



**Daffodil**  
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**Extra Judicial Killing by Law Enforcement Agencies  
Violation of the Constitution and the Human Rights  
in Bangladesh Perspective**

**Submitted by**

Mohammad Moniruzzaman  
Id No: 201-38-364  
Department of law

**Supervised by**

Md. Abu Saleh  
Assistant Professor  
Department of Law  
Daffodil International University

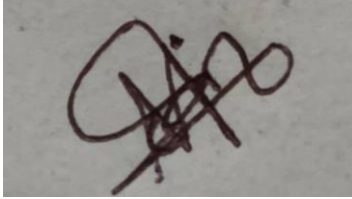
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## **Dedication**

I want to dedicate my research paper on "*Extra Judicial Killing by Law Enforcement Agencies: Violation of The Constitution and the Human Rights in Bangladesh Perspective*" to those people who gets killed by the member of law enforcement agencies illegally.

## **Declaration**

I hereby declare and ensure that the research paper is made by me using my own thought and this research paper does not present before any academic organizations or any other institutions before. I found no copyright issue in this research paper.



.....  
**Mohammad Moniruzzaman**

Id No: 201-38-364

LL.M (Final)

Department of Law

Daffodil International University

## **Certification**

This is to certify that the research paper on "Extra Judicial Killing by Law Enforcement Agencies: Violation of The Constitution and the Human Rights in Bangladesh Perspective" has made by Mohammad Moniruzzaman for the purpose of completing LL.M Course from Daffodil international University. The research paper has made by him under my supervision.

A rectangular box containing a handwritten signature in black ink that reads "Md. Abu Saleh".

.....

**Md. Abu Saleh**

Assistant Professor

Department of Law

Daffodil International University

## **Acknowledgement**

First of all, I am thankful to my Almighty for keeping me well in this COVID-19 situation. Then I am thankful to my mother who raised me by her own effort. Now I would like to express my special thanks of gratitude to my teacher Mr. Abu Saleh Sir who is my Supervisor of my research. Respected Sir helps me a lot to complete the research paper on “Extra Judicial Killing by Law Enforcement Agencies: Violation of The Constitution and the Human Rights in Bangladesh Perspective.”

I am also thankful to digital networks for helping me to find out my desired resources in this difficult time. I humbly thank them all.

## **Abstract**

The research paper will show how enforcement agency law abuses their power to justify extra judicial killing and the way human rights and constitution gets violated because of extra judicial killing. The research paper provides legal status of a person who gets arrested or taken into custody including his legal rights in such situation. The research paper also provides related provision from different laws, conventions, precedents made against extra judicial killing in Bangladesh and list of recommendations to prevent extra judicial killing with references.

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# Chapter One



## **Introduction**

Research on any individual topic is very much important to create new realistic knowledge. A proposal for research paper is also important. A proposal paper can describe a whole Research paper in a short time and in an easy way. A proposal paper can give a basic knowledge on the research paper. So, my desirable topic for making the proposal paper of research paper is the Extrajudicial killing by law enforcement Agency and violation of The Constitution of Bangladesh and provisions of Human Rights. In this recent year's extra judicial killing like crossfire, custodial death etc. by Law enforcement agencies like Police and Rapid Action Battalion (RAB) has reportedly increased! Either they are doing it the reason of corruption or for money or doing it for political purpose. Extra judicial killing is the complete violation of article 32 "Right to life" of Bangladesh Constitution and where this provision is got violated by the law enforcement agencies, it is the adequate responsibility of the government to establish law and order and also make such person liable and assure punishment by existing laws. Analyzing the "right to life" under the International Human Rights Conventions, this research paper will be discussed about extra judicial killing by law enforcement agencies, violation of Human rights and constitution as per existing laws of Bangladesh.

## **Background:**

Extra judicial killing is the complete violation of article 32 "Right to life" of Bangladesh Constitution and most of the time extra judicial killing proved out as a criminal offence made by the law enforcement agencies. Analyzing "right to life" under the International Human Rights Conventions, Articles 3,5 and 7 to 11 under UDHR conventions and Articles 6,7, 9 and 10 of ICCPR convention provides safeguards during arrest, taken into custody of any persons by the law enforcement agency. Bangladesh has ratified those Conventions. Beside Right to life Article 27, 31, 33, 102 (2) (b) provides constitutional rights to the citizens of Bangladesh. All related grounds will be discussed as per existing laws of Bangladesh. I choose Extra Judicial killing and violation of constitution and other existing laws as the topic of my research paper, the reason is i want to discover and provide a proper legal knowledge about the consequences and abuses of law and order by law enforcement agencies.

I will try to examine my research topic by gathering of provisions from the Constitution of Bangladesh along with provisions different laws, acts, precedents available in Bangladesh against extra judicial killing so that people can earn some realistic and legal knowledge which will prove that extra judicial killing by law enforcement agencies is an offence and punishable under our existing law.

## **Literature Review:**

The laws by which I'll discuss about extra judicial killing maybe as follows

- The Constitution of Bangladesh
- Penal Code 1860
- The Code of Criminal Procedure 1898
- Torture and Custodial Death (Prevention) Act 2013
- Related Case studies

## **Question of Research:**

1. How Extra Judicial Killing violates the provisions under 'Fundamental Right' parts of Bangladesh Constitution?
2. How extra judicial killing violates Human Rights Law?
3. How section 54 of CrPC 1898 is used to justify an operation of extra judicial killing?

### **Methodology:**

The research paper is concerned with the provisions of Bangladesh Constitution by which extra judicial killing makes contradiction. The research paper is divided into separate parts. Basically, this research paper is an examination on extra judicial killing by law enforcement agency and examination of the violation of Constitution. Extra Judicial Killing is also the reason of violation of Human rights and other existing laws of our country. So I think these research paper will provide a proper knowledge about the negativity of extra judicial killing in Bangladesh.

### **Objective:**

The objective of these research paper provides:

1. To examine the provisions by any suspected or person who has taken into custody can avoid crossfire;
2. To make an overview about extra judicial killing happening in Bangladesh by the member of law enforcement agencies;
3. To examine the legal procedure available against any liable officer under the existing laws for his action to operate crossfire killing, custodial death or any kind of unnatural death during custodial period victim;
4. To clarify the situation of the Constitution of Bangladesh in the case of extra judicial killing;

### **Significant of the Research**

In the Universal Declaration on Human Rights does not allow any kind of custodial death or extra judicial killing or cross fire of any person even if he is a recognized and dangerous criminal.

It is considered a heinous crime against the humanity or violations of human rights. Our existing laws are also not allowed extra judicial killing by law enforcement agency by any means and it is considered to be a punishable offence under existing laws of Bangladesh.

# Chapter Two

### **Extra Judicial Killing and violation The Constitution of Bangladesh:**

The Constitution of Bangladesh is very much strict about Human Rights and provisions under fundamental rights clause provides that:

#### **According to Article 27 (Equality before law): -1**

All citizens are equal before law and are entitled to equal protection of law.

**According to Article 31(Right to protection of law):** - To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

**According to Article 32 (Protection of right to life and personal liberty):** - "No person shall be deprived of life or personal liberty save in accordance with law."

**According to Article 33 (Safeguards as to arrest and detention):** - "(1) 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."

"(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

"(3) Nothing in clauses (1) and (2) shall apply to any person—

(a) Who for the time being is an enemy alien; or?

(b) Who is arrested or detained under any law providing for preventive detention."

"(4) No law providing for preventive detention shall authorize the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the

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<sup>1</sup> Constitution of Bangladesh (Article 27,31,32,33)

expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention."

**According to Article [102 (2) (b) (Habeas Corpus)]:** - "To have his body before the court within 24 hours of arrest or taken into custody"

So, it can be said that Article 31 has provided rights of law to the citizens of Bangladesh, every person of Bangladesh has the right to life provided by Article 32, has lawfully rights to apply existing laws where it is seeming necessary. Article 33 has provided legal procedure to arrest and police custody of any person when it is necessary in the eye of law. Article 102 (2) (b) assures that when a person is got arrested or taken into the custody it will be his fundamental right to present before the court within 24 hours of arrest or custody, but unfortunately it doesn't happen. When Cross fire killing, extra judicial killing or custodial death happens by any member of law enforcement agencies such rights of individual or victim become the cause of violations. In 2020 we have seen to happen to dangerous crime happened by the members of law enforcement agency by abusing their power.

### **Some recent cases**

**Major Sinha Md Rashed Khan**<sup>2</sup> has got killed by some police officer in Cox Bazar on 31 July 2020. **Rayhan Ahmed**<sup>3</sup> Has got custodial death by **S.I Akbor** in Sylhet on 11 October 2020. **Councillor Ekram Hossen Chowdhury** Cox Bazar who was considered to be a trusted person of so-called ex MP Mr. Body who is alleged for Yaba business (Yaba business king) and went to jail Several times, Mr. Ekram has got killed by cross fire in 2018 by cox bazar police. Some years earlier (In 2014) **seven murder**<sup>4</sup> was committed in Narayonganj by the member of Rabid Action Battalion (RAB) alog with former Awami league leader Noor Hossein and others. And the most common of this murder is all the victims did not present before the court within 24 hours though it was their fundamental right to be present before the Court under 102 (2) (b) of the Constitution of Bangladesh.

Police does not make entry the name of arrested person in the selected book though they are bound to make entry of arrested person's full details with arrested time.

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<sup>2</sup> Bangladesh vs Pradeep Kumar Das (pending)

<sup>3</sup> Tahmina Akter vs Akbor Hossain and others (Pending)

<sup>4</sup> Selina Hossein Beauty vs Noor Hossein and others

### **Statistics as per National Daily**

Since 2001 to 2020 4002 people has been killed by law enforcement agency by the name of cross fire or custodial killing aka extra judicial killing.<sup>5</sup> [Source BBC Bangla news:10/08/2020]

**When** any person got arrested or taken into custody, he has some rights under Article 31 and 33 of Bangladesh Constitution. Article 31,33,33 and 102 (2) (b) are under the fundamental right parts of Bangladesh Constitution. No one are allowed to violate these rights by any means but law enforcement agency often violates these fundamental rights by abusing their legal power to kill people for money, political influence or personal benefits and cases like Seven murders, Major Sinha, Rayhan, Councilor Ekram from Cox Bazar etc. is happening every day.

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<sup>5</sup> BBC Bangla News on 10/08/2020

# Chapter Three



## **Violation of Human Rights**

Almost in every nation, every citizen has some human rights for living peacefully. No one can violate these human rights by any means. Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) ensures that Human Rights and Bangladesh also follow these conventions to ensure human rights and Fundamental Rights Part 3 of Bangladesh Constitution which provides Article 27, 32, 33, 33 and 102 (2) (b) (these articles are described already) to ensure the rights of a human being and provisions under this part ensures Human Rights in our country.

As per Articles 3, 5, and 7-11 of UDHR<sup>6</sup>, every human has some rights which become violated when an extra judicial kill operates by any member of law enforcement agencies. The rights which above mentioned article provides are:

### **According to Article 3,**

"Everyone has the right to life, liberty and security of person".

### **According to Article 5,**

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

### **According to Article 7,**

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

### **According to Article 8,**

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

### **According to Article 9,**

"No one shall be subjected to arbitrary arrest, detention or exile."

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<sup>6</sup> Human Rights (Article 3,5,7,8,9,10,11)

**According to Article 10,**

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

**According to Article 11,**

"(1) everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

ICCPR<sup>7</sup> also provided some human rights under Articles 6, 7, 9 and 10.

**According to Article 6,**

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

"2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."

"3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide."

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<sup>7</sup> International Covenant on Civil and Political Rights (ICCPR)

"4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

"5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."

"6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."

**According to Article 7,**

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

**According to Article 9**

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

"2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

"3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

"4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

"5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

**According to Article 10,**

"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

"2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons"

"(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication."

"3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

These Laws has made peoples right strong but in real the person who gets killed by law enforcement agency members during his custodial period these universal rights become valueless. So, law should be maintained and applied strictly within all over the country.

# Chapter Four

## **Operation of an extra judicial killing and justification of it:**

Section 54 of The Code of Criminal Procedure 1898<sup>8</sup> is so much important provisions in Bangladesh perspective. Almost in every cases of extra judicial killing provisions of section 54 are playing the dark role. It is very much sad to say that section 54 of CrPC 1898 is being used to justify an operation of extra judicial killing by law enforcement agency. Section 54 of the CrPC 1898 provides:

### **Arrest without Warrant**

**According to Section 54 (When police may arrest without warrant):** - "(1) Any police officer may, without an order from a Magistrate and without a warrant, arrest" -

- firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;
- secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;
- thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;
- fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;
- fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;
- sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh
- seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive

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<sup>8</sup> The Code of Criminal Procedure 1898 (section 54)

Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

- eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);
- Ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition. Victim often got arrested as a suspected person under 54, taken him for collection of evidence and kill him by the name of self-defense! There is an interesting matter i can tell that no single police or RAB officer has been found killed during such a dramatic combat situation till now. Only they got injured and the arrested person got killed in the firing. The same scenario is happening every time and it is a continues process. Major Sinha was unarmed and took at least six bullets on his chest when he got killed. Mr. Rayhan got killed during custodial period only for 20k money. Seven murders in Narayangonj were happened for money and power, top class RAB Officers found guilty along with Terror like Noor Hossein in this crime. If person who are liable law to enforce but enforce the law with bad intentions the consequences is in front of us! No one is saved and law become curse! Law is established to create Justice not to create injustice and crime. Law should be a blessing among us not a curse. So, law should be use in a lawful way by the law enforcement agencies to create a prosperous Bangladesh.

But Article 33 of Bangladesh Constitution provides safeguards for someone during arrest, detention and custodial period.

### **According to Article 33 (Safeguards as to arrest and detention)<sup>9</sup>:**

- 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.
- Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- (3) Nothing in clauses (1) and (2) shall apply to any person—
- who for the time being is an enemy alien; or?
- who is arrested or detained under any law providing for preventive detention?
- No law providing for preventive detention shall authorize the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.
- When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:
- Provided that the authority making any such order may refuse to disclose facts which such authority considers to be against the public interest to disclose.
- Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (4).

If these provisions of Article 33 of Bangladesh Constitution and Section 54 of CrPC 1898 followed by the member of law enforcement agency of Bangladesh with accordance and without abusing power of these two provisions, I can tell that there will be no extra judicial killing which operates with bad intention.

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<sup>9</sup> The Constitution of Bangladesh (Article 33)



# Chapter Five

## **Some Recommendations to prevent extra judicial killing**

Extra judicial killing is a criminal offence and any member of law enforcement agency who commits such offence is liable for punishment as per existing law of Bangladesh and it is a duty of Bangladesh government to make them liable and ensure justice. For the purpose of ensuring Justice legal procedure has been established to prosecute every kind of extra judicial killing made by any member or group of members of law enforcement agencies. As an extra judicial killing operation becomes the reason of violating human, civil and political rights of an individual. It is a criminal offence and offender shall be punished under law and it is an adequate duty of government to make such offender liable, make him or them punished and ensure justice, there is no specified punishment for extrajudicial killing in the Penal Code 1860<sup>10</sup>.

For the purpose of ensuring justice "Torture and Custodial Death (Prevention) Act 2013 has been Established. Where highest punishment for torture and Custodial death is the sentence of life Imprisonment under section 15<sup>11</sup>.

There is another recommendation in my opinion which can prevent extrajudicial killing or custodial death. Though the case was filed to challenge the power of Section 54 and 167 of CrPC 1898 which provides procedure to arrest any suspected person in any time. The High Court Division made some recommendations in BLAST vs Bangladesh case to prevent the abuses of power of Section 54 and 167. In my opinion the recommendations can be helpful to prevent extrajudicial killing also. The recommendations in the BLAST vs Bangladesh<sup>12</sup> maybe as follows:

1. No arrest by section 54 of CrPC to detain any person under section 3 of the Special Powers Act 1974.
2. Showing official police Id during arresting someone.
3. Reason of arrest in writing in the specific book.
4. Reason of injury if happens during arrest, it needs to be written in the report book and admit injured person in nearest hospital.
5. If any person is arrested, his relatives need to be informed within one hour after his arrest by the police.

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<sup>10</sup> The Penal Code 1860

<sup>11</sup> Torture and Custodial Death (Prevention) Act 2013

<sup>12</sup> BLAST vs Bangladesh; 55 DLR 363 (2003)

6. Immediate Consultation of lawyer for the person arrested.
7. Present him before the court within 24 hours of getting arrest, over 24 hours reason of delay need to be shown in written to the Magistrate.
8. If all the procedure is followed by the member of law enforcement agencies and Magistrate become satisfy, he will approve detention, if he does not, he will release him immediately.
9. Where a person is released on the aforesaid grounds, the Magistrate shall proceed under 190(1)(c) of the CrPC against the Officer concerned under Section 220 of the Penal Code.

In recent years, cases related with extra judicial killing by law enforcement agencies of Bangladesh, considered as criminal offences and prosecuted by the provisions available in the CRPC 1898 and punishment provided under The Penal Code 1860. In the Seven murder<sup>12</sup> cases including 16 members of RAB total 25 persons has found guilty and declared different punishments including death sentences and life imprisonment under The Penal Code. The judgement established the Principle of Equality and it is a remarkable judgement for preventing extra judiciary killing and there must be established more precedent cases like seven murders cases.

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<sup>12</sup> Bijoy Kumar vs Nazmul Haque and others

# Chapter Six

## **Conclusion**

So, it can be said that law enforcement agency has no right to abuse their power by the name of self-defense aka cross fire or by the name of custodial death or by the name of extra judicial killing it is the completely violation of The Constitution and other existing laws of Bangladesh. Government needs to be more strike to prevent extra judicial killing by the law enforcement agencies so that human can enjoy their rights, constitution can play its role properly because a good constitution can develop a country and her people properly.

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