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Short Research Article

Disposal of Death Reference and Confinement in Condemned Cells in Bangladesh: Law vs. Reality

Abstract:

This paper reflects the inhuman system of our legal system, which is inconsistent with the constitution and human rights. This paper shows the sufferers who stay in condemn cell for almost decade and wait for their appeal decision. Their appeal decision may change the subordinate courts judgement or not. So, in this dilemma situation, they have to stay in condemn cell. And there is no legal framework established yet about the compensation of those inmates who get acquittal after staying long time in condemn cell. The aim of this paper is mainly to show the troubles of those people who are the worst victims of the slow trial system of our country. And the sufferings are not only tied up within the inmate's life but also affected his family and friends' social life. Already in some case judgement uphold the right of compensation of the person who got acquittal after undertaking the long-term imprisonment. But no legal framework or any standard is not found yet. One should be bothered by these critical arising issues. Speedy trial system can be a good remedy in our Bangladesh it is more or less impossible for the huge case backlogs. Compensation giving system should be introduced. Sending condemn cell system has to be removed rather than sending the separate prison which is more convenient in nature and more human living friendly.

Key Words: Condemn Cell, Death Reference, Inmate, Compensation, Imprisonment.

1. Introduction:

Those who commit the most terrible crimes in our legal system receive the death penalty. It takes years for a death sentence judgment to be heard and decided upon when it is sent to the High Court Division (HCD) for confirmation by a trial court. Such a death sentence may or may not be upheld by the HCD, and the HCD's judgment may be appealed to the Supreme Court's Appellate Division, which prolongs the process of resolution.

In the last resort, a death row inmate may request the prerogative of mercy under Article 49 of the Constitution of Bangladesh [1]. As a result, the execution of a death sentence is finally concluded with the President's acceptance or denial of the President's mercy petition. A death row inmate typically must remain in a condemn cell for a decade, from the date the death sentence was passed to the end of the Supreme Courts appeal procedure. How would it feel to

await execution [2]? Prisoners' rights are frequently neglected in Bangladesh's criminal justice system. Delay in carrying out a death penalty has a dehumanizing impact. The legal ramifications of depriving an individual of their life in an unlawful, unfair, and arbitrary manner to violate fundamental rights protected by Bangladesh's Constitution are significant. For death row inmates, it results in adverse physical and mental circumstances. The guilty convicts suffer trauma when death penalty cases are not promptly resolved, which leads to mental instability and suicide thoughts.

It is surprisingly true in recent years that two-third of the death sentence given by the trial court have been changed by the Apex Court of Bangladesh. It is showed that on 2nd September to 13th October, 29 death reference verdicts have been given by the HCD. In those suits, total 77 accused were sentenced with death penalty. Surprisingly, the HCD has not approved the death penalty of 50 accused among 77 accused and the percentage of not approving the death sentence by the HCD is 64.93% [3].

2. What is Condemn Cell? and Laws Relating to Condemn Cell:

In a very plain sense, condemn cell means a room for a prisoner who was going to be punished by death penalty as legal punishment. The special cell of the death row inmates is called a condemn cell.

According to section 30(1) of The Prison Act, 1994- All death row inmates will have their belongings checked by the jailer or on his order as soon as they arrive at the prison, and anything the jailer feels is unsafe or unnecessary to be in their possession will be taken away [4].

In this prison Act-1994 the term “condemn cell” is not used but in this Act the prison in which the prisoner is immediately is sent After passing death sentence from session trial court is mainly condemn cell. Since the inmates are placed in the condemned cell as soon as the trial court renders its decision, the expression "under sentence of death" has come under question.

In section 30(2) of The Prison Act, 1994, Every of such prisoners will be confined in a cell that is separate from the rest of the prisoners and will be supervised by a guard both during the day and at night [5].

That means every such prisoner in the condemned cell is put in isolation.

3. The Condition of the Usual Prison and the Condemn Cell:

The usual prison for prisoners who are legally held as a punishment other than death penalty is not the same as condemn cell. The condition of condemn cell is more dreadful and terrible. In usual prison, sometimes prisoner have opportunity to see the sunlight or get the fresh air. But in condemn cell, they only can walk in front of the cell for a very short time in a day. That means they can get a very small opportunity to see the outside [6]. The prisoner of usual prisoners can communicate with other prisoners, and they have more opportunity to communicate their relatives than the inmates of condemn cell. In condemn cell, communication with relatives is very limited. Inmates become isolated in the cell. They can visit once a month and can talk on the phone with relatives once a week up to a certain time. For air passing and entering sunlight, a small window is kept open in condemn cell, but the size of that window is smaller than the window of usual prison [7].

4. Condemn Cell Prisoners and Human Rights in the Context of Bangladesh:

In Bangladesh, it is hard to maintain human rights in condemn cells, because right to adequate shelter, right to clothes, right to food mainly right to life is violated [8]. As per jail rules, each accused was also given two sets of clothes by the jail. Most of the time the two sets of cloth is not adequate, they can't maintain hygiene in their dress. In consequence, they face various types of skin disease. And they can't have adequate food for living, most of the time they face malnutrition and suffer from various stomach ailments. Though there is provision, most often one doctor visits them and checks up the inmates, but it is not always maintainable. After staying in a condemn cell for a long time, they are not only being physically unstable but also mentally unstable. They are excluded from prison education and employment program [9]. And before getting confirmation from the High Court Division, the decision of trial court is not final. So, this type of leading miserable life is not holding human rights under UDHR.

5. Keeping Prisoners in Condemn Cells before the Final Decision is Legal or not:

According to "Rule 980 of the Jail Code, 1894", "Every prisoner sentenced to death shall, from the date of his sentence, and without waiting for the sentence to be confirmed by the High Court Division, be confined in some safe place, a cell, if possible, within the jail, apart from all other prisoners. The cell or room in which a convict condemned to death is confined shall invariably, before he is placed in it, be examined by the Jailor, who shall satisfy himself with its fitness and safety, and shall record the result of the examination in his report book [10]."

After passing the final verdict from the High court division or appeal from appellate division, the court may or may not confirm the decision of trial court. The court may give lifetime imprisonment or acquittal. Human rights are being violated by this rule. Because there was no legal provision for execution of any death sentence immediately after verdict of the trial court until the sentence was upheld by the Supreme Court. Even in our country the disposal of Death reference from High Court Division is not found immediately after the verdict of trial court which is not justifiable.

6. Disposal of Death Reference and Death Appeal:

According to section 374 of the Cr.PC, 1898- When the Subordinate court delivers a death sentence, the High Court evaluates the judgement by considering arguments to confirm the sentence [11]. The case documents and judgement are submitted to the High Court within seven days of the Subordinate court's decision.

Section 376 of the Cr.PC, 1898 denotes that The High Court Division may either uphold the sentence or give any other sentence that is permitted. It may also overturn the conviction and find the person guilty of any crime that the Sessions Court might have found them guilty of. It may also order a new trial on the same or a different charge, or it may acquit the person:

Provided that No order of confirmation will be granted under this section until the time granted for filing an appeal has passed, or if an appeal is filed within that time, until the appeal is dealt with [12].

State vs Tuku Biswas [13]–

It is not a condition precedent to the confirmation of death sentence that the proceeding will be submitted by the Court of Sessions .If it is brought to the notice of the High Court Division that the session judge have omitted to send the death reference to it for confirmation, the High Court Division can, in the exercise of its power of revision, call for the case and deal with it according to law.

And in case of appeal in such a judgement of death penalty the Sessions Judge will inform the accused of the period within, which, he or she wishes to appeal, his or her appeal should be confirmed. The period of limitation of appeal from a sentence of death is 7 days from the date of the sentence [14].

7. Delay in Disposal of Death Reference and Death Appeal and Its Consequence:

Unfortunately, the process of hearing and resolving death references and appeals can be a lengthy one, resulting in a significant number of convicts having to wait in condemned cells for an extended amount of time. Moreover, the situation is deteriorating as these records continue to accumulate. More than 50% of cases saw a duration of over 10 years, from the first filing to the final disposition by the High Court Division (HCD) [15]. On average, the cases had to endure a period of four and a half years (starting from the date of case registration) awaiting adjudication by the trial courts. Subsequently, they had to wait an additional five and a half years for the final decision by the High Court Division (HCD). The prolonged legal actions against the convicts caused significant financial losses and distress for almost every family, as approximately one-fourth of the detainees were the sole breadwinners for their households. Over half of the convicts' families experienced harassment from local residents, resulting in the relocation of the families.

8. Practical Scenarios of Delay Disposal of Death Reference and Kept in Condemn Cell in Bangladesh:

In July 2006, a court in Gaibandha issued a death sentence to Abdul Bari, Nizamul Haque, and Sohanur Rahman, who were all from the same neighborhood. A case was filed against them for the crime of murder. The main accused in the case, Abdul Bari, passed away while incarcerated in 2014. The remaining two accused who were arrested in 2001 have been incarcerated ever since. However, the High Court hasn't yet decided the death reference and appeal related to their case.

Obaid Ali, after enduring 13 years on death row, the inmate was officially proven innocent by the Appellate Division on October 7, 2021 [16].

Between 2014 and November 2021, the High Court Division has had 1,514 pending death references, while the Appellate Division has had 273 ongoing appeals against High Court verdicts. There are currently 1,787 death reference cases for disposal in both the Appellate Division and the High Court Division of the Supreme Court. According to sources from the Supreme Court, there were a total of 575 death reference cases in 2010. However, only 43 of these cases have been adjudicated thus far. In 2011, the number of cases rose to 609, with 64 being disposed. In 2012, there were a total of 595 cases, out of which 145 cases were successfully adjudicated. In 2013, out of a total of 513 cases, 111 were disposed. In 2014, out of a total of 498 cases, 135 were settled. In 2015, there were a total of 477 cases, out of which only

56 were adjudicated. In the year 2016, a total of 580 cases were reported, out of which only 45 were settled. In 2017, there were a total of 706 cases, out of which only 66 were resolved. In 2018, the number of cases rose to 711, with only 83 being settled. The total number of cases recorded in 2019 amounted to 732. In 2020, there were 780 death references awaiting judgement by the High Court. A total of 82 cases have remained unsettled during the past six months to June 2021 [17].

9. Constitutional Violation: Delay Disposal of Death Reference and Confine the Inmates in Condemn Cell for uncertain Period:

The unforeseen delay in resolving a death reference case to its ultimate conclusion undoubtedly constitutes double punishment, which contravenes the fundamental human rights safeguarded by our Constitution. The High Court Division has power to alter or confirm the decision of the session court and the same power has been exercised by Appellate Division in case of appeal. So, it will be a great violation of right to life if a person get acquittal after staying in condemn cell for a long time or many years. Because he is innocent and has not been proven guilty in the High Court Division. But because of delay disposal and the wrong conception of trial court, he was confined in condemn cell for a long time [18]. So, it is a violation of Article-32 of Bangladesh Constitution which ensures right to life. The condition of condemn cell is dangerous [19]. Inmates become a mental patient sometimes, and death rate in condemn cell is not so low. The relatives of inmates also fall into a very helpless situation like financial crisis, social degradation, so their right to life is also violated. Detaining the convict in a condemned cell prior to the disposal of the review petition and clemency appeal to the President is a violation of the fundamental rights protected by Article-33 of our Constitution. This article ensures a speedy trial, but due to extensive case backlogs and a shortage of judges, it is not feasible to maintain a speedy trial process. Article 31 of our Constitution stipulates that no one shall be deprived of their life or personal liberty unless it is done in accordance with the legal procedure. If a person is deprived of their life or freedom through a procedure that is not deemed 'reasonable, just, or fair,' this deprivation would be in violation of article 31. According to Article 21, an individual who is employed by the state must perform their official tasks with discipline. If a person who is not guilty is subjected to prolonged periods of detention without having committed a crime, it might be asserted that the government personnel have failed to do their duties with efficiency and diligence. The public official failed to fulfill his duty and violated Article-21 [20]. Violation of Article -21 triggers the provision of Article-27, which enforces the principle of "equality before the law". Prior to granting the death penalty by HC, sending the accused to the condemned cell constitutes a breach of the fundamental rights outlined in Articles 27, 31, and 32 of the Constitution.

Various international human rights treaties clearly prohibit governments from subjecting anyone to "cruel, inhuman, or degrading treatment or punishment [21]." The prohibition is a fundamental principle enshrined in various international human rights instruments, including "the Universal Declaration of Human Rights in 1948 (Article 5) [22], the International Covenant on Civil and Political Rights (ICCPR) (Article 7), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984 (Preamble and Article 16) [23], and the Convention on the Rights of Persons with Disabilities (Article 17)". An expanding collection of international case law indicates that prolonged incarceration on death row with the prospect of execution constitutes as cruel, inhuman, or degrading treatment [24].

10. High Court Division and Criminal Law Experts Opinion:

The High Court asked for an explanation from the authorities regarding the rationale behind the decision to not declare the detention of death-row inmates in condemned cells pending the disposition of their appeal and review applications. Additionally, the court asked for a report with details regarding the amenities provided for inmates confined in condemn cells within a period of six months.

Bipul Bagmar a Deputy Attorney General on behalf of the state, while Advocate Mohammad Shishir Monir appeared for the writ petition against the delay in disposition of the death reference and confinement in a condemn cell prior to the confirmation of the death penalty. He stated that the final verdict frequently results in the commuted death sentence being reduced to life imprisonment or the acquittal of the offender. Human rights are violated by this rule. It has therefore been challenged [25].

Advocate Mujahid Shaheen, a lawyer from the Bangladesh Supreme Court, expressed his view that it is inhumane for a person who has been sentenced to death by a trial court to be promptly taken to the condemn cell upon receiving the judgment. A condemned cell is a small room designated for the confinement of prisoners awaiting execution. The offender has to stay in the condemned cell for a longer period of time until the case is adjudicated. It is unforeseen.

According to ZI Khan Panna, a specialist in Criminal Law, the issue arises due to the absence of a specific time limit for resolving the death reference and appeal against the death sentence under the Code of Criminal Procedure 1898.

11. Remedies of Unreasonable Confinement:

As wrongful confinement is violation of fundamental right “right to life”. So, there is a scope under Article 44 of the Constitution to file writ according to Article 102. Although there is no explicit law regarding compensation, there have been cases where the high court division of the Supreme Court of Bangladesh has ruled that the government is obligated to provide monetary compensation to convicts who have been wrongfully imprisoned due to improper laws. In the judicial history of Bangladesh, a significant decision was made in the case of Abdul Jalil, where the court ordered the government to provide him with Tk 50,000,00 as compensation for his unjust imprisonment lasting 14 years. The High Court Division has issued a rule demanding that the government provide Tk 20,000,00 in compensation to Javed Ali from Satkhira. This compensation is for the 13 years he spent in prison following his acquittal from a murder case [26].

12. Conclusion:

A very important principle exists in Criminal procedure “presumption of innocence”. This implies that until and until they are proven guilty, every defendant in a criminal prosecution is presumed innocent. Article 105 of our Constitution guarantees the right to review against the decision of subordinate court. So, without the confirmation of High court Division and confirmation from the decision of appeal, it is not fair to dent the convict in the dangerous condemn cell and for getting the confirmation or any alteration, convicts wait in condemn cell for a very long time. It seems a big punishment before passing the final judgment and it is never

acceptable because they do any wrong or not, it is not yet sure before passing final decision of the Apex Court of Bangladesh. It is true that taking confirmation from High court Division is very good concept before finalizing the judgment rendered by the trial court but the unreasonable delay of High Court Division and kept the convicts in condemn cell carries a big inhuman culture. But ignore this process, the trial court and Supreme Court must take necessary steps.

Recommendations:

1. After passing the judgement of death penalty from trial court and before passing the confirmation from High Court Division or death appeal, the convict would stay in usual prison rather condemn cell. Trial court has to be more careful and passionate regarding the cases and issues. So that unreasonable death penalty as a judgement is not passed and help to decrease the number of appeals in Appellate Court.

Number 2?

3. State and Authority should take measures to ensure the basic human rights of prisoners. Special measures were required from the Supreme Court's end to dispose of these cases. Like more judges should be appointed to remove the burden of cases disposal and decrease the case backlogs and should take initiatives to increase manpower in these branches.

5. The case documents and the judgment of death reference from the trial court should be sent to the High Court as soon as possible.

6. Though compensation is never the adequate remedy in case of unreasonable confinement, but Court should grant a reasonable compensation. A National Commission for Compensation should be established in Bangladesh, which will be governed by a judicial authority and where an innocent person may apply for compensation. The legislation would state unequivocally that a specific amount of money must be paid for a specific period of time, and that it must be provided depending on the claimant's social status, income etc.

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Abbreviations:

Cr.PC	The Criminal Procedure Code
HCD	High Court Division
AD	Appellate Division
UDHR	The Universal Declaration of Human Rights