

DISSERTATION ON

**A Critical Analysis on the Protection of Human Rights of the Death
Convicts in Condemned Cells in Bangladesh**

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DECLARATION

I herewith declare that this dissertation titled “*A Critical Analysis on the Protection of Human Rights of the Death Convicts in Condemned Cells in Bangladesh*” is my original work, completed after registering for the Bachelor of Laws degree at East West University, and that it has not previously been included in a thesis or dissertation submitted to this or any other institution for a degree, certificate, or other academic credentials.

I have accepted and take accountability for following the University's current research ethical standards and for doing the procedures in accordance with the University's rules.

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A CRITICAL ANALYSIS ON THE PROTECTION OF HUMAN RIGHTS OF THE DEATH CONVICTS IN CONDEMNED CELLS IN BANGLADESH

ABSTRACT

The death penalty, sometimes known as capital punishment, is the execution of a person who has committed a serious crime after the court has announced the conviction. An accused who has been sentenced to death must remain in a condemned cell until his/her execution. As a result, an accused has to spend the whole time of his/her trial in a condemned cell. Prolonged delay in concluding a death referral case might cause the accused to spend longer time than necessary. Bangladesh's constitution provides citizens a set of rights, including human rights, yet such essential rights are denied to those imprisoned in condemned cells. The goal of this research is to determine which parts of Bangladesh's constitution guarantee the human rights of prisoners in the condemned cell. The research also tries to identify possible reforms that the government may implement in compliance with international legal regime norms. To that end, this research looked at the effectiveness of existing legal frameworks concentrating on constitutional law and concluded with a thorough scenario on the topic.

KEY WORDS: Condemned Cell, Capital Punishment, Death Convict, Constitution, Human Rights

LIST OF ABBREVIATION

| | |
|-------|--|
| A.D | After Death |
| B.C | Before Christ |
| CP | Civil and Political |
| ESC | Economic, Social, Cultural |
| ICCPR | International Covenant on Civil and Political Rights |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |

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CHAPTER ONE

INTRODUCTORY CHAPTER

1.1 Background of the Study

Capital punishment or death penalty means the execution of an offender of serious crimes to death after publishing the conviction of the court. In Bangladesh, there are 33 types of offences including murder, rape, abetment of suicide sedition, sabotage etc. under which the sentence of death penalty can be given by the court.¹ According to the report of 2021, there are 1987 prisoners across the country who are convicted of capital punishment and been living in condemned cell.²

A person convicted of death penalty has to live in a condemned cell for 13 to 14 years on average due to the legal complications.³ Some certain procedures in accordance with the law must be followed for the execution of a death penalty. First, the approval of the High Court Division is required for the execution of a death penalty.⁴ On the other hand, one can appeal to the High Court Division against the judgment of death penalty.⁵ Secondly, the accused can appeal to the Appellate Division against the judgment of the High Court Division under the constitution.⁶ Thirdly, there are provision of reviewing the judgment of the Appellate Division under the Constitution of Bangladesh.⁷ Finally, the accused reaches the last phase of this procedure which ends with the application for prerogative mercy by the president under article 49 of the Constitution of Bangladesh.

This whole procedure takes a long time to complete. As a result, an accused has to live in a condemned cell during this whole period. Sometimes, the excessive delay in resolving a death penalty case results into making the accused spend more time than usual which might constitute

¹ Muhammad Mahbubur Rahman, 'Living Under Sentence of Death: A study on the profiles, experiences and perspectives of death row prisoners in Bangladesh' (2020) Department of Law, University of Dhaka

² Star Digital Report, 'HC seeks govt report on facilities for death row convicts in condemned cells' *The Daily Star* (Dhaka, 31 October 2021) <<https://www.thedailystar.net/news/bangladesh/crime-justice/news/hc-seeks-govt-report-facilities-death-row-convicts-condemned-cells-2210541>> accessed 1 March 2022

³ Didarul Alam, 'Death Row Prisoners do not want to stay at Condemned Cell' *Daily Ittefaq* (Dhaka, 05 September 2021)

⁴ Section 374 of the Code of Criminal Procedure 1898

⁵ Section 410 of the Code of Criminal Procedure 1898

⁶ Article 103 of the Constitution of the People's Republic of Bangladesh

⁷ Article 105 of the Constitution of the People's Republic of Bangladesh

double punishment. Besides, the condemned cell is not a great place to live in. A Condemned cell is a tiny cell that is approximately 10 feet by 6 feet in measure. The cell is totally locked and there is no system of ventilation of air, no arrangement of light, no arrangement of any sanitary toilet. The prisoner must do all his humane activities in this tiny cell. The life standard in a condemned cell is to the lowest point.⁸ Sometimes, after passing a decade in the condemned cell, an accused gets released after a successful appeal to the apex court.⁹

In recent times, a writ petition was filed in the High Court Division questioning the rationality of keeping the death penalty convicts in condemned cells before the final disposal of the case by the Appellate Division.¹⁰ In Bangladesh's criminal justice system, prisoners' rights are frequently neglected as delay of execution of a death sentence for an extended period of time has a demoralizing impact. It has the potential of depriving a person of his life in an unethical, discriminatory, and irrational manner to violate the fundamental rights guaranteed by the constitution.

Some certain provisions of the constitution of Bangladesh can be interpreted in this regard to protect the rights of the prisoners in the condemned cell. Article 15 of the constitution has described about the provision of basic necessities for every citizen including food, clothing, shelter and medical care. Article 35 of the constitution has mentioned the provision of protection of rights in respect of trial and punishment. Article 35 (5) explicitly talks against any act of cruel, inhuman or degrading treatment to any alleged person. Moreover, many provisions relating fundamental rights in part III of the constitution can be discussed regarding the matter of human rights violation of the death convicts in the condemned cell. Article 25 of the constitution recognizes the UN charter. The UN has set the minimum standards and rules for the treatment of the prisoners in First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955. So, it is necessary for the government to set an acceptable standard for the treatment of the death convict prisoners by maintaining the constitutional provisions and

⁸ Shishir Manir, 'Living under the agony of Death' *The Daily Star* (Dhaka, 18 December 2021) <<https://www.thedailystar.net/law-our-rights/news/living-under-the-agony-death-2920256>> accessed 1 March 2022

⁹ Staff Correspondent, '20 Years in Condemned Cell' *The Daily Star* (Dhaka, 25 June 2021) <<https://www.thedailystar.net/city/news/20-years-condemned-cell-2117793>> accessed 1 March 2022

¹⁰ Staff Correspondent, 'Writ challenging legality of keeping convicts in condemned cells' *Daily Bangladesh* (Dhaka, 04 September 2021) <<https://m.daily-bangladesh.com/english/Writ-challenging-legality-of-keeping-convicts-in-condemned-cells/63728>> accessed 1 March 2022

international obligations. This delicate procedure of ending one's life must be handled with extreme caution. Any flaw in that legal procedure jeopardizes the right to life and calls the entire process into doubt.

1.2 Research Question

Primary Question:

- To what extent does the constitution of Bangladesh protect the human rights of the death convicts in the condemned cell?

Secondary Question:

- What reformations regarding this matter can possibly be made by the government in the context of the international legal regime?

1.3 Research Objective

The principal objective of this study is to find out the provisions of the constitution of Bangladesh under which the human rights of the death convicts in the condemned cell are being protected and to what extent those human rights are being protected. The research also aims at finding out the probable reformations which can be undertaken by the government in accordance with international legal regime standards.

1.4 Research Methodology

This study takes a qualitative approach to its inquiry. The research is doctrinal, which is based on the study of the existing legal regime as well as secondary sources including necessary materials and comprehensive information from acts, relevant books, cases, international legal instruments, publications from journals as well as online resources.

1.5 Analytical Framework

1.5.1 Research Design

The study relies heavily on secondary data. Reports, laws, rules, guidelines, regulations, websites, newspapers, online blogs, journals, and research papers, among other sources, were used to compile information. Apart from that, the internet has been used as a source of knowledge. This study employs qualitative research technique. The theoretical framework established served as the foundation for two separate procedures of advanced legal study. The first is to look for applicable legal provisions inside the legal system in question, and the second is to interpret such provisions.

1.5.2 Data Analysis

The legal framework also includes the relevant organizations, as well as its statutes and norms of conduct. As a result, in order to gain a complete picture of the legal system, these practices will be investigated as well. Different transnational legal concerns will also fall under the subject matter of the research in terms of assessing and investigating the statute and laws of the international perspectives on protection of rights of death convicts in condemned cell, as outlined in the conceptual framework.

A comparison tool will be utilized once more to identify the various restrictions and flaws in the current legal framework, as well as to offer a future road map. A portion of comparative study will be discussed in order to determine where we fall short. Finally, conclusions might be made about what measures should be taken as a policy proposal to lead us to a future road map that will be provided for a better legal regime on a national and global scale.

1.6 Limitations of the Study

To begin with, the most significant constraint is the limitation of time. Due to these limitations, as well as a lack of suitable data, several parts of the study were unable to be explored further. Also, because of the COVID 19 Pandemic and personal difficulties, direct interviews with the relevant personalities who were victims of such conditions were not possible. Finally, because the work

was done at home, many cases, journals, research papers, books, and articles were unavailable due to lack of access to certain websites.

1.7 Literature Review

In the case of *Union of India vs Dharam Pal*¹¹ the court ruled that "Only when the punishment has become final, conclusive, and indefensible, and cannot be overturned or nullified by any legal or constitutional method, can the prisoner be deemed to be under the sentence of death... Until then, a person who is sentenced to death cannot be considered a prisoner under section 30(2) of the Prisons Act. We believe that this interpretive procedure will alleviate the pain and torture inherent in sub-section (2) of section 30, limiting the length of such detention to a minimum." As a result, solitary confinement prior to the denial of a mercy petition by the president, which has occurred despite several Supreme Court orders to the contrary, is tragic and clearly unlawful.

Muhammad Mahbubur Rahman in his book named 'Living Under Sentence of Death: A study on the profiles, experiences and perspectives of death row prisoners in Bangladesh', opined that¹² Bangladeshi men and women are sentenced to death for lengthy periods of time before being executed. Delays in the criminal proceeding caused concern among prisoners and their financial hardship of the regular family life. Sometimes, the cost of legal representation is so high that the accused party cannot afford the litigation costing. In some cases, because a family is deprived of the prisoner's financial contributions to household expenses, particularly in cases where the prisoner was the family's sole earner. The analysis argues that there are fundamental weaknesses in Bangladesh's criminal justice system that should concern people who advocate the continued use of capital punishment in critical circumstances. But the research project did not mention any writings related to the violation of human rights of the prisoners in condemned cell under the constitutional provision.

Death row is regarded as the most dehumanizing setting in the prison. Author Robert Johnson in his paper described that death row inmates are confined to a type of existential limbo, residing as cold storage creatures rather than living like human beings with even a semblance of autonomy.

¹¹ *Union of India vs Dharam Pal* [2019] Criminal Appeal No. 804 of 2019

¹² Muhammad Mahbubur Rahman, 'Living Under Sentence of Death: A study on the profiles, experiences and perspectives of death row prisoners in Bangladesh' (2020) Department of Law, University of Dhaka

The death sentence is intrinsically dehumanizing, according to the author, and hence a violation of human dignity and rights.¹³

¹³ Robert Johnson "Reflections on the Death Penalty: Human Rights, Human Dignity, and Dehumanization in the Death House," (2014) *Seattle Journal for Social Justice*: Vol. 13: Iss. 2, Article 14 <<https://digitalcommons.law.seattleu.edu/sjsj/vol13/iss2/14>> accessed 1 March 2022

CHAPTER TWO

THEORETICAL AND CONCEPTUAL FRAMEWORK

2.1 Introduction

This chapter will describe relevant concepts, theories and definitions relating to the death penalty and condemned cells. As the concept of capital punishment is a form of punishment that has been followed since the beginning of civilization.

2.2 Relevant Concepts and Definitions

2.2.1 Capital Punishment, Condemned Cell and Death Convicts

Capital punishment is a legal process in which a person is sentenced to death as a penalty for a crime generally as result of serious breach of state laws.¹⁴ It also is known as the death penalty or death sentence. Capital punishment or the death penalty is recognized as a form of punishment in Bangladesh¹⁵. According Bangladeshi laws, almost all death sentences are carried out by hanging.¹⁶ Bangladesh, like other countries in the area, does not have a jury system; offenders are tried and punished by a judge. Those who have been sentenced to death have an inherent right to appeal to the High Court. An aggrieved may file subsequent appeal to the High Court Division. The final appeal can be filed in the Supreme Court. If all other options of appeal have been completed, the convicted person's only remaining option is to petition the President for mercy.

Death row, also known as a condemned cell, is a part of a jail where prisoners who have been convicted of a serious offense and sentenced to death awaiting execution.¹⁷ When a person is

¹⁴ Richard C. Dieter, 'The Death Penalty and Human Rights: U.S. Death Penalty and International Law' Oxford Round Table, U.S. Death Penalty and International Law (2005) p-5

¹⁵ Section 53 of the Penal Code 1860

¹⁶ Capital punishment is a legal process of approval of the honorable High Court division of the Supreme Court of Bangladesh, The Lawyers and Jurists < <https://www.lawyersjurists.com/article/capital-punishment-is-a-legal-process-of-approval-of-the-honorable-high-court-division-of-the-supreme-court-of-bangladesh>> accessed 14 March 2022

¹⁷ Death Row, Florida Department of Corrections <<http://www.dc.state.fl.us/ci/deathrow.html>> accessed 16 March 2022

sentenced to death, he is forced to spend years, if not decades, in isolated prison. This procrastination imposes a double penalty on death row inmates, which is neither imposed by law nor prescribed in any manner by the judge. As a result, while pursuing their legal appeals, the physical and mental health of death-row inmates has deteriorated dramatically. The condemned cells are meant to keep the accused away from sunlight, fresh air, and interaction with other inmates.¹⁸

The term "death convict" refers to those who have been sentenced to death and are now awaiting execution. Death convicts are those who have been found guilty of the most heinous crimes and sentenced to death. The offenses and elements that determine whether a crime is punishable by death are determined by legislation or by any statute.¹⁹

2.3 Relevant Theories:

Punishment is a social norm, and institutions are formed to administer punishment once the criminal justice system has determined that the offender is guilty and that the institution has the jurisdiction to punish. Since crime was considered an intentional act of a free moral person, greater emphasis was placed on societal retaliation as punishment evolved. As a result, we began punishing largely for revenge, deterrence, or the sake of achieving a right balance of accounts between "deliberate" wrongdoers on the one hand and an aggrieved community on the other. This section attempts to analyze several conceptions of punishment, as well as its usefulness and effectiveness, in light of current criminology.

2.3.1 Deterrent Theory:

Because the word "deterrent" means "to discourage," it can be concluded that the penalty imposed out to the offender under this theory will discourage the criminal from committing the same crime

¹⁸ M A Hossain, Death row prisoners in Bangladesh <<https://m.theindependentbd.com/post/268548>> accessed 16 March 2022

¹⁹ Department of Justice, The United States of America <<https://bjs.ojp.gov/topics/corrections/capital-punishment>> accessed 17 March 2022

again in the future. Ultimately, the goal of penalty under this theory is to create fear in the wrongdoer's mind. This can be accomplished by imposing a penalty on the offender or by delivering an exemplary punishment against the criminal that would prevent him from committing any crime in the future.²⁰

2.3.2 Retributive Theory:

Retributivists scholars think that a guilty party should be punished. According to Herbert Hart, the application of the sufferings of punishment to an offender who is morally culpable is one of the main theme of retributive theory.²¹ The main reason for using the Retribution theory is to provide a sense of social security by granting a punishment against the criminal, which can provide justice to the society and also serve as an example for any other person who may be thinking of committing an offence similar to the one for which a person has been given Retribution punishment.

2.3.3 Preventive Theory:

According to the preventive theory, the criminal's punishment should not be given in retaliation for the offense, but rather to deter future crimes. The basic goal of this theory is to safeguard society from criminals, and it is for this reason that the offender should be imprisoned in order to remove the possible risk posed by his presence in society.²² This notion was intended to prevent repetition of criminal conducts through punishments like as jail, execution, or exile.

2.3.4 Reformative Theory:

According to this theory, a criminal should not be examined in isolation from his surroundings since he does not cease to be a human person when he commits a crime, and it is thus necessary to investigate what drove him to commit such a crime against another human being.²³ Reformative theory possesses that a criminal should serve his or her sentence in order to be freed, reformed and

²⁰ Chaturvedi & Chaturvedi, 'Theory and Law of Capital Punishment' 16 (1989)

²¹ R.A.Duff and Stuart P.Green, 'Introduction: The Special Part and Its Problems' in *Defining Crimes: Essays on the Special Part of the Criminal Law* Oxford University Press (2005) p-42

²² Critical Analysis of Theories of Punishment, <<http://jsslawcollege.in/wp-content/uploads/2013/05/CRITICAL-ANALYSIS-OF-THEORIES-OF-PUNISHMENT1.pdf>> accessed 18 March 2022

²³ Dr. NV Pranjape, 'Studies in Jurisprudence and Legal theory', 18th Ed., Ch 12, P- 264

changed because the main goal of a punishment is to change a person's mind and transform him into a better human being.²⁴

2.4 Conclusion

By conceptualizing and evaluating such terminology and legal frameworks, this chapter incorporates the primary legal basis for protecting the rights of prisoners in condemned cells and specifies the objective and movement of the research study.

²⁴ *ibid*

CHAPTER THREE

PROTECTION OF HUMAN RIGHTS OF DEATH CONVICTS: A HISTORICAL DISCUSSION

3.1 Introduction

The extent, purpose, and manner of capital punishment have all sparked debates around the world. The death penalty has a complicated and contentious history that dates back to prehistoric times. This chapter will describe the history of capital punishment and provide a concise overview of the current situation surrounding the death penalty and the condemned cell.

3.2 A Historical Overview of Capital Punishment

Since the dawn of civilization, almost every society has utilized the death penalty. Without matured imprisonment systems, there was usually no feasible alternative to provide deterrence and incapacitation of criminals until the 19th century. Through ages, the procedure of capital punishment has been evolved and developed. The evolution of capital punishment can be described as below:

3.2.1 Ancient Era

In many ancient cultures, the death penalty was used in various forms. In 18th Century B.C, The Hammurabi Code was written by the king of Babylon which contained crimes and their punishments. The code applies the principle of “*lex talionis*”, or "an eye for an eye," and imposed the death sentence for twenty-five of the offences.²⁵

Around the 12th century B.C., ancient Egyptian civilizations adopted the capital punishment as well. Those accused of attempting to assassinate Pharaoh Ramses III, for example, were either executed or forced to commit suicide. Imprisonment with a stake was one brutal way of capital

²⁵ Rebecca Stetoff, ‘Furman v. Georgia: Debating the death penalty’ (2008) Tarrytown, New York

punishment, ensuring a protracted and agonizing death.²⁶ The very first constitution of Athens, the “Draconian Law” contained capital punishment was more prevalently than eve.²⁷

3.2.1 Middle Age

It's important to note that the death penalty was established into law under the Roman Empire; 'in the first two centuries A.D., the basic death punishment and brutal modes of execution grew more widespread.²⁸ Before the creation of modern penal system, the death sentence was utilized as a broad type of punishment for even minor offenses throughout medieval and early modern Europe. The first caliph of the Rashidun Caliphate, Abu Bakr, is reported to have advised collapsing a wall on the offender or burning an offender alive, while Ali ibn Abi Talib is said to have ordered one sodomite to be stoned to death and another to be thrown face from the highest structure in city.²⁹

3.2.3 Modern Era

Over time, the concept of fundamental human rights has begun to appear in many writings by renowned intellectuals. Cesare Beccaria in his work 'On Crimes and Punishments,' for example, speaks out against the capital punishment, arguing that "the punishment of death is not allowed by any right." He also claims that capital punishment is an easy tool for the state to destroy its own inhabitants "whose annihilation they deem essential or advantageous to the common interest."³⁰

²⁶ Dollinger, 'Law and order in ancient Egypt' <http://www.reshafim.org.il/ad/egypt/law_and_order/index.html> accessed 23 March 2022

²⁷ Ellis Horne, *What is Draconian law? In The Story of the Greatest Nations and the World's Famous Events* (1913, Vol. 1)

²⁸ Peter Garnsey, *Why Penalties Become Harsher: The Roman Case, Late Republic to Fourth Century Empire* (Vol. 1, p 152 Natural Law Forum 1968)

²⁹ Will Roscoe, Stephen O. Murray, 'Islamic Homosexualities: Culture, History, and Literature' <https://books.google.com.bd/books?id=6Zw-AAAAQBAJ&pg=PA88&redir_esc=y#v=onepage&q&f=false> accessed 25 March 2022

³⁰ Cesare Beccaria, *Of Crimes and Punishments*, (1764, p-24)

3.2.4 Current Era

The Universal Declaration of Human Rights (UDHR), the most fundamental instrument, declares that "everyone has the right to life, liberty, and the security of person" and was accepted by the majority of UN members. Despite the fact that the UDHR has been recognized by the entire world community, it is still not recognized as a legally enforceable treaty by numerous national judicial systems.

3.3 Death Penalty and the Constitution of Bangladesh

The constitution states that no one's life or personal liberty can be taken away unless it is conducted in line with the law.³¹ As offence is subject to violation to law, the offenders in prisons are barred from their personal liberty in accordance with the constitution. Loss of life includes the death sentence, whereas deprivation of personal liberty includes both the lawful and unlawful or arbitrary confinement of any individual.

No one shall be tortured or subjected to cruel, brutal, or humiliating punishment or treatment, according to the constitution of Bangladesh.³² Obviously, the death sentence is a cruel, inhumane, and degrading punishment. However, the constitution states that the previous mentioned provision will not change the functioning of any existing legislation.³³ As a result, in current legislation or a criminal statute, this clause allows for the death sentence, resulting into justifying the prison system.

Deprivation of life can only occur when it is necessary for the state's or organized social security. The penal laws of Bangladesh impose a mandatory death penalty for a few offences³⁴, which is a gross violation of the constitution³⁵, because these clauses acknowledge the inviolability and sanctity of human life and liberty. These two mentioned articles are based on the principle of strengthening and entrenching the dignity of human life and liberty.

³¹ Article 32 of the Constitution of the People's Republic of Bangladesh

³² Article 35(5) of the Constitution of the People's Republic of Bangladesh

³³ Art. 35(6) of the Constitution of the People's Republic of Bangladesh

³⁴ Section 303 of the Code of Criminal Procedure 1898

³⁵ Article 31, Article 32 of the Constitution of the People's Republic of Bangladesh

3.4 Conviction of Death Penalty: The Procedure

Sessions judges, additional sessions judges, or tribunals decide on death penalty cases.³⁶ The proceedings are forwarded to the High Court Division as a Death Reference Case if an accused is sentenced to death by the trial judge, and the death sentence cannot be carried out unless the High Court Division confirms it.³⁷ The prisoner has the right to appeal to the Appellate Division of the Supreme Court of Bangladesh if the High Court Division affirms a death sentence imposed by the trial court or condemns a person to life imprisonment.³⁸ A petition for reconsideration of the Appellate Division's decision is also available.³⁹ A death sentenced prisoner has the right to petition for clemency from the president, in addition to judicial remedies.⁴⁰

Death sentenced prisoners are placed in condemned cells, which are segregated prison cells where a death sentenced prisoner awaits for execution, immediately after the trial court verdict.⁴¹ This lengthy custom appears to stem from the Prisons Act, which states that a prisoner "under sentence of death" should be "confined in a cell apart from all other convicts, and shall be kept under the control of a guard by day and by night."⁴²

In Bangladesh, hanging by the neck is the most common method of execution. When someone is sentenced to death, the sentence must include the phrase "be hung by the neck until he is dead."⁴³ On the other hand, it is also stated that "a person sentenced to death under may be executed by hanging him by the neck until he is dead or by shooting him in the prescribed way until he is dead as the Special Tribunal may direct."⁴⁴

³⁶ The Code of Criminal Procedure 1898

³⁷ Section 374 of the Code of Criminal Procedure 1898; Section 30(2) of the Special Powers Act 1974; Section 29 of the Suppression of Violence against Women and Children Act 2000

³⁸ Article 103(2)(b) of the Constitution of the People's Republic of Bangladesh

³⁹ Article 105 of the Constitution of the People's Republic of Bangladesh

⁴⁰ Article 49 of the Constitution of the People's Republic of Bangladesh

⁴¹ Muhammad Yeasin 'Living Death in Condemn Cells' *The Independent* (Dhaka, 4 February 2019) <www.theindependentbd.com/post/186101> accessed 28 March 2022

⁴² Section 30 of the Prisons Act 1894

⁴³ Section 368(1) of the Code of Criminal Procedure 1898

⁴⁴ Section 34(A) of the Special Powers Act of 1974

3.5 Current Scenario of the Death Convicts in Condemned Cell

Although the death penalty has been abolished in many nations, it is still used indiscriminately in our country. Because death references are received from lower courts all across the nation, review processes in the High Court Division take a lengthy time.⁴⁵ Worryingly, the extended detention of inmates and their prolonged isolation in condemned cells is due to the large delay in proceedings. As a result, death-row inmates must spend a long time in the condemned cell. Almost half of the cases take more than ten years from the time they are filed to the time they are decided by the High Court Division.⁴⁶ On average, it takes four and a half years for the trial courts to decide a matter, followed by another five and a half years for the High Court Division to decide.⁴⁷ Almost all death row inmates endure significant financial losses and suffering as a result of the lengthy legal processes against them, as roughly a quarter of the inmates provide their family's sole source of income. The agonizing waiting time causes most death-row inmates to lose their mental stability. Recently, a writ petition was filed in the High Court Division questioning the rationality of keeping the death penalty convicts in condemned before the final disposal of the case by the Appellate Division.⁴⁸

3.6 Conclusion

This chapter has upheld the historical context of protection of human rights of death convicts. The constitutional and procedural provisions regarding death penalty in Bangladesh have been discussed thoroughly in this chapter.

⁴⁵ Staff Correspondent, '20 Years in Condemned Cell' *The Daily Star* (Dhaka, 25 June 2021) <<https://www.thedailystar.net/city/news/20-years-condemned-cell-2117793>> accessed 30 March 2022

⁴⁶ Muhammad Mahbubur Rahman, 'Living Under Sentence of Death: A study on the profiles, experiences and perspectives of death row prisoners in Bangladesh' (2020) Department of Law, University of Dhaka p-42

⁴⁷ *ibid*

⁴⁸ Staff Correspondent, 'Writ challenging legality of keeping convicts in condemned cells' *Daily Bangladesh* (Dhaka, 04 September 2021) <<https://m.daily-bangladesh.com/english/Writ-challenging-legality-of-keeping-convicts-in-condemned-cells/63728>> accessed 30 March 2022

CHAPTER FOUR

LEGAL REGIME ON DEATH PENALTY CONVICTS IN BANGLADESH: TO WHAT EXTENT HUMAN RIGHTS ARE PROTECTED?

4.1 Introduction

This chapter broadly discusses the existing legal regimes in Bangladesh on rights of death penalty convicts. It discusses on how the rights and interests of a death convict can be protected according to the existing laws. Lastly, this chapter gives a briefing about recent case laws on protection of rights of death convicts in condemned cell.

4.2 Legal Regime of Bangladesh

4.2.1 The Code of Criminal Procedure 1898

The rights of a prisoner of condemned cell initially get protected under the Code of Criminal Procedure. The death convict prisoner has the right to stay the execution of sentence unless it is confirmed by the High Court Division after passing the judgment of the Court of Session.⁴⁹ After that, if the High Court Division thinks that further inquiry or evidence shall be taken to prove the guilt or innocence of the prisoner in condemned cell, the High Court Division may take such evidence or inquiry by itself or direct the Court of Session to take such evidence or inquiry.⁵⁰ The code also protects the right to life of a woman if it is found that any death convicted woman in condemned cell is found to be pregnant. Therefore, the execution of death sentence shall be postponed and the accused shall be sentenced to life imprisonment.⁵¹ As a result, the prisoner shall be moved to the regular cell from the condemned cell. The code also refers to commute the punishment of a death row prisoner by the government.⁵² The commutation of death sentence of

⁴⁹ Section 374 of the Code of Criminal Procedure 1898

⁵⁰ *ibid* at S. 375

⁵¹ *ibid* at S. 382

⁵² *ibid* at S. 402

condemned cell prisoner shall be exercised by the president.⁵³ The prisoner in condemned cell also has the right to appeal against the judgment in the higher court according to this act.

4.2.2 The Prison's Act 1894

The Prison's Act deals with widespread matters related to prison system, jail authority, jurisdiction, prisoners and their separation, facilities and other related matters. This act says that the Medical Officer has the duty to report to the Superintendent of the jail if he thinks that any prisoner, including the prisoner in condemned cell, is likely to be seriously affected by the treatment of the prison.⁵⁴ Every prisoner must be evaluated by a Medical Officer as soon as possible following admission, according to this statute.⁵⁵ Solitary confinement cells must allow the prisoner to speak with a prison officer, and anyone detained in solitary confinement must be visited at least once a day by a Medical Officer or Deputy.⁵⁶ Friends and family are allowed to give food, clothes, bedding, and other essentials⁵⁷ to the unconvict prisoners under this act but the prisoners in condemned cell are not entitled to this facility. Unconvict prisoners are provided with clothing and bedding by the jail authorities⁵⁸ under this act but the convicted and death row prisoners are not provided with such facilities.

The act ensures the medical attention of sick prisoners including those in condemned cell.⁵⁹ The prison authority is responsible for the care of ill prisoners including prisoners in condemned cell. Proper medicine or medical attention has to be provided to the ill prisoner according to the recommendation of the Medical Officer.⁶⁰ Unconvict prisoners are allowed to have visits, even from their lawyers, under this statute⁶¹ but the death convicts are deprived of this right. Surprisingly, the right to have visitors does not appear to extend to those who have been condemned to prison.

⁵³ Section 402A of the Code of Criminal Procedure 1898

⁵⁴ Section 14 of the Prisoners Act 1894

⁵⁵ *ibid* at Sec. 24

⁵⁶ *ibid* at Sec. 29

⁵⁷ *ibid* at Sec. 31

⁵⁸ *ibid* at Sec. 33

⁵⁹ *ibid* at Sec. 37

⁶⁰ *ibid* at Sec. 38,39

⁶¹ Section 40 of the Prisoners Act 1894

4.2.3 The Prisoners Act 1900

The Prisoners Act 1900 deals with some widespread scopes related to prisoners such as: execution of the prisoners, removal of prisoners, discharge of prisoners, attendance of prisoners etc. The act says that a condemned cell prisoner's rights against execution of any court's order are protected when the officer in charge of a prisoner subsequently finds the legality of such order of execution doubtful.⁶² A prisoner can be removed by general or special provision from the prison under this act on various grounds such as : payment of fine, bail for keeping peace, good behavior etc.⁶³ The act also talks on how lunatic prisoners shall be kept in prison. It says that the lunatic prisoners must be kept in in lunatic asylum in accordance with the Lunacy Act, 1912.⁶⁴ It can be argued from the previous sentence that any lunatic in condemned cell has the right to get the proper treatment in accordance with the above said law. The statute also mentions prerogative mercy, noting that in any situation in which the High Court Division has recommended to the President the issuance of a prerogative mercy to any prisoner in condemned cell, the prisoner may be released with due formalities.⁶⁵

4.2.4 The Identification of Prisoners Act 1920

This act generally talks about the identification of the prisoners in order to keep their all information for further procedure. The act says that a convicted who can be punished with rigorous imprisonment for a term of one or more years shall allow the police officer to take his photograph and body measurements.⁶⁶ This act also gives jurisdiction to the magistrate for the purpose of investigation under the Code of Criminal Procedure 1898 to take photos and measurement of relevant prisoners or persons.⁶⁷ The act protects the right to personal information of a person who has not been convicted of an offence punishable for rigorous imprisonment more than 1 year, saying that all recorded photographs, measurements and other information shall be destroyed as soon as the person gets discharged or acquittal from any case.⁶⁸

⁶²Section 17 of the Prisoners Act 1900

⁶³ *ibid* at Sec. 29

⁶⁴ *ibid* at Sec. 30

⁶⁵ *ibid* at Sec. 33

⁶⁶ Section 3 of the Identification of Prisoners Act 1920

⁶⁷ *ibid* at Sec. 5

⁶⁸ *ibid* at Sec. 7

4.3 The Court's Approach on Death Convicts: Recent Writ Petition Challenging the Legality of Condemned Cell

The constitutionality of a provision in the prison code that enables death convict prisoners to be held in condemned cells until their cases are fully resolved by the court has been called into question by the High Court Division.⁶⁹ The High Court Division has issued a rule ordering the government to explain why the government should not deem it unconstitutional to hold death convicted prisoners in condemned cells until their sentences are finalized by judicial and administrative tribunals. The High Court Division also asked why allowing death convict detainees being held in condemned cells, not found to be unconstitutional. In addition, the court has ordered information in the form of a report on the kind of amenities accessible to the accused who are held in condemned cells.⁷⁰

Shishir Monir, the petitioner, argued that “Every prisoner sentenced to death should be held in a safe area inside the jail, preferably a cell, from the day of his sentence and without having to wait for the sentence to be validated by the High Court Division. Before a criminal sentenced to death is placed in a cell or chamber, the Jailor must inspect it to ensure its fitness safety and record the results of the inspection in his report book.”⁷¹ He also added that in many situations, the death sentence is lowered to life imprisonment or the accused is acquitted in the final verdict. Human rights are being violated by this rule. He also argued that confining death convict prisoners in condemned cells before their sentences are finalized by judicial and administrative tribunals violates Article 35(5) of the constitution. According to the constitution, no one should be tortured or subjected to cruel, inhuman, or degrading punishment or treatment.⁷²

⁶⁹ Staff Correspondent, ‘Writ filed challenging legality of putting convict in death cell’ *The Daily Observer* (Dhaka, 5 September 2021) <<https://www.observerbd.com/details.php?id=329670>> accessed 7 April 2022

⁷⁰ *ibid*

⁷¹ TBS Report, ‘Why keeping convicts in condemned cells before the final verdict ought not to be illegal: HC’ *The Business Standard* (Dhaka, 5 April 2022) accessed 10 April 2022

⁷² M Moneruzzaman, ‘HC questions detention in death cell pending appeals’ *The New Age* (Dhaka, 5 April 2022) <<https://www.newagebd.net/article/167355/hc-questions-detention-in-death-cell-pending-appeals>> accessed 10 April 2022

4.4 Conclusion

Though the laws in Bangladesh are not adequate enough to protect a wide ranges of rights of prisoners in condemned cell, the existing laws can be interpreted and extended to protect the rights of the prisoners in condemned cell.

CHAPTER FIVE

INFRINGEMENT OF HUMAN RIGHTS OF DEATH CONVICTS IN CONDEMNED CELL UNDER CONSTITUTIONAL LAW OF BANGLADESH

5.1 Introduction

The constitution has established a set of rights of the citizen which guarantees the human rights of every individual of the state. This chapter will identify those human rights which are enshrined in the constitution and how those set of rights advocates in favour of the prisoners in condemned cell in Bangladesh.

5.2 Types of Rights

5.2.1 Absolute Rights

Some rights have been preserved in their unrestricted form, in the sense that parliament cannot put any restrictions on them unless the Constitution expressly allows it. Absolute rights are a set of rights, primarily Human Rights, that cannot be lawfully violated, regardless of the importance of the public interest in doing so. The absolute rights described in the constitution are mentioned below:

- **Equality before Law and Equal Protection of Law⁷³:** "Equality before law" implies that the law should be applied equally to all people. There must be no special privileges granted to anyone by any means or for any purpose, such as birth, creed, or other factors. "Equal protection of the law" indicates that all people in similar situations should be treated equally and that no discrimination should be made in granting advantages or imposing obligations.
- **Prohibition of Forced Labour:** Bangladesh's constitution forbids all forms of forced labor, and any violation of this regulation is penalized by statute.⁷⁴ The constitution also prohibits anyone suffering punishment for a court-ordered sentence from using the earlier

⁷³ Article 27 of the Constitution of the People's Republic of Bangladesh

⁷⁴ Article 34(1) of the Constitution of the People's Republic of Bangladesh

rule against forced labor, and the state has the authority to compel compulsory services for public objectives.⁷⁵

- **Protection in Respect of Trial and Punishment:** In terms of trial and punishment, the constitution guarantees a set of rights. It offers the following safeguards:
 - 1) Protection of Ex post facto
 - 2) Avoidance of double jeopardy
 - 3) Essential of a prompt and impartial trial
 - 4) Immunity from self-incrimination.
 - 5) Prohibition of torture and other cruel, inhumane, or humiliating punishments
- **Discrimination on Grounds of Religion etc.:** The constitution abolished all forms of discrimination based on religion, ethnicity, caste, sex, or region, and made provisions for women, children, and citizens from backwards section.⁷⁶

5.2.2 Conditional Rights

There are some rights in which reasonable restrictions can be imposed by the government. Those are described below:

- **Freedom of Movement:** The right to movement is an integral aspect of liberty; a person's freedom to travel freely, to live and work wherever he wants, is linked to his livelihood and pursuit of happiness.⁷⁷ Even while the due process clause of Article 31 protects this right as a vital aspect of liberty, the framers of the constitution established additional provisions to guarantee people's freedom of movement.
- **Freedom of Assembly:** Every citizen has the right to peacefully gather and participate in public assemblies and festivities, subject to any specific limits imposed by law in the interests of public order or public health.⁷⁸
- **Freedom of thought, conscience, speech, and the press:** Freedom of thoughts and sense of morality are crucial for the development of the human identity, and everyone should be able to think and act freely.⁷⁹ Freedom of expression, on the other hand, is critical to the

⁷⁵ Art. 34(2) of the Constitution of the People's Republic of Bangladesh

⁷⁶ *ibid* at Art. 28

⁷⁷ *ibid* at Art. 36

⁷⁸ *ibid* at Art. 37

⁷⁹ Art. 39 of the Constitution of the People's Republic of Bangladesh

formation and operation of democracy. There can be no democracy without freedom of expression, as well as an autocrat's first act is to restrict freedom of speech.

- **Freedom of Religion:** The constitution guarantees that every citizen has the right to proclaim, exercise, or amplify any religion, and that any religious community or group can set up, preserve, and maintain its religious institutions, subject to reasonable legal restrictions imposed on the basis of public order and morality.⁸⁰

5.3 Human Rights Situation of the Convicts in the Condemned Cell under the Constitution of the People's Republic of Bangladesh

The constitution guarantees the protection of human dignity.⁸¹ It can be narrated that any situation that degrades the human dignity of a prisoner in condemned cell shall be the violation of the constitution. The subject of judicial enforcement of ESC rights of prisoners in condemned cell is connected with the wider matter of judicial enforceability of ESC rights, which specifically proclaims to be not judicially enforceable under Bangladesh's Constitution. Among these rights are provisions for basic requirements,⁸² the state's responsibility to enhance public health,⁸³ and the right to education⁸⁴ are the most noteworthy. Theoretically, the condemned cell prisoners have the right to get basic essentials such as: food, clothing, shelter and medical care as a citizen of Bangladesh. They also have the right to have an improved life securing the right to public health.

Nonetheless, Bangladeshi legislation, particularly the Constitution, tries to guarantee that prisoners' rights in condemned cell or prison cell are safeguarded. With apparent exceptions, prisoners are entitled to all of the human rights recognized by the Constitution's Bill of Rights as human beings. They clearly do not have the right to equal opportunity in public employment,⁸⁵ personal liberty,⁸⁶ or freedom of movement.⁸⁷ Furthermore, restriction on forced labour does not apply to prisoners condemned to hard labor.⁸⁸

⁸⁰ *ibid* at Art. 40

⁸¹ *ibid* at Art. 11

⁸² *ibid* at Art. 15

⁸³ *ibid* at Art. 18

⁸⁴ *ibid* at Art. 17

⁸⁵ *ibid* at Art. 29

⁸⁶ *ibid* at Art. 32

⁸⁷ *ibid* at Art. 36

⁸⁸ *ibid* at Art. 34

Prisoners, nevertheless, are entitled to some rights, including as the right to life,⁸⁹ unless they are convicted to death by a competent court in Bangladesh. So the death convicts in condemned cell do not get protection to right to life under the constitutional provision. The constitution gives protection of rights of the prisoners to freedom of religion,⁹⁰ and, more crucially, protections against arrest and detention, particularly those that apply to preventative detention.⁹¹ Among those rights, the prisoners in condemned cell only has the right to practice their own religion in the cell. The constitution also provides that no person shall be subject to any kind of cruel, inhuman or degrading treatment.⁹² Moreover, the constitution has the provision mentioning that the president has the power to grant pardon and to remit, suspend or commute any sentence passed by the court.⁹³ So the prisoner in condemned cell has the right to ask for the prerogative mercy from the president.

5.4 Conclusion

Every citizen has some fundamental rights guaranteed under the constitution. The prisoners are subject to reasonable restrictions of those set of rights in the constitution. This chapter has clarified the rights which the prisoners in condemned cell are subject to enjoy and the rights which the prisoners in condemned cell are

⁸⁹ Art. 32 of the Constitution of the People's Republic of Bangladesh

⁹⁰ *ibid* at Art. 41

⁹¹ *ibid* at Art. 33

⁹² *ibid* at Art. 35

⁹³ *ibid* at Art. 49

CHAPTER SIX

INTERNATIONAL LEGAL REGIME ON CAPITAL PUNISHMENT AND DETERMINATION OF STANDARD FOR THE TREATMENT OF DEATH CONVICTS

6.1 Introduction

Death punishment has already been abolished in many nations including Germany⁹⁴ and the United Kingdom⁹⁵. There are a few countries, such as the United States⁹⁶ and China, where the death sentence is still used and enforced. In this chapter we shall be going through the legal regimes of Death penalty of our neighboring countries like India, Pakistan and Sri Lanka and determine the standard for the treatment of death convicts in condemn cells and wherever they are put through the process.

6.2 Country Analysis

6.2.1 India

The statutory provision of India specifies the method of execution, which is hanging by the neck until death, once the death penalty has been given and affirmed following the exhaustion of all legal remedies.⁹⁷ By the end of 2021, there were 488 people in condemned cell, the most in 17 years.⁹⁸ The year 2021 witnessed the greatest number of death row convicts since 2016 with 488 at year's conclusion, a rise of over 21% over 2020.⁹⁹ For the first time since 2004, there are more

⁹⁴ When Germany's current Constitution was adopted in 1949, the Death Penalty was outlawed. In 1951, the Penal Code was ratified and the death penalty was abolished.

⁹⁵ For treason and piracy with violence, capital punishment was only truly banned in 1998, when House of Lords' amendment to Crime and Disorder Act 1998, forbade death sentence for those offenses in the United Kingdom.

⁹⁶ As a Federation, The United States of America has different legislation regarding the death penalty. Some States still have it while others do not.

⁹⁷ Section 354(5) of the Code of Criminal Procedure of India

⁹⁸ National Law University of Delhi, 'Death Penalty in India Report' <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5b4ced7b1ae6cfe4db494040/1531768280079/Death+Penalty+India+Report_Summary.pdf> accessed 15 April 2022

⁹⁹ *ibid*

condemned cell prisoners than there were in 2004.¹⁰⁰ In India, condemned cell prisoners are subjected to brutal treatment, including wrongful trials and police abuse.¹⁰¹ According to the study, the inability of courts to function as usual because of the pandemic has influenced the number of cases involving the death penalty that have been given priority.¹⁰²

In recent years, capital penalty has been infrequently used, and a large number of death sentences have been commuted to life in prison, despite the fact that many convicts have waited years for their destiny to be decided.¹⁰³ In a recent case¹⁰⁴, the court ruled that until the verdict has become final and conclusive, the prisoner cannot be deemed to be under the execution of death penalty. Until the final decision, a death sentenced prisoner cannot be considered a prisoner of condemned cell in accordance with section 30(2) of the Prisons Act. The main objective of this interpretive judgment is to reduce and alleviate the pain and suffering of a condemned cell prisoner, limiting the length of such detention in condemned cell to the minimum. The court also opined that the extended period spent in condemned cell prior to the denial of a prerogative mercy by the president, which has occurred despite several Supreme Court orders to the contrary, is tragic and clearly unlawful. In this case, the respondent spent so much time in condemned cell, even before his mercy petition was denied, that it was a strong case for commuting his death sentence to life imprisonment.

6.2.2 Pakistan

In July 2019, almost 4,700 prisoners were on death row in Pakistan, which has now decreased to 3,800. The Supreme Court of Pakistan issued a historic verdict on February 10, 2021, stating that if a condemned prisoner is unable to understand the rationale and cause for their punishment due to mental illness, then carrying out the death sentence would not serve the goals of justice.¹⁰⁵ As a

¹⁰⁰ Prison Statistics India Report 2019-2020, <<https://www.iasbhai.com/prison-statistics-india-report-2019-2020-upsc/#:~:text=The%20total%20number%20of%20prisons,%2C%20having%20increased%20by%200.82%25>> accessed 15 April 2022

¹⁰¹ Project39A, <<https://www.project39a.com/>> accessed 15 April 2022

¹⁰² *ibid*

¹⁰³ Vidhi Doshi, 'India Death Row Prisoner's Horrific Conditions' *The Gaurdian* (Delhi, 6 May 2016) <<https://www.theguardian.com/world/2016/may/06/india-death-row-prisoners-horrific-conditions-study>> accessed 15 April 2022

¹⁰⁴ *Union of India vs Dharam Pal* [2019] Criminal Appeal No. 804 of 2019

¹⁰⁵ *Safia Bano v. Home Department* [2019] Constitution Petition No. 09 of 2019

result, they should not be sentenced to death. The use of death penalty was barred for mentally ill prisoners of this case; soon after, it commuted the sentences of two inmates with schizophrenia. The court also stated that not all cases of mental illness will automatically qualify for a death penalty remission. The exception will only apply if a Medical Board certifies that the condemned cell prisoner no longer possesses the essential mental stability to comprehend the reasoning and grounds for the death sentence imposed on them. In addition, the Supreme Court ordered the government to create a Medical Board and Mental Health Facilities for the examination, treatment, and rehabilitation of detainees and convicts including condemned cell prisoners.

6.2.3 Sri Lanka

Capital punishment is existent in Sri Lankan legal regime and it is used in cases of murder cases, and it can also be applied in cases of narcotic crimes.¹⁰⁶ Despite the fact that the High Court has consistently handed down death sentences for murder and drug trafficking charges since June 23, 1976, no one has been put to death since then.¹⁰⁷ However, the last execution of a death penalty in Sri Lanka was in 1976, and subsequent Presidents have either avoided carrying out the punishment or commuted it to life imprisonment. These were automatically sentenced to life imprisonment. In Sri Lanka, condemned cell prisoners now have a hope. Following a review by a government backed commission, the execution death penalty might be modified to life imprisonment. As the committee interviewed the convicts and studied reports concerning them, the president's authority of prerogative mercy was used to commute the death sentences of 34 prisoners.¹⁰⁸ Death penalty was being practiced in a very few cases so the amount of prisoners in condemned cell in Sri Lanka is basically very less in amount.

¹⁰⁶ Section 296 of the Penal Code of Sri Lanka; Section 54A of the Poisons, Opium and Dangerous Drugs Ordinance

¹⁰⁷ Nirasha Piyawadani, '40 Years Without an Execution, Sri Lanka Still Heatedly Debates the Death Penalty' *Global Press Journal* (Colombo, 13 July 2016) <https://globalpressjournal.com/asia/sri_lanka/40-years-without-execution-sri-lanka-still-heatedly-debates-death-penalty/> accessed 17 April 2022

¹⁰⁸ *ibid*

6.3 The United Nations Standard Minimum Rules for the Treatment of Prisoners: Nelson Mandela Rules

The Nelson Mandela Rules assists the countries around the world to improve jail administration in order to guarantee that convicts are held in a secured, healthy, and compassionate manner. In 1955, the United Nations Congress on the Prevention of Crime and the Treatment of Offenders¹⁰⁹ adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were later endorsed by the UN Economic and Social Council in 1957. The 70th session of the United Nations General Assembly overwhelmingly accepted a new version of the Standard Minimum Rules on December 17, 2015.¹¹⁰ The rule has mentioned provision about proper accommodation for all types of prisoners providing proper floor space, lighting, air content, ventilation etc. for maintaining standard health of all prisoners.¹¹¹ The rule also directs to ensure adequate sanitary installation and bathing facility for all types of prisoners including condemned cell prisoners.¹¹² Moreover, all the prison authorities are directed to provide proper clothing and bedding utilities to the prisoners as well as ensuring proper food and water supply to all the prisoners.¹¹³ The medical officer is appointed to supervise the above mentioned utilities enjoyed by the prisoners according to this rule.¹¹⁴ The prisoners have the right to get proper physical or mental medical attention whenever it is needed to be met.¹¹⁵ The rule describes that all the prisoners shall be treated with such manner so that they will be fit to be a person to abide by all the laws and develop the sense of responsibility.¹¹⁶

6.4 Death Row under International Human Rights Law

The UN General Assembly declared that the major goal in the sphere of capital punishment should be to gradually decrease the amount of crimes for which the death sentence can be imposed, with

¹⁰⁹ First United Nations Congress on the Prevention of Crime & the Treatment of Offenders 1955

¹¹⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners 2015

¹¹¹ Article 10 of the UN Standard Minimum Rules for the Treatment of Prisoners

¹¹² Article 12, 13 of the UN Standard Minimum Rules for the Treatment of Prisoners

¹¹³ Article 17,18,19,20 of the UN Standard Minimum Rules for the Treatment of Prisoners

¹¹⁴ Article 26 of the UN Standard Minimum Rules for the Treatment of Prisoners

¹¹⁵ Article 22 of the UN Standard Minimum Rules for the Treatment of Prisoners

¹¹⁶ Article 65 of the UN Standard Minimum Rules for the Treatment of Prisoners

the ultimate goal of eliminating the penalty.¹¹⁷ The United Nations Human Rights Committee has urged nations around the world to lessen the amount of crimes punishable by capital punishment, limiting them to the gross offenses, with the goal of abolishing the death penalty as well as condemned cell. Capital punishment may be applied only for the most heinous crimes in nations that have not abolished the death penalty, with the understanding that its scope should not extend beyond deliberate offenses with deadly or other highly serious consequences.¹¹⁸

The United Nations Human Rights Committee has revealed concern about below par life standard of prisoners in condemned cell, which includes irrational restrictions on visitors of convict, tiny cell shapes¹¹⁹, absence of nutritious and balanced diet, high heat of the cell, poor ventilation installment, insect-infested cells, and inadequate hours spent in exterior cells.¹²⁰ The committee has urged the states around the world to improve these conditions in accordance with the requirements of the International Covenant on Civil and Political Rights, including its Article 7 (prohibition of torture and cruel, inhuman or degrading treatment) and Article 10(1) (respect for the human dignity of persons deprived of their liberty). It is also said that the death penalty should be used to properly implement the United Nations Standard Minimum Rules for the Treatment of Prisoners, in order to minimize the pain of prisoners serving death sentences to a bare minimum and to prevent increasing their misery.¹²¹

6.5 Conclusion

According to several authorities, the death penalty is a breach of human rights. Courts have different interpretations of the theory, but the essential principle is the same. Fundamentally, a death row inmate is sentenced to death, not long periods of torturous treatment followed by death. States should not be able to hold death row inmates for years because of a lack of support for capital punishment or judicial resources. Doing it incorrectly or not at all is unacceptable.

¹¹⁷ Resolution 32/61 of the UN General Assembly, adopted on 8 December 1977

¹¹⁸ Safeguard 1 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984

¹¹⁹ Concluding observations of the Human Rights Committee: Uzbekistan, UN document CCPR/CO/71/UZB (26 April 2001)

¹²⁰ *Safarmo Kurbanova v. Tajikistan*, Views of the Human Rights Committee... Communication No. 1096/2002, UN document CCPR/C/79/D/1096/2002 (12 November 2003)

¹²¹ The United Nations Economic and Social Council in resolution 1996/15, adopted on 23 July 1996

CHAPTER SEVEN

FINDINGS AND RECOMMENDATIONS

7.1 Introduction

This study has come to a conclusion with some of the significant results after all of the preceding chapters' talks. This research discovered the core findings and achieved the research's goal through studying and investigating the subject. Following an explanation of the study's findings, this research makes some recommendations that will aid in the advancement and development of important scenarios and concerns with the preservation of human rights of condemned cell prisoners.

7.2 Major Findings of the Study

- i. Due to the complexities of our legal system, prisoners of death convict are held in condemned cell for longer periods of time.
- ii. In a noteworthy amount of cases, a death convict prisoner gets acquittal by the order of the Higher court after passing significant years in condemned cell. This results into severe waste of time in life of a human being.
- iii. The custom of keeping death convict prisoners in condemned cell in Bangladesh has a long, developed history, which originated during the time of pre-British colonial age in the sub-continent. Though the customs related to condemned cell have been practiced for ages, the norms and customs related to condemned cell has not been recognized as a customary law in Bangladesh.
- iv. The term “Condemned Cell” and its related issues are not introduced in any of statutes in Bangladesh. No particular or specialized law does not explicitly talk about any provisions related to condemned cell or rights of condemned cell prisoners.
- v. The constitution of Bangladesh guarantees a set of rights to its citizens but the prisoners in condemned cell are deprived of those fundamental set of rights. Though reasonable

restrictions are imposed on the death convict prisoner, most of them are deprived of their owing rights.

- vi. The existing laws are not sufficient enough to ensure the human rights of the prisoners in condemned cell. The statutory provisions do not advocate much in favour of the prisoners in condemned cell. For example, the present laws do not advocate much for providing basic facilities to the condemned cell prisoners such as: standard food, clothing, water, bed, sanitation, ventilation etc. More importantly, the existing legal frameworks does not explicitly mention any term “Condemned Cell” and its related matters.

7.3 Recommendations

- i. Ensuring speedy trial is necessary to eradicate the longer time period of stay of the prisoners in condemned cell. Collective reformations are needed to be taken for the speedy and fast trial of death reference cases.
- ii. The structure of condemned cell should be improved in order to have a better environment of the cell. The present cells are so tiny and unfit to live in. Properly designed cells ensuring basic human necessities should be made by the government. The law such as the Prisons Act 1894, the Prisoners Act 1900, the Identification of Prisoners Act 1920 etc. should be amended adding specific provisions relating to “death convicts”, “condemned cell” and “standard environment of condemned cell”.
- iii. The existing laws such as the Prisons Act 1894, the Prisoners Act 1900, the Identification of Prisoners Act 1920 etc. should be amended and should be supported with provisions in order to protect the human rights of the prisoners of condemned cell in accordance with the constitutional provisions. A set of rights and privileges should be introduced and added in the existing statutes dealing with prisoners in condemned cell accordingly.

7.4 Concluding Remarks

During the trial, an accused of a death referral case must spend the entire time in a condemned cell. A lengthy delay in resolving a death referral case makes an accused to spend more time than it is required. The government must respect constitutional requirements and international obligations in order to provide an acceptable standard for the care of prisoners in condemned cell. This sensitive operation of ending one's life must be performed with great care. Any mistake in that legal system puts the right to life in risk and throws question on the whole process. Moreover, the human rights of the death convict prisoners in condemned cell must be ensured at any cost. Although a death convict prisoner is subject to be executed, one has every right to live with all human dignity till the last moment of one's life.

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