

Justice Denied: Confronting the Constitutional Breakdown

Enabling Extrajudicial Killings in Bangladesh

Executive summary

Extrajudicial killings in Bangladesh—commonly portrayed as “crossfire” or “gunfights”—replace arrest, charge, and trial with irreversible state violence. They breach **Articles 31–35** of the Constitution (protection of law, life, and personal liberty, and fair-trial guarantees) and breach international standards of necessity, proportionality, and precaution, as well as the right-to-life duty to ensure prompt, independent, and effective investigations. The harms cascade: people are killed without adjudication; families face intimidation, financial dislocation, and denial of truth and remedy; communities lose confidence in lawful policing and judicial institutions. This brief recommends three reforms: (1) legislate clear use-of-force rules and command responsibility; (2) establish an independent fatal-incident investigations directorate with forensic autonomy; and (3) guarantee protection, legal aid, and reparations for families. Implementation rests with the Ministry of Home Affairs (MoHA) and the Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs, under writ-based guidance and structural review by the Supreme Court (High Court Division). The package restores constitutional supremacy, improves public safety, and rebuilds trust.

Background: the promise and the breach

Bangladesh’s Preamble commits to a society “in which the rule of law, fundamental human rights and freedom, equality and justice... will be secured for all citizens.” **Article 31** protects everyone through law; **Article 32** bars deprivation of life or personal liberty except “in accordance with law”; **Article 35** guarantees fair-trial protections. Together they presuppose a lawful pathway—arrest, charge, counsel, trial, judgment—under an independent court. When unlawful lethal force substitutes for adjudication, constitutional guarantees are rendered ineffective. Law is not only a set of commands; it is a constitutional promise that procedure, reasons, and review will bind coercion.

International standards are clear. In law-enforcement, lethal force is a last resort strictly necessary to protect life, always proportionate to the threat, and planned/commanded with precaution to minimize foreseeable risks to life for suspects, bystanders, and officers. The right to life also imposes a procedural obligation: every potentially unlawful killing must be investigated promptly, independently, and effectively; accountability and remedy must follow. If operations are not planned and documented to these standards—and if inquiries lack

independence or effectiveness—unlawful killings can be shielded by narrative rather than tested by evidence, eroding both rights and safety.

This is not a trade-off between security and rights. The social contract underlying democratic policing depends on state power being exercised within constitutional limits; extrajudicial killings shatter this compact by placing officers above the law they are sworn to enforce. Where unlawful resort to lethal force recurs, cooperation declines, evidence quality worsens, and trust—the foundation of effective policing—deteriorates. The result is a system that is both unlawful and less safe.

Rationale: the cumulative violations and their impact

- **Arbitrary deprivation of life:** Lethal force is unlawful when not strictly necessary to protect life or disproportionate to the threat—regardless of crime-control aims. That violates **Article 32**’s “in accordance with law” requirement and settled international standards for law-enforcement operations.
- **Denial of due process:** When death replaces adjudication, the presumption of innocence, the right to counsel, and a public trial before an independent court vanish. **Articles 31–35** lose force for the deceased; allegations remain untested.
- **Procedural breach of the right to life:** Failure to ensure prompt, independent, effective investigation—e.g., self-investigation by implicated units, delayed/deficient inquiries, poor scene preservation—violates the state’s positive duty and entrenches impunity.
- **Suppression of truth and remedy:** Families are denied timely autopsies, access to evidence, and reasoned prosecutorial decisions. Justice and reparation are obstructed; fear chills complaints; confidence in lawful policing and courts erodes.

This chain of harm spreads outward. Individuals lose life and rights; families face intimidation and poverty; communities internalize impunity; institutions drift from constitutional supremacy to discretionary coercion. Rule-of-law pillars—constraints on government power, fundamental

rights, open government, and criminal justice—are each degraded, weakening accountability and safety.

Why does it matter?

- **Rule of law:** Unchecked lethal force simultaneously erodes constitutional constraints, fundamental rights, transparency, and justice.
- **Social contract:** State authority is legitimate only within constitutional limits; lethal force exercised beyond the law breaches constitutional consent and delegitimizes state authority. Police authority rests on this same foundation—when officers operate outside legal bounds, they break the bargain that makes their power legitimate.
- **Deontology vs. utilitarianism:** Killing without adjudication fails a categorical duty to treat persons as ends-in-themselves; and “ends-justify-means” fails empirically, as unlawful force reduces cooperation and safety over time.

Target audience

Primary

- **Ministry of Home Affairs (MoHA):** Issues standing orders and SOPs on use of force; deploys less-lethal tools; mandates and enforces body-worn camera policy and evidence retention; directs internal discipline; sets performance metrics that reward de-escalation and lawful outcomes.
- **Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs:** Drafts and advances a Use-of-Force and Firearms Act; establishes an Independent Investigations Directorate (IID); legislates witness/victim protection and reparations; conducts hearings and requires periodic reporting.
- **Supreme Court (High Court Division):** Uses **writ** jurisdiction (**Articles 44, 102**) to issue binding guidelines on minimum investigative steps, automatic referral of fatal incidents to an independent body, disclosure obligations, and timelines; maintains a structural docket to supervise compliance.

Secondary

- NHRC (monitoring, thematic inquiries, amicus curiae), civil society (documentation, witness services, strategic litigation), and international partners (forensic/investigation technical support) reinforce state action but do not replace state duties.

Who is responsible?

- **Primary:** Law-enforcement units that conduct operations; their chains of command; MoHA for policy, discipline, and oversight.
- **Secondary:** Investigative/prosecutorial bodies where independence, promptness, or effectiveness is lacking; the judiciary, where structural guidance and supervision are absent or underused.
- **Tertiary:** Political leadership and media narratives that normalize unlawful force or overlook due process; institutional cultures that favor outcomes over legality.

Who is hurt?

- **Individuals:** Alleged drug/crime suspects and opposition activists—often young men in high-policing, low-income areas—are killed without adjudication; they never see a lawyer or a court.
- **Families:** Face intimidation, coercive questioning, pressure to alter or withdraw complaints, and sudden loss of income and support. Women caregivers and elders shoulder disproportionate burdens while struggling for autopsy reports and case updates, compounding grief with uncertainty and economic hardship..
- **Communities:** Fear suppresses reporting and cooperation; a belief spreads that justice is discretionary, not legal; safety degrades as unlawful force begets silence, not security.
- **Intersectionality:** Class, locality, age, disability, migration status, religion/ethnicity, and political identity can overlap to raise risk and lower access to remedy. Protection, procedures, and services must be tailored to these realities.

Policy objective

Re-anchor use-of-force, investigations, and remedies in constitutional supremacy and the right-to-life framework so that lethal force becomes a true last resort; every fatal incident triggers an independent investigation and potential prosecution; and families receive protection, information, and reparations—restoring trust and adequate public safety.

Recommendations

1. Codify use-of-force and command responsibility

- Pass a Use-of-Force and Firearms Act embedding necessity, proportionality, and precaution; defining lawful aims; setting a strict lethal-force threshold (only to protect life when no lesser means suffice); and requiring warnings where feasible.
- Mandate written operational plans for planned operations and after-action reports for all significant uses of force, documenting risk assessments, less-lethal options considered, warnings, commander identities, and time-stamped narratives.
- Codify command responsibility so superiors who knew or should have known of unlawful practices and failed to prevent or punish face criminal and disciplinary liability.
- Require body-worn and vehicle cameras, tamper-proof retention, independent investigative access, and adverse evidentiary inferences where required recordings are missing without adequate justification.

Lead: Parliament (enactment). **Implement:** MoHA (SOPs, equipment, training).

Oversight: HCD (guideline references, case management).

2. Establish an Independent Investigations Directorate (IID)

- Mandate: Exclusive authority over all deaths/serious injuries from police or specialized-unit operations and all deaths in custody; powers of entry, seizure, and subpoena; own scene-of-crime and forensic teams to avoid reliance on implicated units.
- Protocols: Immediate scene control; officer separation; logging and sealing of weapons/ammunition; ballistic/toxicology testing; preservation and secure transfer of digital evidence; prohibition on self-investigation by implicated units.
- Timelines: Scene secured within hours; preliminary report within 14 days; full investigation within 90 days; public, reasoned prosecutorial decision to charge or not;

judicial review available for deficiency or delay.

- Transparency: Quarterly dashboards by unit, geography, demographics, and outcomes for open government and legislative oversight; use the data to flag high-risk units and patterns.
Lead: Parliament. **Cooperate:** MoHA **Oversight:** HCD (automatic referral requirement; structural review).

3. Guarantee protection, legal aid, and reparations

- Witness/Victim Protection Act: Relocation; confidentiality/anonymity where justified; secure testimony procedures; penalties for intimidation; independent administration separated from implicated agencies.
- Independent external autopsies to international standards for all deaths in custody/operations; family observers or independent representatives permitted; reports delivered within set deadlines (with translation support).
- Reparations fund: Interim relief within 14 days (funeral/subsistence); final compensation linked to investigative outcomes; psychosocial services and community-rooted legal aid designed with gender-responsive and disability-sensitive access.
Lead: Parliament/Justice Ministry. **Deliver:** MoHA, Legal Aid Board. **Support:** NHRC/CSOs.

4. Judicial guidelines and structural supervision

- Guidelines under **Articles 44 and 102**: Automatic referral to IID for all fatal incidents; minimum investigative steps (scene preservation, evidence inventory, interviews); disclosure obligations to next of kin; strict completion deadlines; reasoned extensions only.
- Magistrate controls: Verify presence/quality of use-of-force documentation (operational plans, camera data, chain-of-custody) at remand/charge; order remedial steps for deficiencies.
- Structural docket: Periodic High Court review using IID data to address systemic bottlenecks, with preventive, institution-building orders.

Implementation roadmap

Phase 1 (0–6 months)

- Hold hearings on the Use-of-Force, IID, and Reparations/Protection Bills with families, CSOs, police leadership, prosecutors, and forensic experts. Publish exposure drafts for comment.
- MoHA issues interim SOPs on operational planning, body-worn cameras, evidence retention, command documentation, and de-escalation; selects pilot districts; sets indicators (fewer fatalities, higher documentation quality).
- HCD consults stakeholders, signals forthcoming guidelines, and creates a register for automatic reporting of fatal incidents to designated Benches.

Phase 2 (6–18 months)

- Enact/commence laws; recruit and train IID investigators, pathologists, and analysts; procure core forensic equipment and secure data systems; finalize SOPs for scenes, evidence integrity, and disclosure.
- Launch pilots in high-incidence districts; publish quarterly dashboards; hold public briefings to build trust and deter interference.
- Integrate training on necessity, proportionality, precaution, de-escalation, and lawful orders across academies and units; link completion to promotion and command eligibility.

Phase 3 (18–36 months)

- Scale IID nationwide; expand forensic capacity; embed victim-support in legal aid and social welfare with minimum service guarantees (counseling in 7 days, legal aid in 5).
- Commission independent audits of IID timeliness and outcomes; refine statutes and SOPs based on judicial feedback and operational lessons; align budgets and promotions with compliance and performance indicators.
- Maintain HCD structural review with public reporting to entrench constitutional supervision.

Risks and mitigation

- **Resistance:** Pair mandates with metrics and incentives that reward de-escalation, lawful outcomes, and documentation; ensure specific discipline; and institutionalize recognition of lawful practice to shift organizational culture.
- **Resources:** Front-load low-cost steps (planning templates, chain-of-custody protocols, scene-preservation kits); phase forensic investment; leverage technical partnerships for training and labs.
- **Intimidation and tampering:** Activate protection early; independent reporting channels; enforce anti-interference penalties; secure digital evidence with auditable access and dual-control.

Monitoring indicators

- **Prevention:** Fatal encounters per 100,000 residents (pilot vs. baseline); body-camera compliance; share of operations with written plans and documented less-lethal options.
- **Accountability:** % of fatalities referred to IID within 24 hours; average days to prosecutorial decision; charge/conviction rates where evidence supports culpability; command-discipline outcomes for planning/supervisory failures.
- **Remedy and trust:** % of families receiving autopsy reports within 30 days; interim relief within 14 days; survey-based willingness to report crime/misconduct as a proxy for restored confidence.

Conclusion

Extrajudicial killings are an avoidable breach of constitutional guarantees and right-to-life obligations that violate individual rights, impose disproportionate burdens on families, and weaken institutions and public safety. Legislating use-of-force rules, establishing an independent investigations directorate, and protecting and compensating families will return Bangladesh to its constitutional path—where law governs power and life, dignity, justice, and trust are secured in practice. Implemented with urgency, transparency, and judicial supervision, these reforms align

power with law and align state authority with constitutional law, ensuring that public safety and fundamental rights advance together.

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