights. If they are affected exclusively and if no question of violation of legal right or any provision of law protecting citizen's right to life or liberty was raised under general laws, aggrieved citizens can go to the HCD and bring an action in the form of habeas corpus writ for the enforcement of their right to life or liberty. Under these circumstances by considering the number of filing and disposal of writs in Writ Courts (HCD Benches) in the recent years particularly in the period (2008-2016), we can get an idea regarding the role of the judiciary on ensuring and protecting citizens' right to life, liberty and right against inhumane treatment or punishment which are as under:

**Table No.2: Number of Filing and Disposal of writs in Writ Courts in the Period (2008-2016)**

| Year  | Writ Courts (HCD Benches) |                   | Remark            |
|-------|---------------------------|-------------------|-------------------|
|       | Filing New writs          | Disposal of Writs | Disposal Rate     |
| 2008  | 11,402                    | 8915              | Disposal < Filing |
| 2009  | 8,848                     | 6370              | Disposal < Filing |
| 2010  | 10,175                    | 7303              | Disposal < Filing |
| 2011  | 11,421                    | 10924             | Disposal < Filing |
| 2012  | 17,876                    | 8028              | Disposal < Filing |
| 2013  | 12,958                    | 7473              | Disposal < Filing |
| 2014  | 12843                     | 8688              | Disposal < Filing |
| 2015  | 14,284                    | 13457             | Disposal < Filing |
| 2016  | 16,965                    | 9857              | Disposal < Filing |
| Total | 1,16,772                  | 81,015            | Disposal < Filing |

Source: High Court Division, Supreme Court of Bangladesh,  
Annual Reports on Numbers of Cases of Bangladesh 2008-2016

It is evident from the above table that disposal rate was lesser than filing rate of writ in the writ courts per year. In the said period (2008-2016), total 116772 writs have been filed whereas only 81015 writs have been

disposed of. At the end of year-2016 the total pending writs in the writ courts stand as 69326 whereas it was 40980 in the beginning of the year-2008(HCD, The Supreme Court of Bangladesh, 2008 & 2016). As a result new pending writs stand as  $(69326-40980)= 28346$  in the said period. Therefore, it can be said that within the said period new pending writs stand 28346 for only nine years whereas it was 40980 for last 36 years from the year 1972-2007 (HCD, The Supreme Court of Bangladesh, 2008 & 2016). So, in the recent years, particularly, in the said period, the trend of pending writs has been increased in comparison with previous period (1972-2007). As a result, citizens could not get back their right to life, liberty and right against inhumane treatment or punishment more quickly. It is relevant to mention that within the said period the number of population has also been increased and the number of judges has also been increased but it was inadequate in comparing with developed and developing countries which researcher will discuss in the problems section of this paper.

### **Judicial Recent Views/Trends**

Whenever the rights of a citizen are affected, it is the constitutional mandate upon the court to adjudicate it and enforce it (Islam, 2012). Because of the Constitution empowers the HCD as custodian to protect the citizens' fundamental rights including right to life, liberty and right against inhuman treatment or punishment (The Constitution, Article 44). And the judiciary is always upgrading and expanding the scope of citizens' rights including right to life, liberty and right against inhuman treatment or punishment. In recent years particularly in the period (2008-2016) the active role of the judiciary in protecting citizens' right to life, liberty and right against inhumane treatment or punishment have been found in several judicial pronouncements.

It is now well settled proposition of law that even the HCD can suo moto interfere when it comes to its knowledge that liberty of a citizen had been taken away by the unlawful ground. In such matter the court should avoid technicality. When the State does not raise any objection in such circumstances, this court can certainly interfere, when the liberty of a citizen is curtailed and his valuable right of freedom is taken away by the order of the subordinate court. The HCD is empowered under section 491 of the Code of Criminal procedure to set at liberty of the victim who is found to be detained illegally or improperly (64 DLR 462).

In another recent leading case the judiciary declares the extra-judicial punishment by the name of execution of Fatwa without proper authority is

violation of fundamental rights enshrined in Articles 31, 32, and 35 of the Constitution and does not have any legal effectiveness (63 DLR 1). In this case it is also decided that the failure of the State to take any systematic action to address to such incidents of imposition and execution of extra judicial penalties involves a breach of its obligation under the Constitution and international law to ensure the right to freedom from cruel, inhuman and degrading treatment or punishment. The following directions have also been issued to prevent extra-judicial punishment by the name of execution of Fatwa:

- (a) The persons who by the name of execution of Fatwa impose any extra-judicial punishments and their abettor(s) shall be held responsible under Penal Code and other existing laws in the regard.
- (b) The law enforcing agencies and the Union Parishads and the Pourashavas across the country shall take preventive measures and legal steps to stop extra-judicial punishments in the name of execution of Fatwa.
- (c) The Ministry of Local Government shall intimate the law enforcing agencies, all the Union Parishads and the Pourashavas across the country that imposition of extra-judicial punishment is beyond the Constitution and is punishable under the law. The Government shall take appropriate steps for creating awareness amongst people regards extra-judicial punishment in the name of execution of Fatwa as impermissible in law and, in fact, a crime.
- (d) The Ministry of Education shall give priority in incorporating various articles and educational materials in the syllabus in School, College and University level and particularly in Madrasha level highlighting the supremacy of the Constitution and the Rule of law and discouraging imposition of extra-judicial punishment of any form in the name of execution of Islamic Sharia/Fatwa.

The judiciary has recently given another landmark decision regarding mandatory death in any statute in the case of ***BLAST & Others v. Bangladesh & Others*, (2015) 1 SCOB (AD) 1 and *BLAST v. Bangladesh*, (2011) 63 DLR 10 in which the judiciary** declared mandatory death penalty in any statute as inconsistent with citizens' rights accruing particularly in Articles 27, 31, 32 & 35 of the Constitution and so such provisions are ultra vires the constitution and therefore they are void. The provisions of different statutes like Sub-sections (2) and (4) of section 6 of the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995, subsections (2) and (3) of section 34 of the Nari-O-Shishu Nirjatan Daman Ain, 2000

and section 303 of the Penal Code are declared ultra vires the Constitution. It is also declared that there shall be no mandatory sentence of death in respect of an offence of murder committed by an offender who is under a sentence of life imprisonment.

It is also seen in a recent judicial pronouncement the judiciary has shown an important views regarding for protection of citizens' right to life in a severe earthquake time (63 DLR 71). In the case of **HRPB v. Bangladesh** (2011) 63 DLR 71 it is held that the government is bound to protect life and property of the people in the discharge of its constitutional obligation. The Government is therefore directed to make available sufficient necessary equipment for rescue of the citizens soon after occurrence of a severe earthquake. And it is also declared that recent news items published in different national dailies creates great anxiety among the citizens of Bangladesh. Even it is also declared in this case that if further direction is needed, the parties will be at liberty to make applications in the instant rule as this rule nisi will be treated as continuous mandamus.

In the case of **BLAST v. Bangladesh**, (2011) 63 DLR 643 the judiciary has upgraded its views regarding the corporeal punishment upon the children in the educational institutions and declared it as violative of Articles 27, 31, 32 and 35 of the constitution. The higher judiciary also declared corporeal punishment as absolutely prohibited, inflicting it be deemed as misconduct of the concerned teachers, and gave directions to the concerned authorities of the Government to take necessary steps to prevent the imposition of corporeal punishment by way of framing and adopting and disseminating appropriate guidelines, directions or orders to all concerned authorities.

The following directions are issued on the demand of emergency:

1. Corporeal Punishment is absolutely prohibited in all educational institutions of the country
2. Giving corporeal punishment to the students shall be treated as misconduct.
3. District Educational Officers and Upazila Secondary Education Officers shall take necessary measures to end corporeal punishment; they shall take steps against the teachers imposing corporeal punishment under the Penal Code, 1860, the Children act, 1974 and where fit by taking departmental steps.

4. Head of the Educational Institutions shall take effective steps to stop corporeal punishment in their institutions.
5. School Management Committee shall take measures for identification of the teachers inflicting corporeal punishment and shall take actions with rules against the concerned teachers accused of corporeal punishment.
6. Inspectors of the concerned offices, departments and board of education under the Ministry of Education shall monitor whether in the educational institutions corporeal punishment is inflicted and shall take necessary steps to stop it in there.

The judiciary gave a milestone views in the case of **Z. I. Khan Panna v. Bangladesh & ors**, 7 SCOB (2016) HCD 7 on the right of the victim of custodial death by law enforcing agencies during the period of “Operation Clean Heart” to bring legal action and seek compensation through the writ jurisdiction. It is stated in 75 Para of the Judgment:

“The affected persons/victims of brutalities or torture or the dependents/family members of the deceased in case of custodial deaths during the ‘Operation Clean Heart’ will be at liberty to file cases against the perpetrators of the crimes, that is to say, the concerned members of the joint forces/law-enforcing agencies both under civil and criminal laws of the land for justice. They may also invoke the writ jurisdiction of the High Court Division under Article 102 of the Constitution for compensation, if they are so advised, in addition to the reliefs sought for under prevalent civil as well as criminal laws of Bangladesh.”

The court argued for adequate compensation awarded to the victims of human rights violations in the custody of law enforcing agency/ joint forces. The amount of compensation will vary from case to case upon the facts and circumstances of each case.

**In the case of BELA v. Bangladesh, (2010) 62 DLR 463** the court recognized the right to protection of law, to life and to hold properties of the villagers guaranteed by the Constitution and urged the respondents to discharge their duties to ensure those rights of the villagers. The court also gave direction upon the respondents to stop illegal extraction of sand from the bed and banks of the river and outside the designated area of the Fazilpur Sand Quarry.

The Judiciary has given another important views on premature death of citizens and their right to life in the case of ***Bangladesh Beverage v. Rowshan Akter (2010) 62 DLR 483***. In this case the court said that life is bundle of incident. Every child is born with expectation of life and with constitutional guaranteed rights of basic requirements for living. Death is inevitable but premature death in whatever form is not expected and cannot be consoled. Accidental death is also a premature death. Government is answerable to all such premature death as Government is to protect the citizen and is responsible for the life of a citizen.

### **Real Scenario of Citizens' Right to Life, Liberty and Right against Inhumane Treatment or Punishment**

In the previous section the active role of the judiciary has been noticed in protecting citizens' right to life, liberty and right against inhumane treatment or punishment in recent several judicial pronouncements but what are the reality in the society to such rights can be realized in the following data:

**Table No.3: Scenario of Enforced Disappearances of the Citizens in the Recent Years**

| <b>Year</b>     | <b>Number of Victims</b> | <b>Body Discovered</b> | <b>Traced</b> |
|-----------------|--------------------------|------------------------|---------------|
| 2017 (Jan-July) | 45                       | 2                      | 10            |
| 2016            | 97                       | 11                     | 29            |
| 2015            | 55                       | 8                      | 12            |
| 2014            | 88                       | 23                     | 25            |
| 2013            | 72                       | 5                      | 10            |
| 2012            | 56                       | 4                      | 18            |
| 2011            | 59                       | 16                     | 4             |
| 2010            | 47                       | 6                      | 7             |
| Total           | 519                      | 75                     | 115           |

Source: Ain O Salish Kendra

From the above table it is evident that the numbers of enforced disappeared citizens are gradually increasing each year except one or two cases which are giving very alarming message regarding citizens' right to life or liberty.

**Table No.4: Scenario of Extra Judicial Killing of the Citizens by Law Enforcing Agencies in the Recent Years**

| <b>Year</b>        | <b>Total</b> |
|--------------------|--------------|
| 2017<br>(Jan-July) | 109          |
| 2016               | 195          |
| 2015               | 192          |
| 2014               | 154          |
| 2013               | 189          |
| <b>Total</b>       | <b>730</b>   |

Source: Ain O Salish Kendra

From the above table it is also revealed that the numbers of extra-judicial killings have been increased per year except 2014 which is also alarming message for citizens regarding their constitutional right to life, liberty and right against inhumane treatment or punishment. Such extrajudicial killings are arbitrary or unlawful deprivation of citizens' life which is not acceptable at any cost in any sort of society. Under these circumstances this year (28.03.17) the United Nations expressed their concern and criticized Bangladesh (in a report on political and civil rights by the UN Human Rights Committee) for a "high rate" of extrajudicial killings and enforced disappearances at the hands of police, RAB and other law enforces. Quoting on this report, Al Jazeera said than more 1300 cases of extrajudicial killings and 325 enforced disappearances traced out since 2009 (en. prothomalo.com, 30 March, 2017). On the other hand, it is often seen on the daily newspapers and heard here and there that the victims are not interested to go to courts for bringing an action due to the presence of culture of not getting justice and severe harassment from the government. Indeed, this is a continuous real scenario regarding citizens' right to life, liberty and right against inhumane treatment or punishment. Even the National Human Rights Commission of Bangladesh can do nothing to investigate such extrajudicial killings by the state actors. Therefore, the UN has expressed concern at the failure to empower the NHRCB to investigate such gross violation of rights of citizens by the state actors and recommended empowering it to probe the complaints of such violation (*ibid*).

### **Problems/Restraints in Enforcing Citizens' Right to Life, Liberty and Right against Inhuman Treatment or Punishment**

The judiciary is under constitutional obligation to protect and enforce citizens' rights including right to life or liberty. And in the previous

sections particularly in judicial recent views' section, it is found that the judiciary has shown its upgrading role in protecting and enforcing citizens' right to life, liberty and right against inhumane punishment; it is also found in the role of judiciary section, that the performance of the judiciary was not satisfactory in the said period for the disposal rate of cases being lesser than filing new cases and therefore, backlog of cases are increasing rapidly in the judiciary which are really hampering the judiciary in protecting and ensuring citizens' right to life or liberty and establishing the rule of law. The real problems behind such performance of the judiciary are as under:

#### **a. Inadequate Number of Judicial Officers**

Bangladesh is over populated country where the judiciary is extremely suffering from huge backlog of cases (more than 3.16 million of pending cases) with shortage of judicial officers; there are only 1268 judges of approved 1655 posts and having vacancies of 387 posts in the lower judiciary. And there are only 98 judges in the higher judiciary (Sinha, 2016). These numbers of judicial officers are very inadequate with the total number of citizens in Bangladesh and backlog of cases in comparing with the number of judicial officers of developed and developing countries in proportion to their citizens as under in the Table:

**Table No.5: Comparative data on judicial officers**

| <b>Name of Country</b> | <b>Number of Judges per 10 Lakh Citizens</b> |
|------------------------|--|
| USA                    | 107  |
| Canada                 | 75   |
| UK                     | 51   |
| Australia              | 41   |
| India                  | 18   |
| <b>Bangladesh</b>      | <b>10</b>                                    |

Source: The Speech of Chief Justice, BD  
at National Judicial Conference, 2016.

From the above table it is evident that in Bangladesh the number of judicial officers is so poor because of there are only 10 officers per 10 lakh citizens where it is 18 in India in our neighboring developing country like us; in developed country like USA it is more than 10 times in comparing with us.

## **b. Absence of Separate Investigation Cell**

In Bangladesh there is no separate investigation cell under the judiciary or judicial magistrate courts; the investigation of an offence or accusation is to be assigned to the police officers, who are under the control of State Ministry. They often take huge time in giving a report and often fail to give a strong report. Therefore, the accused get discharged and victim citizens are depriving of justice. It is often seen that police are more interested to arrest the criminals than to submit an investigation report or present witnesses before the court which is directly responsible for not insuring justice to the victim citizens and they often lose the confidence upon the judiciary. In a field survey conducted by the researcher, it is found that among 30 judicial officers 83.33% respondents (25) gave their opinion for separate investigation team under the judiciary for ensuring citizens' rights; only 10% (3) disagreed; and 6.67% (2) made no comments.

## **c. Backdated Laws on Evidence**

Still today in our judiciary the evidence is taken and witnesses are examined under the Evidence Act, 1872 which is not suitable at the present time where digital system should get priority in disposing of the cases. Digital recording system and examining the witnesses through the video conference system should be introduced in the Evidence Act to dispose of the case more quickly. Besides, the examination of witnesses is very lengthy system which is also responsible for delaying justice to the citizens should be updated. Under these circumstances, Bangladesh Supreme Court drafts witness management policy with a view to reducing litigation time and slash backlog of cases and posted it on the SC website on 31 August, 2017(The New Age, 7<sup>th</sup> Sep. 2017).

## **d. Lack of Proper Security to the Witnesses**

In the criminal cases particularly murder cases or grievous hurt cases the witnesses are not interested to testify before the courts due to lack of security. As a result, the criminals are getting acquittal due to not prove of the allegation against them which is depriving of justice to the victim citizens. Under these circumstances, Bangladesh Supreme Court proposed a policy in the 21-point witness management policy that the vulnerable or threatened witnesses would be examined through video conference (BD SC, 2017).

**e. Corruption**

The general people cannot keep confidence upon the judiciary due to corruption but fair trial is the citizens' fundamental rights (The Constitution, Art.35). In a NHCR survey it is seen that conviction rate among the cases brought into trial is only 10% - extremely low often due to corruption (The Daily Star, 24<sup>th</sup> December, 2011). In a seminar, Prof. Abul Barakat, Ex-Chairman, Janata Bank, claimed that "judgments of lower and higher judiciary are selling". Though, it was denied by the present chief Justice Surendra Kumar Sinha. He claimed it would be 5-10% (The Daily Star and the Prothom Alo, 3<sup>rd</sup> April, 2016). In a field survey conducted by the researcher, similar view was found on corruption in judiciary. It is found that 66.11% (119) respondents among 180 citizens think that a citizen has to face corruption in order to get justice from court; only 23.89% respondents disagreed with this; and 10% respondents made no comments.

**f. Lack of Independent Public Service Commission: Govt. Unskilled Lawyers**

In Bangladesh, there is no independent public service commission. Therefore, there is no proper recruitment mechanism in appointing public prosecution. Generally, public prosecutors are appointed in political consideration; as a result inefficient and inexperienced lawyers are being appointed as public prosecutors who are often failing to prove the case and the victim citizens are deprived of getting justice and are losing confidence upon the judiciary. Besides, it is often seen that by using political backing, most of them get involved in corruption to make quick money; they do not present important witnesses or do not produce the required documents. As a result, the accused get acquittal at the final hearing.

**g. Lack of Adequate Accommodation**

The Judiciary-either higher or lower both face extremely accommodation crisis. At present 170 judicial officers are sharing the court-room by shifting which interrupts the judicial activities and waste the judicial working hours (Sinha, 2016). Besides, the government often creates new special courts- woman and child torture prevention tribunal, Speedy Trial Tribunal, Environment Court, Land Survey Tribunal, Labour Tribunal, and Administrative Tribunal etc under existing and new laws without considering the distinct establishment for them which also creates accommodation crisis for judicial officers and hamper their regular activities where the citizens suffer lots and gradually lose their confidence upon the judiciary.

## Findings and Concluding Remarks

The judiciary is under obligation by constitutional laws and general laws to protect and enforce citizens' rights either fundamental or non-fundamental rights including right to life, liberty and right against inhumane treatment or punishment. And the judiciary has upgraded its role in the several judicial pronouncements in recent years particularly in the period (2008-2016) in protecting and enforcing citizens' rights special reference to right to life, liberty and right against inhumane treatment or punishment.

In a recent judicial pronouncement in the case of *Emran Ahmed v. Bangladesh*, (2012) 64 DLR 462 the judiciary declares that the HCD can *sou moto* interfere when it comes to its knowledge that liberty of a citizen had been taken away by the unlawful ground. It is also pronounced in the same case that the HCD is empowered under section 491 of the Code of Criminal procedure to set at liberty of the victim who is found to be detained illegally or improperly.

***In the case of BLAST v. Bangladesh*, (2011) 63 DLR 10 the Judiciary** declared mandatory death penalty in any statute as inconsistent with citizens' rights accruing particularly in Articles 27, 31, 32 & 35 of the Constitution and so such provisions are ultra vires the constitution and therefore they are void.

In the case of *HRPB v. Bangladesh*, (2011) 63 DLR 71 the judiciary has shown an important views regarding for protection of citizens' right to life in a severe earthquake time. The Government is directed to make available sufficient necessary equipment for rescue of the citizens soon after occurrence of a severe earthquake.

In the case of *BLAST v. Bangladesh*, (2011) 63 DLR 643 the judiciary has upgraded its views regarding the corporeal punishment viz. caning, beating, and chaining upon the children in the educational institutions. The court declared such punishment as prohibited absolutely, and gave directions to the concerned authorities of the Government to take necessary steps to prevent the imposition of corporeal punishment by way of framing and adopting and disseminating appropriate guidelines, directions or orders to all concerned authorities.

Though the judiciary has upgraded its role in protecting and enforcing citizens' rights special reference to right to life, liberty and right against inhumane treatment or punishment in several judicial pronouncements in recent years particularly in the period (2008-2016), it could not show

better performance overall in the said period due to the less disposal of cases than filing of cases. As a result, the numbers of pending cases have been increased rapidly (See Recent Role of the Judiciary Section).

At the end of year-2016 the total pending cases in session courts stand as 647422 whereas it was 253832 in the beginning of the year-2008 (HCD, Supreme Court of Bangladesh, Annual Reports, 2008 & 2016,). As a result, in the mentioned period (2008-2016) new pending cases stand as 393590.

At the Beginning of year-2008 the total pending cases in the judicial magistrate courts were 618671 which have stood as 865536 at the end of year 2016 (HCD, The Supreme Court of Bangladesh, 2008 & 2016). Therefore, within the said period (2008-2016) new pending cases have been increased as 246865.

At the end of year-2016 the total pending writs in the writ courts stand as 69326 whereas it was 40980 in the beginning of the year-2008(HCD, Supreme Court of Bangladesh, 2008 & 2016). As a result new pending writs stand as 28346 in the said period.

So, in the recent years, particularly, in the said period (2008-2016), the trend of pending cases or writs has been increased rapidly in comparison with previous period (1972-2007). As a result, citizens could not get back their infringed right to life, liberty and right against inhuman treatment or punishment more quickly.

Along with the trend of pending cases, the numbers of extra-judicial killings and enforced disappeared citizens are gradually increasing each year in the said period except one or two cases which are giving alarming message regarding citizens' right to life, liberty and right against inhuman treatment or punishment (See Real Scenario Section).

Under these circumstances this year (28.03.17) the United Nations expressed their concern and criticized Bangladesh (in a report on political and civil rights by the UN Human Rights Committee) for a "high rate" of extrajudicial killings and enforced disappearances at the hands of police, RAB and other law enforcers.

Besides, it is often seen on the daily newspapers and heard here and there that the victims are not interested to go to courts for bringing an action due to the presence of culture of not getting justice and severe harassment from the government. This is a continuous real scenario regarding citizens' right to life, liberty and right against inhumane treatment or punishment where

even the National Human Rights Commission of Bangladesh can do nothing to investigate such extrajudicial killings by the state actors.

The reasons behind the backlog of cases being increased rapidly in the recent years are many (See Problems' Section):

There is huge vacancy of judicial officers in lower and higher judiciary. Besides, the number of judges in proportionate to the people is very low in comparing with developing and developed countries. As a result, the affected citizens are deprived of getting their rights in due time and are losing their confidence upon the judiciary in spite of its separation from the executive.

The Judiciary are extremely facing accommodation crisis. At present 170 judicial officers are sharing the court-room by shifting which interrupts the judicial activities and waste the judicial working hours.

There is no separate investigation cell under the judiciary or judicial magistrate courts. The judiciary has to depend on Police who are under the control of State Ministry, take huge time to give a report and often fail to give a strong report. Therefore, the accused get discharged and victim citizens are depriving of justice.

Still today, in a case, the evidence is taken and witnesses are examined under the Evidence Act, 1872, which is very backdated laws on evidence in which there is no application of digital system for quick disposal of cases and delivering justice to the affected citizens in due time.

On the contrary, in the criminal cases particularly murder cases or grievous hurt cases the witnesses are not interested to testify before the courts due to lack of security. As a result, the criminals are getting acquittal due to not prove of the allegation against them which is depriving of justice to the victim citizens.

Corruption, inefficiency of govt. lawyers, and lack of public service commission are also responsible for the failure of the judiciary in ensuring and enforcing citizens' rights.

## **Conclusion**

Under the above circumstances, in order to ensure better performance of the judiciary and for ensuring citizens' rights including right to life, liberty

and right against inhumane treatment or punishment, the identified problems should be solved; the vacancies of judicial officers should be filled up and the number of judges should be increased in proportionate to the number of citizens with adequate accommodation at least Indian model should be followed here; the law regarding evidence should be updated with ensuring proper security and facilities to the witnesses for their encouragement; separate judicial investigation cell and independent public prosecution service commission should be established; the state actors must stop extra-judicial killings of citizens; if they are notorious criminals, they can be tried by special courts within very short time; and the National Human Rights Commission of Bangladesh can be empowered to investigate such gross violation of rights of citizens by the state actors.

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