

CHALLENGES OF HUMAN RIGHTS IN PRISON: BANGLADESH PERSPECTIVE

Author:- *Badsha Mia*¹

Abstract:

Persons who committed crime and who are under trail are restrained in prison. The aim of prison is rehabilitation and reformation of criminals so that they do not commit crime again when they are released and lead a life of an ideal law abiding citizen. International law contains rules on the ideal prison system. It is necessary to comply with these rules so that the aim of the prison is achieved. The national law of Bangladesh also contains some rules of international law on prison. As the complying with the rules of international law on prison is necessary to reduce crime in society, I have, therefore, chosen the topic "Challenges of Human Rights in Prison: An overview on the perspective of Bangladesh" to find out as to what extent the some Bangladeshi Jails are conforming to the rules of international law on prison and prisoner's rights. The scope of this study is just to find out the challenges of human rights guaranteed under international, hard and soft, and national law to prisoners in the Jail of Bangladesh. Regional international law is not considered in this respect. While discussing violation of a right, the non violation aspect of the right is also mentioned. The prison is very restricted area. Therefore, it was not easy to collect data from the prison. I collected data from prisoners of the prison and the prison administration. Prisoners answered the same in relation to the same question.

Key words: Human Rights, National Legal Framework, International Legal Framework, Prisoners, Violations.

1. Introduction:

Human rights are rights inherent to all human beings without any distinction as to nationality, place of residence, sex, national or ethnic origin, color, religion, language or any other status. Human rights are universal, interrelated, interdependent and indivisible. Human rights are recognized in various international human rights instruments. Human rights encompass every sphere of human life. Therefore, the human rights of a person who is in prison are also recognized in general and special human rights instruments. There are many forms of international instruments like treaties, conventions, principles, guidelines, declaration etc. The instruments governing human rights of

¹ M.Phil Researcher, Faculty of Law, University of Chittagong & Senior Lecturer, Department of Law, Britannia University, Comilla-3500, Bangladesh

prisoners are result of these various forms of international instruments. The instruments or the provisions of instruments governing the human rights of prisoners consist of the hard law and soft law, universal international instrument and regional international instrument, human rights law and humanitarian law etc. Bangladesh is party to many binding and non binding international instruments governing human rights of prisoners. Hence it has legal and moral obligation to ensure application of human rights in prison. Application of human rights in prison depends on taking legislative and other efforts on behalf of the state and ensuring application of human rights by the prison administration.

2. International legal framework on human rights of prisoners:

The human rights which belong to prisoners are found in customary international law and hard and soft human rights instruments. International law governing human rights of prisoners can be divided into three classes, namely:

- (1) Customary law,
- (2) Hard law,
- (3) Soft law.

2.1. Customary law on human rights of prisoners:

Customary international law is the usage which has obtained the force of law. It derives force of law from the actual practices of nations for a long period of time. An international custom becomes law when it is long-standing, widespread, reasonable and certain and practiced regularly in a uniform and consistent way by almost all states. Customs are generally unwritten, it is found in practices of the states. Customs may also be deduced from the rules and statements contained in treaties. At present time, customary international laws are being codified in treaties. For example, the Vienna Convention on the Law of Treaties, which was approved in 1969 and took effect in 1980, codified the customary law that treaties between sovereign states are binding on their signatories and must be followed in good faith. Whether or not they are embodied in a written treaty, customs become part of international law because of continued acceptance by the great majority of nations. When a usage becomes customary law, it is binding on all states of the world. Certain human rights may now be regarded as having entered into the category of customary international law in the light of state practice e.g. prohibition of torture, slavery, principle of non discrimination etc². Besides, right to life, liberty is also customary international law.

² Malcolm N. Shaw, *International Law*, Sixth Edition, Cambridge University Press, Cambridge, 2008, p. 275.

2.2. Hard law on human rights of prisoners:

Hard laws are laws resulted from international treaties which impose binding legal obligation on states parties to such treaty. Till today, no universal international legally binding instrument, which specifically addresses human rights of prisoners, was adopted to create binding legal obligation on states. But, provisions on human rights of prisoners are found in the international binding instruments. The legally binding universal treaties which contain provisions on the human rights of prisoners are mentioned below with brief introduction:-

i. International Covenant on Civil and Political Rights.

It was adopted on 16 December 1966 and entered into force on 23 March 1976. It has 53 articles. At present, it has 168 parties. Bangladesh has accessed to the ICCPR on 6 September 2000.

ii. International Covenant on Economic, Social and Cultural Rights.

It was adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966 and entered into force on 3 January 1976. It has 53 articles. At present, it has 162 parties. Bangladesh has accessed to the ICESCR on 5 October 1998.

iii. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It was adopted on 10 December 1984 and entered into force on 26 June 1987. It consists of 33 articles. At present, it has 155 parties. Bangladesh has accessed to the CAT on 5 October 1998.

iv. Convention on the Elimination of All Forms of Discrimination against Women.

It was adopted by General Assembly resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981. It contains 30 articles. It has 188 parties at present. Bangladesh has accessed to the CEDAW on 6 November 1984.

v. International Convention on the Elimination of All Forms of Racial Discrimination.

It was adopted by General Assembly resolution 2106 A (XX) of 21 December 1965. The Convention entered into force on 4 January 1969. It currently has 177 States Parties. Bangladesh has accessed to the ICERD on 11 June 1979.

vi. Convention on the Rights of the Child.

It was adopted on 20 November 1989 and entered into force on 2 September 1990. It has 54 articles. At present, it has 194 parties. Bangladesh has ratified the CRC on 3 August 1990. It defines

„Child“ as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”³

vii. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

It was adopted on 18 December 1990 and entered into force on 1 July 2003. At present, it has 188 parties. Bangladesh has ratified the ICMW on 24 August 2011.

The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national⁴.

viii. Rome Statute of the International Criminal Court.

It was adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 17 July 1998. The Statute entered into force on 1 July 2002. It currently has 122 States Parties. Bangladesh ratified the Statute on 23 March 2010. It declares certain acts towards prisoners as crime.

2.3. Soft law on human rights of prisoners:

Soft laws are laws which do not impose any binding legal obligation on states. They impose only moral obligation. The instruments on soft law on the human rights of prisoners are generally adopted by the United Nations. Bangladesh is member of the United Nations and therefore it has moral obligation to apply these instruments. The instruments are given below:

i. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

It was adopted by General Assembly resolution 43/173 of 9 December 1988. It contains 39 principles. For the purposes of the Body of Principles: “Detained person” means any person deprived of personal liberty except as a result of conviction for an offence⁵. “Detention” means the condition of detained persons as defined above.⁶ “Imprisoned person” means any person deprived of personal liberty as a result of conviction for an offence.⁷ “Imprisonment” means the condition of imprisoned persons as defined above.⁸

³ Article 1, Convention on the Rights of the Child

⁴ Article 2(1), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

⁵ Use Of Terms(b), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

⁶ Use Of Terms(d), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

⁷ Use Of Terms(c), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

⁸ Use Of Terms(e), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

ii. Standard Minimum Rules for the Treatment of Prisoners.

It was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955. Thereafter, it was approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. It contains 95 rules.

iii. Basic Principles for the Treatment of Prisoners.

It was adopted by General Assembly resolution 45/111 of 14 December 1990. It contains 11 principles.

iv. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

It was adopted by General Assembly resolution 45/112 of 14 December 1990. It contains 66 guidelines.

v. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

It was adopted by General Assembly resolution 40/33 of 29 November 1985. It contains 30 rules.

vi. United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

It was adopted by General Assembly resolution 45/113 of 14 December 1990. It contains 87 rules.

vii. Declaration on the Elimination of Violence against Women.

It was adopted by General Assembly resolution 48/104 of 20 December 1993. It contains 6 articles.

viii. United Nations Standard Minimum Rules for Noncustodial Measures (The Tokyo Rules).

It was adopted by General Assembly resolution 45/110 of 14 December 1990. It contains 23 rules.

ix. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

It was recommended by Economic and Social Council resolution 1989/65 of 24 May 1989. It contains 20 principles.

x. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It was recommended by General Assembly resolution 55/89 of 4 December 2000. It contains 6 principles.

xi. Declaration on the Protection of All Persons from Enforced Disappearance.

It was adopted by General Assembly resolution 47/133 of 18 December 1992. It contains 21 articles.

xii. Code of Conduct for Law Enforcement Officials.

It was approved by General Assembly resolution 34/169 of 17 December 1979. It contains 8 articles.

xiii. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

It was adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. It contains 26 principles.

3. National legal framework relating to human rights of prisoners:

The national laws of Bangladesh addressed some of the human rights of prisoners in its laws. The laws which contain provisions on human rights of prisoners are:

- i. The Constitution of Bangladesh.
- ii. The Children Act 2013.
- iii. The Prisons Act 1894 and rules framed under it.
- iv. The Prisoners Act 1900.
- v. The Torture and Custodial Death (Prevention) Act 2013.
- vi. The Special Privileges for Convicted Women Act 2006.
- vii. The National Human Rights Commission Act 2009.
- viii. The Legal Aid Services Act 2000.
- ix. The Probation of Offenders Ordinance 1960.
- x. The Code of Criminal Procedure 1898.

4. The Prison:

Prison is an institution for the confinement of persons who have been remanded (held) in custody by a judicial authority or who have been deprived of their liberty following conviction for a crime⁹.

The term 'jail' is a synonym of 'prison'. According to Banglapedia, "Jail is a particular structure or building meant for confinement of the prisoners ... and fixed under general or special order of the government as permanent or temporary prison¹⁰." Legal definition is available in section 3(1) of the Prisons Act 1894, 'prison' means any jail or place used permanently or temporarily under the general

⁹ Prison, *Encyclopædia Britannica 2009 Ultimate Reference Suite*. Encyclopædia Britannica, Chicago, 2009

¹⁰ Jail, *Banglapedia*, Asiatic Society of Bangladesh, Dhaka, 2012, available at <www.banglapedia.org/HT/J_0030.htm> accessed 20th July 2014.

or special orders of Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include,

(a) Any place for the confinement of prisoners who are exclusively in the custody of the police; (b) Any place specially appointed by the Government under section 541 of the Code of Criminal Procedure, 1898; or (c) Any place which has been declared by the Government, by general or special order, to be a subsidiary jail.”

5. The Prisoner:

Prisoner is a person deprived of liberty and kept under involuntary restraint, confinement, or custody; especially: one on trial or in prison¹¹. The Prisons Act 1894 classifies prisoners into criminal prisoner, convicted criminal prisoner and civil prisoner. Criminal prisoner“ means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial¹². Convicted criminal prisoner“ means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1898, or under the Prisoners Act, 1900¹³. Civil prisoner means any prisoner who is not a criminal prisoner¹⁴.

6. The human rights of prisoners and violations thereof:

Prisoners are deprived of their liberty; but they do not cease to be human. The ICMW also recognizes the right and also requires respecting their cultural identity¹⁵. The CRC also reiterates it in relation to child by providing that, every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age¹⁶. The UN Rules for the Protection of Juveniles Deprived of their Liberty provides that, juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity¹⁷. Therefore, prisoners are entitled to human rights subject to restriction as imposed by judicial authority. The BPTP confirms it by stating, “Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal

¹¹ Prisoner, *Merriam-Webster's Dictionary and Thesaurus*, available at: <www.merriam-webster.com/dictionary/prisoner> accessed 20th July 2014.

¹² Section 3(2), the Prisons Act 1894

¹³ Section 3(3), the Prisons Act 1894

¹⁴ Section 3(4), the Prisons Act 1894

¹⁵ Article 17(1), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

¹⁶ Article 37(c), Convention on the Rights of the Child

¹⁷ Rule 31, United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants¹⁸.” The human rights of prisoners as enshrined in international law, whether hard or soft, and national laws which are violated in the jail of Bangladesh depicted below. While depicting the violation of a right, the non violation aspect of the right is also mentioned.

7. Right to full development of human personality:

A prisoner has the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment¹⁹.

The BPTP provides that, all prisoners have the right to take part in cultural activities and education aimed at the full development of the human personality²⁰. The UN rules on administration of juvenile justice provides that, while in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality²¹.The rights related to the full development of human personality are discussed below:

7.1. Rights related to Culture:

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits²².The States Parties to the ICESCR recognize the right of everyone to take part in cultural life²³. But the prisoners of Jails in Bangladesh cannot freely participate in the cultural life of the community due to their undergoing imprisonment or detention. They cannot enjoy the arts and share in scientific advancement and its benefits for the same reason.

7.2. Right to life:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life²⁴. The Body of Principles provides that, whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an

¹⁸ Principle 5, Basic Principles for the Treatment of Prisoners

¹⁹ Principle 28, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

²⁰ Principle 6, Basic Principles for the Treatment of Prisoners

²¹ Rule 13.5, United Nations Standard Minimum Rules for the Administration of Juvenile Justice

²² Article 27(1), Universal Declaration of Human Rights

²³ Article 14(1)(a), International Covenant on Economic, Social and Cultural Rights

²⁴ Article 6, International Covenant on Civil and Political Rights. Article 3, Universal Declaration of Human Rights. Article 6, Convention on the Rights of the Child

inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation²⁵.

The constitution of Bangladesh recognizes the right to life by stating, "No person shall be deprived of life or personal liberty saves in accordance with law²⁶." However, unnatural death in prison continues to be reported. Recently, death of Zakir Hossain (30) is reported. On 3rd June 2014, his body was found hanging on the railing of stairs of prison hospital around 9 pm. Then, he was brought to Chittagong Medical Hospital promptly and the doctor on duty declared him dead. The Senior Jail Superintendent has filed an unnatural death case in the Panchlaish Thana. An investigation committee of three members has been formed with the Deputy Inspector General of Prison of Chittagong and Sylhet Division as head²⁷. The prison administration has claimed that, it is a suicide and the relatives of the dead person have claimed that, it is a murder. However, whether it is suicide or murder, the prisoner's right to life is affected in both situations.

7.3. Safety from cruel, inhuman or degrading treatment or punishment:

It is customary international law that, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment²⁸. In particular, no one shall be subjected without his free consent to medical or scientific experimentation²⁹.

Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention³⁰.

The Constitution of Bangladesh provides that, no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment³¹. Therefore, affected person can apply to the High Court Division under article 102(1) which states, "The High Court Division on the application of

²⁵ Principle 34, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

²⁶ Article 32, the Constitution of the People's Republic of Bangladesh

²⁷ Dui Kararokkhi Borkhasto, Hottar Ovijoge Sorok Oborodh", *the Prothom Alo*, 5th June 2014.

²⁸ Article 5, Universal Declaration of Human Rights. Article 7, International Covenant on Civil and Political Rights. Article 37(a), Convention on the Rights of the Child. Malcolm N. Shaw, *International Law*, Sixth Edition, Cambridge University Press, Cambridge, 2008, p. 275.

²⁹ Article 7, International covenant on Civil and Political Rights. Principle 22, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

³⁰ Principle 16, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

³¹ Article 35(5), the Constitution of the People's Republic of Bangladesh

any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution." But most of jail in Bangladesh does not follow laws properly.

7.4. Right to challenge the lawfulness of detention:

The Body of Principles provides that, a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law³². Article 33(1) provides that, No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. Therefore, it is constitutional right to challenge the lawfulness of a person's detention in order to obtain his release without delay, if it is unlawful.

7.5. Right to legal counsel:

Legal counsel is inevitable to allow the prisoner to challenge detention and imprisonment. Therefore, the Body of Principles provides that, a detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it³³. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay³⁴. But most of jails in Bangladesh provide less scope regarding this.

7.6. Right to communication with outside world:

The SMRTP provides that, a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, member of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful delegations³⁵. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications

³² Principle 11(1), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

³³ Principle 17(1), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

³⁴ Principle 17(2), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

³⁵ Principle 19, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Rule 37, Standard Minimum Rules for the Treatment of Prisoners

sent by the said authorities without delay; (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation. But the most of prisoner's deprived of it.

7.7. Right to the enjoyment of the highest attainable standard of physical and mental health:

The States Parties to the ICESCR recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health³⁶. The prisoners also have the right. The right to health requires discussion under the following heads.

7.7.1. Access to the health services:

The BPTP requires that, prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation³⁷.

7.7.2. Suitable Accommodation:

The SMRTP provides a detailed provision on accommodation of prisoners. The rules are: Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself.

7.7.3. Personal hygiene:

As to personal hygiene, the law provides, prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness³⁸. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly³⁹. All the prisoners reported that, the supply of water is not sufficient. Sometimes, prisoner could not bathe.

7.7.4. Clothing and bedding:

The SMRTP provides that, every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating⁴⁰. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the

³⁶ Article 12, International Covenant on Economic, Social and Cultural Rights

³⁷ Principle 9, Basic Principles for the Treatment of Prisoners

³⁸ Rule 15, Standard Minimum Rules for the Treatment of Prisoners

³⁹ Rule 16, Standard Minimum Rules for the Treatment of Prisoners

⁴⁰ Rule 17(1), Standard Minimum Rules for the Treatment of Prisoners

maintenance of hygiene⁴¹. They lie and sleep on the floor laying blanket. The prisoners have to keep their blanket clean.

7.8. Right to food:

Right to food is recognized under UDHR⁴² and ICESCR⁴³. The SMRTP provides that, every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served⁴⁴. Drinking water shall be available to every prisoner whenever he needs it⁴⁵. All the prisoners reported that, the food sustains quality, but not nutritive.

7.9. Exercise and recreation:

Prisoners who are employed in the outdoor work need not do physical exercise. The SMRTP provides that, prisoners who are not employed in outdoor work to have at least one hour of suitable exercise in the open air daily if the weather permits⁴⁶. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided⁴⁷. There is no arrangement of physical and recreational training for children.

7.10. Right related to property:

The SMRTP provides that, all money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be place in safe custody.

The Prisons Act 1894 provides rules as to how to deal with the property brought by the prisoner. According to section 21, the officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer. Section 24(1) provides that, whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him. Section 25 provides that, all money or other articles in respect whereof no order of a competent

⁴¹ Rule 17(2), Standard Minimum Rules for the Treatment of Prisoners

⁴² Article 25(1), Universal Declaration of Human Rights.

⁴³ Article 11, International Covenant on Economic, Social and Cultural Rights

⁴⁴ Rule 20(1), Standard Minimum Rules for the Treatment of Prisoners

⁴⁵ Rule 20(2), Standard Minimum Rules for the Treatment of Prisoners

⁴⁶ Rule 21(1), Standard Minimum Rules for the Treatment of Prisoners

⁴⁷ Rule 21(2), Standard Minimum Rules for the Treatment of Prisoners

Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailer. Under section 12(5) of the Prisons Act 1894, the Superintendent shall keep, or cause to be kept a record of the money and other articles taken from prisoners. But, one fifth of the prisoners reported that, their properties have been taken and are not returned.

7.11. Right to reformation and social rehabilitation:

The ICCPR requires that, the penitentiary system shall comprise treatment of prisoners the essential aims of which shall be their reformation and social rehabilitation⁴⁸.

The ICMW also provides that, during any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation⁴⁹.

7.12. Right to marriage:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution⁵⁰. Marriage shall be entered into only with the free and full consent of the intending spouses⁵¹. The ICCPR also requires the right of men and women of marriageable age to marry and to found a family be recognized⁵². The jail code does not have any provision that permits a prisoner to get married in jail. In the absence of clear law, the jail administration cannot allow a prisoner to marry.

7.13. Right to vote:

The ICCPR provides, "every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors⁵³". Therefore, prisoners have the right to vote. But no arrangement to take vote of the prisoners was ever made by the election commission and the Government.

⁴⁸ Article 10(3), International Covenant on Civil and Political Rights.

⁴⁹ Article 17(4), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

⁵⁰ Article 16(1), Universal Declaration of Human Rights

⁵¹ Article 16(2), Universal Declaration of Human Rights

⁵² Article 23(2), International Covenant on Civil and Political Rights

⁵³ Article 25, International Covenant on Civil and Political Rights

8. Facts attributed to violations of human rights of prisoners:

The violations of human rights of prisoners are caused due to some factors. The facts which are responsible for violations of human rights are discussed below:

8.1. Lack of training of the Personnel of the prison:

The CAT provides that, each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person⁵⁴.

8.2. Lack of effective control of judicial authority or other authority:

In Bangladesh, all measure affecting human rights of prisoners are not under effective control of the judicial authority. But, the prisoners can get remedy when any violation of some human rights has been committed. The human rights which are incorporated in the various laws of Bangladesh can be enforced in the court of Bangladesh. The human rights which belong to customary international law are also enforceable in the courts if there is no municipal law on the contrary. Rights other than those mentioned before cannot be enforced by the courts until they are incorporated in the domestic law of Bangladesh or they become customary international law. All measures taken in the prison and by the prison administration are not subjected to effective control of judicial or other authority.

8.3. Lack of sincerity of the duty of the employees:

Lack sincerity of the duty of the employees is another reason of the continuation of the violation of the prisoners' rights. The employees of the prison are not trained on the rights of the prisoners. Therefore, they are unable to detect the violations of the rights of prisoners. Further, many ill practice are committed before their eyes; but they do not report to the superior. Such as, giving contribution to prisoners to get a suitable place in ward is known to them, but they do not report to the superior of that.

8.4. Lack of consciousness on the part of the government:

The establishment of proper penitentiary system depends on the will of the government because the necessary actions i.e. establishment of infrastructure, arrangement of training, strengthening of the

⁵⁴ Article 10, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

manpower, legislation, financial contribution etc. are to be taken by the government. But the government is not conscious of the necessity of the improvement of the prison system. A big step on the part of the government is immediately necessary to reform the existing prison system; otherwise the administration of justice will not be able to achieve its objective.

9. Conclusion

It is clear from the above discussion that, the human rights of the prisoners are not totally ensured. The present system of the Chittagong Central Jail and other prisons too cannot fulfill the aim of the penitentiary system.

The present legal framework has basis on the laws made before the independence of Bangladesh. These laws did not properly address the rights of the prisoners and the prison administration. Therefore, the laws related to prison have to be updated keeping in mind the present international standard. The reformation and rehabilitation of the prisoner is the aim of the prison system. If arrangement is not made to gain this aim, the prison shall not be able to prevent and reduce crime in the country. Therefore, this aspect has to be given the most importance.

The human resource of the prison administration still has to mature. There is lack of psychologist, psychiatrist, teacher, doctor etc. The staffs of the prison are not trained enough to ensure the rights of the prisoners.

The prison administration does not take proper steps when violation of rights of prisoner, discipline and law occurs. Taking bribe by prisoners and staffs from prisoners to give a suitable place in the ward, to get health treatment etc. are not unknown to the prison administration. But, the administration failed to stop these ill practices.

At last, it should be admitted that, the prison system is undergoing progressive development like any other sector of Bangladesh. The present situation of infrastructure, treatment etc. is better than the past. The accommodation, water, food etc. which cannot be given on a day and requires progressive development are expected to be fulfilled gradually. But, the aspects which can be applied now should be applied from present. Therefore, prevention of bribe, torture by other prisoner etc. should be ensured at present by the prison administration.

The Government should immediate set up an efficient body to conduct a study on the present situation of the prisons and improvement of the prisons and act expeditiously according to the report to be submitted by the body. If the prisons are not improved, then the punishment of imprisonment cannot be achieved and the crime shall not be reduced in the society.

