



## **BANGLADESH: Imposition of the death penalty and its impact**

**Submitted to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions**

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### ***Introduction***

The provision of the death penalty remains in force in various criminal laws of Bangladesh. The penal laws of Bangladesh provide capital punishment for 33 offences.<sup>1</sup> Once an accused is found guilty of those offences by a competent court, it can sentence him/her with a death penalty as the maximum punishment. Every year a large number of accused persons are being sentenced to death in the lower courts. The accused who are sentenced to death are kept in solitary confinement for many years. Many of them, fearful of being executed at any time, become mentally and physically ill. Some of the accused are forced to make confessions through torture during police remand and based on such confessions, the court imposes the maximum punishment on the accused.

The incumbent government has maintained considerable influence over the Judiciary since it assumed power in 2009, resulting in a justice administration that lacks independence and impartiality. As a result, opposition political activists and dissidents are at risk of grave human rights abuses due to the existence of a dysfunctional justice system. In this case the government, through the court, can impose severe punishments or long-term imprisonment to a person who they feel is a threat to them. In order to complete an investigation, the police often coerce the accused to give a confessional statement through torture in remand and on the basis of this confession, the court often passes the maximum punishment to the accused. As soon as the Trial Court passes a death sentence, the accused is kept in a condemned cell. It is a gross human rights violation to keep convicts in a condemned cell pending the final decision regarding his fate. For example, one ██████████ was arrested in 2003 for murder. The lower court sentenced him to death in 2006. He has been held in a condemned cell ever since. He was released from prison after the Appellate Division of the Supreme Court acquitted him in 2021. ██████████ was imprisoned in a condemned cell for 15 years awaiting execution of the death penalty.<sup>2</sup>

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<sup>1</sup>See Penal Code 1860 (Bangladesh); The Arms Act 1878 (Bangladesh); The Constitution of the People's Republic of Bangladesh 1972 (Bangladesh); International Crimes (Tribunals) Act 1973 (Bangladesh); Special Power Act 1974 (Bangladesh); Flight Safety Protection Act 1997 (Bangladesh); Women and Child Repression Prevention Act 2000 (Bangladesh); Acid Offense Prevention Act 2002 (Bangladesh); Anti-Terrorism Act 2009 (Bangladesh); Human Trafficking Prevention and Suppression Act 2012 (Bangladesh); Narcotic Control Act 2018 (Bangladesh); Army Act 1952 (Bangladesh); Air Force Act 1953 (Bangladesh); The Navy Ordinance 1961 (Bangladesh); Bangladesh Coast Guard Act 2016 (Bangladesh); Bangladesh Border Guard Act 2010 (Bangladesh), <http://bdlaws.minlaw.gov.bd/laws-of-bangladesh.html>.

<sup>2</sup> The daily Jugantor, 23 March 2022; <https://www.jugantor.com/todays-paper/city/533448/>

The number of death row prisoners is also rapidly rising in the country. As per Odhikar's documentation, from January 2021 to March 2022, a total of 411 persons were sentenced to death by lower courts and seven of the convicted individuals were executed in jail. However, it is difficult to ascertain the exact crimes for which the individuals were handed the death penalty since the authorities did not provide transparent and accurate information. However, documentation show that most of these death sentences were handed down for murder, and in some cases for rape, drug smuggling, and robbery.

In March 2022, a bench of the High Court Division of the Supreme Court of Bangladesh was hearing the death references and appeals of accused persons who had been sentenced to death in 2015 and 2016. It is safe to assume that the death reference cases and appeals of the accused who are being sentenced to death in the lower courts this year, will probably be heard in 2027-2028. As a result, a death row inmate has to stay in a condemned cell for years until the case is settled in the High Court Division of the Supreme Court and if the High Court Division upholds the death sentence of an accused, the accused will have to stay in the condemned cell for approximately 10 to 15 years till the final disposal of the case in the Appellate Division. According to the Supreme Court, 969 death references have come to the High Court for hearing in the last seven years. Of them, only 162 cases have been settled. There are 843 cases awaiting hearing. There are 2,213 death row inmates in condemned cells in the 68 prisons across the country.<sup>3</sup>

### ***Legal obligations***

Right to life and equality before the law are enshrined in the Constitution of Bangladesh. The amount of death sentences awarded in Bangladesh is a cause for serious concern. Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR) in 2000. Being a state party to the said Covenant, Bangladesh has not followed the mandatory obligations under this treaty. The ICCPR expressly states in Article 6(2) that in retentionist countries, a death sentence may be imposed only for the "most serious crimes." The Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."<sup>4</sup> However, in Bangladesh the death penalty can be imposed for economic crimes such as selling goods on the black market, smuggling, and forging currency.<sup>5</sup>

The Bangladesh government has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), neither has it made any commitment to abolish, defer, or put an official moratorium on the death penalty. Rather, the government has amended existing legislation, introducing new capital offences. On 17 November 2020, the Parliament passed the "Women and Children Repression Prevention (Amendment) Bill 2020" to introduce the death penalty as the maximum sentence for individuals found guilty of rape.<sup>6</sup>

Bangladeshi judicial proceedings in criminal cases generally fail to meet fair trial standards enshrined in Article 14 of the International Covenant on Civil and Political Rights. Corruption, political influence and a substantial backlog of cases hindered the justice system, and the granting of extensions effectively prevented many defendants from obtaining fair trials.

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<sup>3</sup> The daily Jugantor, 23 March 2022; <https://www.jugantor.com/todays-paper/city/533448/>

<sup>4</sup> Human Rights Committee, *CCPR General Comment No. 6: Article 6 (Right to Life)*, at para 7 (30 Apr. 1982).

<sup>5</sup> See The Special Powers Act 1974, <http://bdlaws.minlaw.gov.bd/act-details-462.html>.

<sup>6</sup> The Daily Star, 17 November 2020; <https://www.thedailystar.net/country/news/death-penalty-rape-amended-women-and-children-repression-prevention-bill-passed-199657>

Victims have no access to justice due to a prolonged and prevailing culture of impunity, corruption, and the lack of implementation of laws. There have been cases where some death row convicted prisoners were later found to be innocent and have been released from jail.<sup>7</sup>

### ***Method of execution***

The method of executing death penalty in Bangladesh is hanging to death by the neck, as provided in the Criminal Procedure Code. The death penalty has not been shown to be effective in the reduction of the rate of homicides or establishment of fair trial or justice. Most of the people who have been executed so far in the country for ordinary crimes were found to be socio-economically helpless. Interestingly, since the independence of Bangladesh, almost all Presidential Mercy-receivers (receivers who have previously been sentenced to death) were pardoned merely for their political affiliation. As a retentionist country, despite there being laws regarding the implementation of the death penalty for multiple heinous offences; in action, the application is not always equal and equitable for all.<sup>8</sup>

### ***Impact of the death penalty***

The imposition and the enforcement of the death penalty on individuals sentenced to death has a direct impact on their family members as a majority of the people who have been executed were the sole bread-earners of the family. As of June 2021, the number of death-row convicts has crossed 2,000 with over 1,300 appeals of such convicts pending for hearing by the High Court and the Appellate Division for years.<sup>9</sup> The backlog of cases prolongs the trial process resulting in ruthless suffering of death-row convicts, including psychological torture and ill-treatment in prisons and increases the concerns of the family members. Death reference cases are being filed from every district of the country in the High Court Division of the Supreme Court. The settlement rate is much lower than the accumulated death references received. As a result, death-row inmates are kept in solitary confinement in poor condition across the country for years until their sentence is finalised.

The death penalty in Bangladesh is disproportionately used against vulnerable and marginalised sections of society along the lines of economic status, social identity, and levels of educational attainment. According to a [joint study](#) conducted by the Law Department of Dhaka University and the Bangladesh Legal Aid and Services Trust (BLAST), 53% of those who were given death sentence were low-paid labourers or unemployed and 72% were economically weak or vulnerable. Furthermore, a large number of prisoners in this study who had been sentenced to death had low levels of educational attainment; the majority (87%) had no qualifications beyond secondary school level and 15% had no formal education at all. None of the prisoners had prior convictions and 74% of them had no reported delinquent records.<sup>10</sup>

The death-row prisoners are isolated in such a manner that constraints are imposed on meeting friends or loved ones and even other prisoners inside the same jail. The condemned cells, where death-row prisoners are incarcerated, are designed to divest the accused from sunshine, fresh air and socialisation with other prisoners. A death-row prisoner is faced with numerous challenges. Others have to represent the accused in legal management and repression by corruption-plagued jail officials are just two of them. There are allegations that the inmates are

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<sup>7</sup> The Daily Star, 5 February 2022; <https://www.thedailystar.net/law-our-rights/news/rights-watch-against-the-retention-death-penalty-2954721>

<sup>8</sup> The Daily Star, 5 February 2022; <https://www.thedailystar.net/law-our-rights/news/rights-watch-against-the-retention-death-penalty-2954721>

<sup>9</sup> New Age 10 June 2021; <https://www.newagebd.net/article/140285/death-row-convicts-top-2000-as-1300-appeals-await-hearing>

<sup>10</sup> New Age, 30 March 2022; <https://www.newagebd.net/article/166706/>

tortured, discriminated, humiliated and deprived of human rights inside jails. Many death-row prisoners get abandoned by their families. Perhaps due to the socioeconomic conditions, the family members have no alternative other than to relinquish their loved ones. Following their conviction, prisoners sometimes fail to find legal representation. It is also observed that lawyers are hardly willing to represent the poorer convicts. The economic condition of the convict plays a vital role behind his/her case being successfully conducted.<sup>11</sup>

According to a research report, a majority of the accused individuals given the death penalty were poor, less educated and socially disadvantaged and they were tortured in police custody. Most respondents expressed significant dissatisfaction with the quality of the legal investigation, with at least a third of the families claiming that the inmates were tortured in custody to extract confessional statements. Interviews also indicate that the use of torture as a tool of investigation may have become normalised or at least accepted to some extent.<sup>12</sup>

There is an enormous delay in proceedings which is largely responsible for the prolonged detention of inmates and their isolation on death row. In many cases, the process from the filing of the cases to their disposal by the High Court Division took more than 10 years. On an average, the cases had to spend four and a half years (from the date of registration of case) waiting for adjudication by the Trial Courts and, thereafter, another five and a half years for disposal by the High Court Division. Almost all families suffered huge financial losses and agony as a result of the drawn-out legal proceedings against the prisoners, as nearly a quarter of the prisoners had generated the sole income for their family. A large number of families of the prisoners were subjected to harassment and intimidation by law enforcers as well as ruling-party thugs.<sup>13</sup>

Meanwhile, the human rights of inmates in the country's prisons are regularly violated. There are allegations that people are being detained in jail without any evidence and have been incarcerated for years without trial. Despite their right to get bail, many dissidents and opposition leaders and activists are being held in prisons for a long period of time and even after being granted bail, their release is delayed. As a result, prisons are always overcrowded. According to the Department of Prisons, 68 jails across the country can accommodate 42,538 inmates in total, but there were 83,626 prisoners as of February 2022. Furthermore, prisoners are reportedly deprived from necessary medical treatment when they fall ill, resulting in death of many inmates due to illnesses.<sup>14</sup>

### ***Conclusion***

The imposition and execution of death penalty adversely affects both families of victims and families of the accused. It produces negative effects on families and friends of the accused. It also degrades the value of human life and brutalises society. The lack of good governance and the rule of law encourages insecurity, criminality, and corruption in society. With the death penalty in place, there is the unavoidable issue that someone who is in fact innocent will be executed and that there is no possible way of compensating them for this miscarriage of justice.

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<sup>11</sup> The Independent, 29 September 2021; <https://m.theindependentbd.com/post/268548>

<sup>12</sup> <https://deathpenaltyproject.org/knowledge/living-under-sentence-of-death/>

<sup>13</sup> <https://www.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2021/07/death-penalty-bangladesh>

<sup>14</sup> The Daily Star, 05 March 2022; <https://www.thedailystar.net/news/bangladesh/crime-justice/news/even-jail-stay-not-free-2975711>

In countries like Bangladesh where the justice delivery system is dysfunctional and there are allegations against the law enforcement agencies of corruption, extortion and torture in custody are extremely common and widespread, it is not surprising that the repressive attitude of the state will extend to drafting repressive laws that contain the death penalty and the rule of law will become increasingly weakened.

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## **Odhikar**

Odhikar, meaning ‘rights’ in Bangla, is a human rights organisation based in Dhaka, Bangladesh and was established on October 10, 1994 by a group of human rights defenders, to monitor human rights violations and create wider awareness. It holds special consultative status with the ECOSOC of the United Nations.



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