

ENFORCED DISAPPEARANCE IN DEFIANCE OF HUMAN RIGHTS: A CRITICAL REVIEW OF LEGAL AND INSTITUTIONAL ASPECTS FROM BANGLADESH PERSPECTIVE

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ABSTRACT

Enforced disappearance is an atrocious violation of human rights. It affects victims in many ways, including constant fear for their lives, their families go through an emotional roller coaster of hope and despair and waiting for news that might never come. The disappeared person, indeed, is completely deprived from the protection of national and international legal instruments. According to the reports of some national and international human rights monitoring organisations, the volume of enforced disappearance has been alarming in the recent years in Bangladesh. The surfacing of the crime as a grave security concern in Bangladesh, therefore, provides a reasonable justification of this study. The paper presents a critical analysis on the existing legal and institutional functions in Bangladesh relating to the practice of enforced disappearance. Prior to that, the article attempts to make the readers acquainted with the conceptual issues and historical evidences concerning to that particular approach of criminal offence.

INTRODUCTION

The practice of enforced disappearance has been one of the severe types of human rights violation in the world. It affects victims in a number of ways, including the constant fear for their lives and their near and dear ones pass through an emotional nuisance of the expectation and the depression, hoping and waiting for news that might never come. Moreover, it affects a number of human rights, such as the right to individual security, the right to protection under the law, the right not to be deprived of one's liberty and the right not to be subjected to torture or to any cruel or inhuman treatment.¹ The UN Declaration on Enforced Disappearance specifies that, enforced disappearance constitutes a violation of the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to

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¹ Scovazzi, Tullio and Citroni, Gabriella; *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention*, Koninklijke Brill NV, Netherlands: Leiden, 2007.

torture and other cruel, inhuman or degrading treatment or punishment. It also constitutes a grave threat to the right to life.²

In Bangladesh, the cases of enforced disappearance have become so widespread in the contemporary years that it worries a large portion of human rights activists and security experts of the country.³ The trends of disappearance and mysterious killings have taken an alarming turn mostly from 2007.⁴ A large number of the victims have been the political activists, local traders or workers. Some were abducted because of criminal feuds or business rivalries.⁵ According to various newspaper articles and human rights organisations' reports, in most of the cases, persons are usually disappeared after being detained by men having resembled getup of the members of domestic law-enforcement agencies. Later, some of the dead bodies of the victims are found and rests remain untraced.⁶ In such cases, often the families of the victims claim the members of the law enforcement agencies who are in fact allegedly making the arrests.⁷ In this milieu, the core objective of the present study is to make a critical analysis on the existing laws and institutional mechanisms in relation to the practice of enforced disappearance in Bangladesh. In doing so, the paper also seeks to clarify the conceptual issues as well as share some national and international historic evidences relating to that particular type of offence.

SIGNIFICANCE OF THE STUDY

The significance of the study clearly appears while analysing the volume of enforced disappearance in Bangladesh, especially from 2007 to 2012 scenario. According to Odhikar, a non-government human rights organisation in Bangladesh, for example, the number of cases of enforced disappearance has increased from 1 to 30 between 2007 and 2011 (See: Figure 2). However, there is a lack of comprehensive study on the laws and institutional mechanisms

² See, Article 1 of the UN Declaration on Enforced Disappearance, December 18, 1992. Available at: <<http://www.un.org/documents/ga/res/47/a47r133.htm>> (accessed on May 13, 2013)

³ See, the annual reports of Odhikar and Ain O Shalish Kendra (ASK) from 2007 to 2013. These two are of the leading human rights monitoring bodies of Bangladesh, especially in the cases of enforced disappearance.

⁴ See, Odhikar, "Human Rights Report 2011," January 07, 2012.

⁵ Anbarasan, Ethirajan; "Enforced disappearances' haunt Bangladesh," *BBC: News Asia*, April 20, 2012.

⁶ Adhikary, Tuhin Shubhra, "Bangladesh to probe 'mysterious disappearances'," *The Daily Star*, January 06, 2012.

⁷ Hossain, Md. Iqbal; "People worried about abduction and secret killing," *The Daily Star*, December 28, 2011.

relating to the practice of enforced disappearance in Bangladesh, in which the present study seeks to add some valuable insights. Subsequent to a brief discussion on the existing laws and institutional mechanisms relating to enforced disappearance in Bangladesh, the study focuses on the setbacks throughout the mechanisms as well as provides a set of recommendations to overcome these discrepancies.

ENFORCED DISAPPEARANCE: CONCEPTUAL ISSUES

The term ‘enforced disappearance’ means abduction, carrying or kidnapping illegally, secret arrest or detention. Among these meanings, ‘abduction’ is often used as a synonym of the phrase. According to the Oxford Dictionary, it means ‘to compel a person to be invisible’. In general, an enforced disappearance takes place when a person is arrested, detained or abducted by the state or agents acting for the state, who then deny that the person is being held or conceal their whereabouts, placing them outside the protection of the law.⁸

The definition of an enforced disappearance has experienced variations in its evolution through international law of the human rights and international penal law. However, the universal definition of enforced disappearance was eventually found in the draft of the ‘International Convention for the Protection of All Persons from Enforced Disappearance’ (ICCPED), held in Paris, France, on June 26, 2006. According to Article 2 of ICCPED:

[...] ‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.⁹

Article 2 of the Convention, in fact, recognises the following elements in the definition of enforced disappearances:

1. There is an arrest, detention, abduction or any other form of deprivation of liberty of the vulnerable person;
2. That conduct is carried out by the agents of the state or persons or a group of persons with the support and consent of the state;
3. The conduct is followed either by a denial to acknowledge the deprivation of liberty or by disguise of the fate of the disappeared person;
4. The objective of the conduct is that the disappeared person is placed outside the protection of the law.

⁸ See, “Amnesty International,” available at: <<http://www.amnesty.org/en/enforced-disappearances>> (accessed on March 15, 2013)

⁹ OHCHR, “International Convention for the Protection of All Persons from Enforced Disappearance” (ICCPED), June 26, 2006, available at: <<http://www2.ohchr.org/english/law/pdf/disappearance-convention.pdf>> (accessed on March 21, 2013)