**HUMAN RIGHTS AND THE LAW**

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**1. Introduction**

Like in many polities of global south, politics and political institutions in Bangladesh are often shaped by the common experience of colonial oppression and nationalist responses to it, military dictatorship, or more recently, new forms of violence ignited by market liberalization and a particular (often narrow) understanding of democracy (reduced to electoral rituals) and ‘progressiveness’ (in a teleological sense, the ‘west’ being the essential model). Although ‘human rights’ as an ideology emerged as a necessary corrective to the evils of colonialism, authoritarianism and backwardness in the aftermath of World War II, most post-colonial states including Bangladesh remained in an ambivalent relationship with the notion of human rights. This ambivalence could be broadly characterized as two parallel streams: ‘human rights’ as an emancipatory move, and ‘human rights’ as a hegemonic language, or to take Marks’s phrase, as ‘romance’ and ‘tragedy’ (Marks 2012). The first strand emphasizes the ‘ideology’ of human rights as a central element of the project to circumscribe the monopoly of coercive force by post-Westphalian modern states. It is conceived of as a “secular religion: an object of faith, a basis for hope and a code of morality we can all accept” (p. 313). The second strand, in contrast, problematizes the all-pervasive nature of contemporary discourses on human rights, and without undermining its core values, tends to expose the way in which human rights as a neo-colonial political ‘language’ reinforces existing power imbalances at both national and international levels. To a great extent, an understanding of human rights in Bangladesh travels between these two registers.

**2. Strand One: Human Rights as an Emancipatory Move**

Any standard narrative of human rights within this stream essentially finds its legitimacy in existing international human rights standards, which then serve as a lens through which national human rights performance can be evaluated. For example, Bangladesh National Human Rights Commission (BNHRC) implemented a UNDP funded project in 2012 under which a number of compliance studies on various aspects of human rights were conducted by independent National Consultants to analyze the gap between the international standard and the national standard and also between legal norms and state practices. These BNHRC Study Reports (2013) invariably listed a series of recommendations on the basis of which various national and international stakeholders would then negotiate with the government to ameliorate latter’s human rights performance. This standard format of conducting human rights research – international standard, national standard, gap analysis, and recommendations – is also frequently used in academic publications as well as annual reports of NGOs. This section represents a narrative of human rights very much in this orthodox line.

Since its inception, Bangladesh has been repeatedly underscoring, althoughtheoretically, its commitment to the peremptory norms of international human rights law. The Constitution, adopted soon after the independence, incorporates a number of human rights provisions, primarily civil and political rights, along the line with the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) as fundamental rights. Bangladesh has also committed itself to the international responsibility of protecting and promoting civil and political rights by ratifying and acceding to the ICCPR itself on September 6, 2000. Earlier, Bangladesh acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and International Covenant on Economic, Social and Cultural Rights (ICESCR) both on October 5, 1998. Although all human rights are indivisible and interdependent, given that various aspects of economic, social and cultural rights have been discussed in other chapters of this handbook, this chapter largely deals with civil and political rights.

Article 31 of the Constitution guarantees the right to life and personal liberty. As Islam (1995) notes, “‘[l]ife’ within the meaning of article 31 means something more than mere animal existence;” it includes the right to live consistently with human dignity and decency, right to bare necessities of life, and all that which gives meaning and content to one’s life including his tradition, culture and heritage (p. 163). Article 32 of the Constitution provides that no person shall be deprived of life or personal liberty save in accordance with law. Although deprivation can be covered by interpreting article 31 in right perspective, the framers of the Constitution, given the seriousness of deprivation, thought fit to include a separate article limiting the deprivation of human life.

The Constitution also enumerates the principle of equality in accordance with international human rights instruments. Article 27 of the Constitution guarantees that “[a]ll citizens are equal before law and are entitled to equal protection of law.” It is also provided that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status (article 28). The Constitution also recognizes that to enjoy the protection of the law, and to be treated in accordance with law, is the inalienable right of every citizen, and therefore, stipulates that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law (articles 31, 32).

It is also guaranteed in the Constitution that no person who is arrested shall be detained in custody without being informed of the grounds for such arrest, nor shall she be denied the right to consult and be defended by a legal practitioner of her choice (article 33.1). The Constitution also stipulates that “[e]very 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, […] and no such person shall be detained in custody beyond the said period without the authority of a Magistrate” (article 33.2). The relevant provisions of the Code of Criminal Procedure (CrPC) as well as judicial decisions dealing with the rights of arrested persons conform to this constitutional standard.

Besides, the Constitution guarantees protection from torture and other cruel, inhuman or degrading punishment or treatment for any individual. Article 35 (5) specifically stipulates that “no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment”. This protection is guaranteed as one of the fundamental rights, derogation from which is not permissible under normal circumstances. The language of this article is taken verbatim from article 5 of the Universal Declaration of Human Rights (UDHR). It reflects Bangladesh’s endorsement of an international standard prohibiting torture.

Under article 4 of the CAT, each state party to this Convention must ensure not only that all acts of torture as well as attempts to commit torture are offences under its criminal law, but also they are punishable under appropriate laws. Although the prevailing laws in Bangladesh do not have any precise definition of torture, there are a number of laws that penalize conduct amounting to torture. For example, *the Police Act* *1861* provides that every police officer who shall offer any unwarrantable personal violence to any person in his custody shall be liable to a penalty not exceeding three months’ pay or to imprisonment, with or without hard labor, for a period not exceeding three months or to both (s. 29). However, this provision does not apply to Dhaka Metropolitan area (*DMP Ordinance 1976*, s.3), Chittagong Metropolitan Area (*CMP Ordinance 1978*, s.3), Khulna Metropolitan area (*KMP Ordinance 1985*, s.3), and Rajshahi Metropolitan area (*RMP Ordinance 1992*, s.3). Alternatively, the respective Metropolitan Police Acts for these metropolitan areas provide that a police officer offering personal violence and threats against any person in his custody shall be punished with imprisonment for a term, which may extend to one year and/or with a fine which may extend to two thousand taka. Similarly, the *Penal Code 1860* – the principal penal legislation of the country – criminalizes wrongful confinement of a person (s.340),[[1]](#endnote-1) and acts causing hurt and grievous hurt to any individual (s. 319, 320). Given that the concept of ‘torture’ includes mental sufferings, acts of ‘criminal force,’ ‘assault,’ and ‘criminal intimidation’ are also criminalized under the Penal Code. However, the CrPC contains provisions allowing a Magistrate to place a suspect in interrogative custody, known as remand, during which the suspect could be questioned without his or her lawyer present. Most acts of torture occur during the periods of remand.

The Constitution also sets forth a number of protections in respect of trial and punishment. *Ex post facto* legislation is prohibited under article 35; the same article also prohibits double jeopardy. Besides, the Constitution guarantees that every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law; no person accused of any offence shall be compelled to be a witness against himself; and no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

 Besides these guarantees as to the protection of life and person of an individual citizen, the normative position in favor of democratic governance is also well accommodated in the Constitution. The Constitution not only declares democratic governance as one of the fundamental principles of state policy (article 8.1), but also stipulates that “[t]he Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed [...] and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured” (article 11).[[2]](#endnote-2) In conformity with the international standard, the Constitution also guarantees freedom of movement (article 36), freedom of assembly (article 37), and freedom of association (article 38). These rights are crucial for maintaining a democratic political environment in any society.

While the right to assemble or to form associations ensures active participation in any political as well as non-political social process, the freedom of thought and conscience and of speech often engenders the opportunity for creating the context and rationale for such participation. Accordingly, freedom of thought and conscience is guaranteed in the Constitution (article 39.1). Besides, subject to reasonable restrictions imposed by law, freedom of speech and expression, and freedom of the press, are also guaranteed as fundamental rights of every citizen (article 39.2a).

Freedom of religion, in the form of the right to profess, practice or propagate any religion, and also to establish, maintain and manage respective religious institutions by every religious community or denomination, is also enshrined in the Constitution (article 41). The same provision also protects all individuals from compulsory attendance in ceremony or worship, or compulsory education in any religion other than their own.

 **Y**et, despite these constitutional guarantees, the actual state practices often fall much below the Constitutional, and in this sense, international human rights standards. Law enforcement agencies in Bangladesh often fail to uphold the legal standard while dealing with suspects or convicts. Rapid Actions Battalion (RAB), an elite force formed to ameliorate law and order situations, committed numerous extrajudicial killings since its inception on March 26, 2004. Although RAB achieved limited success in destroying the ring of outlawed underground groups as well as outlawed religious militants, in many instances RAB ignored the due process of law while conducting its operations. A good number of deaths, under some unusual circumstances, have been reported that occurred during RAB’s raids, arrests, and other law enforcement operations. RAB often takes the defense by inventing stories that fit either ‘crossfire’ or ‘encounter’. During the period between June 2004 and August 2013, there were nearly 2,000 reported cases of extrajudicial killings (Odhikar Reports 2001-2014), of which 1,200 were depicted as incidents of ‘cross-fire’. Of these ‘cross-fire’ incidents, 614 were reported to had been committed by RAB alone, while the rest had been conducted by police, other forces, or joint forces composed of police, RAB and Border Guards of Bangladesh - BGB (US State Department Reports 2005-2010). In most cases, the government did not take comprehensive measures to investigate cases, despite public statements by high-ranking officials that the government would show “zero tolerance” and would fully investigate all extrajudicial killings by security forces. According to the human rights organization Ain-O-Shalish Kendra (ASK), 133 deaths occurred in custody in 2010 alone, including 74 deaths in prison. Many of the deaths were allegedly the result of torture (ASK Reports 2011).

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| **Year** | **Number of Extra-Judicial Killings** |
| 2005 | 396 |
| 2006 | 355 |
| 2007 | 184 |
| 2008 | 149 |
| 2009 | 154 |
| 2010 | 127 |
| 2011 | 76 |
| 2012 | 70 |
| 2013 | 146 |

[**Source:** US State Department Reports, 2005-2013]

Since 2011, ‘disappearance’ or ‘secret killing’ emerged as a new trend of crime, the rate of which is very alarming as compared to any previous point of time. Ain-O-Salish Kendro (ASK) reports 80 such cases of forced disappearance in first nine months of 2014 alone; only in 23 cases dead bodies were found. The number of forced disappearance in 2013 was 53, of which only 5 dead bodies were found (ASK Reports 2013 & 2014). In some cases, the relatives of the disappeared or persons killed alleged that the law enforcing agencies, particularly the elite force RAB is involved with such activities (ASK Report 2012). Disappearance of the senior opposition leader - Elias Ali in 2012 had been one of the most-discussed issues in national and international media regarding Bangladesh in that year. In the face of rising trend of disappearance, the Chairman of the National Human Rights Commission told the media with frustration that “the strategy of extrajudicial killing has now been changed. Previously there was crossfire, now citizens are picked up and then no trace of those is found. In many cases, their families cannot even find the dead bodies at all” (ASK Report 2012). Very recently, three senior RAB officials in custody have confessed of abducting and killing seven individuals including a senior lawyer in Narayangonj in exchange of money offered by a local mafia. This sensational ‘seven-murder case’ is currently under trial.

The Constitution provides for freedom of assembly and association, and governments generally respect these rights in practice; however, quite often governments use the infamous section 144 of the Criminal Procedure Code to prevent opposition political groups from holding meetings and demonstrations. However, the law made it nearly impossible to form new trade unions in many sectors, such as the ready-made garment industry. (For a general discussion on labor issues, see chapter 14) Civil service and security force employees are legally prohibited from forming unions. Similarly, although public criticism of the government is common in Bangladesh, newspapers have to depend on government advertisements for a significant percentage of their revenue. As a result, self-censorship practice by newspapers is not uncommon. Moreover, by offering licenses to launch new television channels solely on political considerations, coupled with shut-down of channels owned by the political opponents, the government in recent years has literally established a monopoly over electronic media. In a number of cases, newspapers critical of the government experience shut down or pressure in various forms, and journalists perceived to be critical of the government and those aligned with the opposition party face arrests (and even torture in custody) and other forms of harassment from unspecified wings of the security forces and members of the ruling party (US State Department Reports 2005-2013). (Chapter 28 details the freedom of media in Bangladesh)

According to the Constitution, every citizen has the right to profess, practise or propagate any religion, and every religious community or denomination has the right to establish, maintain and manage its religious institutions. However, paradoxically, the Constitution also establishes Islam as the state-religion. In February 2010, the Appellate Division of the Supreme Court ruled that the Fifth Amendment to the Constitution was unconstitutional. Ratified in 1979, the Fifth Amendment overturned a previous law banning unions, associations, or parties based on religion and stating that all citizens have a right to form a union, association, or party for whatever purpose they desire. The Supreme Court ruling returned avowed secularism to the Constitution and nominally banned Islamic political parties; however, the government made it clear that the ban would not be strictly enforced. And finally, following the Fifteenth Amendment, contrasting norms of Islam as the state-religion and secularism co-exist in the Constitution. (For a detailed discussion on the state of religious minorities and ethnic minorities in the CHT, see respectively chapters 27 and 26).

In 2001, a High Court Division Bench ruled all legal rulings based on *Sha’ria*, known as *fatwas*, to be illegal. After a lengthy judicial review, the Appellate Division upheld the ban as a part of a broader ruling against all forms of extrajudicial punishment. Despite this ban, human rights groups and press reports indicate that vigilantism against women accused of moral transgressions often occur in rural areas, and include cruel, inhuman and degrading punishments, such as, whipping. (Chapter 25 specifically focuses on gender related discourses in Bangladesh)

**T**his gap in Constitutional guarantees and actual practice highlighted in conventional narratives not only exposes the lack of a ‘culture’ of human rights in Bangladesh, but also justifies a case for ‘more’ human rights in forms of identifying new areas to be addressed, finding new ways and techniques of advocacy, developing new terminologies, and so on – all within an international framework. In other words, the underlying assumption of these narratives remains that a national legal framework in conformity with the international standard coupled with strict observation of rule of law as well as a popular consciousness about human rights values is set to achieve the universal good that human rights promises. However, this understanding of human rights is problematized by an alternative approach to which we turn in the following section.

**3. Strand Two: Human Rights as a Hegemonic Language**

In his oft-cited article, Mutua (2001) depicts ‘human rights’ as a metaphor that portrays an epochal contest between savages, on the one hand, and victims and saviors, on the other. The main authors of the human rights discourse – UN, western states, international NGOs, and senior western academic, among others – Mutua continues, have constructed this three dimensional prism of savages-victims-saviors (SVS) (p. 202). Under this construction, the ‘savage’, which is presented as cruel and a negation of humanity, is not the state *per se*; given that state is a neutral abstract concept, it is rather the cultural foundation – ‘bad’ culture as opposed to something ‘universally good’ – that makes a state savage (p. 203). On the other hand, the ‘victim’ is a powerless figure, a helpless innocent, “whose naturalist attributes have been negated by the primitive and offensive actions of the state or the cultural foundation of the state” (p. 203). This victimhood is often substantiated by relevant data in forms of annual human rights reports, for example. And finally, the ‘savior’ – “the redeemer, the good angel who protects, vindicates, civilizes, refrains, and safeguards” – is often the above mentioned key authors of human rights, who prescribe policies and act on the basis of available data to ameliorate human rights of the victims (p. 204). Seen through the prism of SVS, human rights discourses, therefore, appear as a continuum of the Eurocentric colonial project, in which not only savages, victims, and saviors are placed into superior and subordinate positions, but also solutions are sought into reproduction of European prototypes in very different cultural contexts (pp. 204-5). Yet, the most far-reaching consequence of understanding human rights through this language of power is that it prevents human rights movements from gaining cross-cultural legitimacy, and as a consequence, human rights as a concept remains as something ‘alien’ – not homegrown, rather imposed from above by international and local elites (p. 206).

 This proposition can be substantiated by a baseline survey conducted under the auspices of Bangladesh National Human Rights Commission in 2011 to determine public attitudes and awareness of human rights, among other. The survey reveals that half of the respondents (50.2%) had never heard of the term ‘human rights’, and 18.1% of those who had heard of the term could not describe what it means (BNHRC 2011: 10). However, the Report rightly notes that the lack of knowledge of the technical term ‘human rights’ does not necessarily mean Bangladeshis do not understand the concept of having certain rights and being able to demand them. Yet, the Report recommends the inclusion of a basic definition of what human rights mean in all information, awareness and education messages (print and non-print) (BNHRC 2011a). More interestingly, the Chairman of the National Human Rights Commission in his common foreword to four studies, conducted under the auspices of the Commission and funded by UNDP, makes clear in an unapologetic way that:

[T]here has been a growing concern that simply ratifying or legislating human rights conventions and laws does not lead to the effective enjoyment of human rights in the daily lives of millions of individuals. What really is necessary are initiatives that would translatethese broad and abstract human rights norms and standards into the vernacular of everyday life, *transplanting these norms* into ordinary human relations where they can truly achieve their transformative potential (BNHRC 2012, foreword).[[3]](#endnote-3)

This is what Mutua’s argument is drawing our attention to: transplanting a very particular understanding of human rights norms, germinated in a particular cultural context and through a different historical process, into a very different socio-cultural context in the name of universality, or translating an indigenous perception of rights and duties into that ‘universal’ vocabulary of human rights is essentially hegemonic, and therefore, destined to remain alien.

And, with alien concept comes alien priorities which often do not reflect the ground reality. For example, when the respondents were asked during the baseline survey about the major problems in Bangladesh (as the Report indicates, the term ‘human rights’ was not explicitly used, for almost all problems facing a society has a human rights dimension), 80.9% of the respondents replied price hike of essentials, followed by electricity/gas/water problems (51.6%), communication and road problems (44.7%), unemployment (30.6%), education (24.5%), lack of income and employment opportunities (23.6%), population (23.3%), lack of health care facilities (18.8%), non-availability of agricultural inputs (15.3%), and corruption (15.3%) (BNHRC 2011a, Table1). Very much in this line, when the respondents were asked specifically about the rights they should have, 50.6% of the responded answered right to life, followed by right to education (46.4%), right to food (40.2%), right to health (31.8%), right to shelter (30.8%), right to clothing (17%), freedom of expression (15.3%), freedom of choice (13.1%), right to equality (11.5%), and protection of person and property (8.7%) (BNHRC 2011a, Table 4). When they were asked to prioritize these rights, a similar pattern emerged (BNHRC 2011a, Table5).

Yet, the irony is that these basic needs of human existence have never been guaranteed as fundamental rights under the Constitution; rather they are placed under Part II of the Constitution that deals with fundamental principles of state policy – principles which are otherwise significant but not judicially enforceable as rights (article 8). This bias in favor of civil and political rights over economic, social and cultural rights is a part of an old debate at the international level. Although the Universal Declaration of Human Rights (1948) presents a catalog of both civil and political, and economic, social and cultural rights, when it came to the question of binding states with strict legal obligations, enormous tension erupted between the then major power blocks: the liberal west advocating for civil and political rights, and the Soviet-bloc emphasizing the primacy of economic rights. The compromise came forth in forms of two different covenants of 1966: International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Generally speaking, the post-WWII phase of international law was indeed set for reaffirming faith in and promoting certain crucial values: fundamental human rights, dignity and worth of individuals, equal rights of men and women and of nations large and small, among others. In this new era, however, progression equated liberal values, and universalism simply meant the expansion of these values at a global scale. Through hegemonic languages of power as well as incessant lobbying, advocacy, and activism of various international and national actors, this structural bias in favor of civil and political rights has managed to endorse these rights as ‘primarily relevant’ human rights in sharp contrast with the reality. This is what I call here ‘alien prioritization’.

Although the subsequent jurisprudence inform that this division is arbitrary and human rights are indivisible in nature, in his Bangladesh Compliance Study Report on ICESCR the author regrets that Bangladesh has been mainly concerned about the civil and political rights. He therefore asserts that since rights are ‘indivisible and interdependent’ and we must not treat some as more important than others. In particular, economic, social and cultural rights are not subordinate to civil and political rights, or vice versa (BNHRC 2012: 1). As the Chairman of the BNHRC endorses this in his foreword to the report, “the country remains far behind in realization of the rights and fulfillment of obligations under ICESCR. Government is yet to undertake adequate legal framework and necessary administrative measures for adequate realization of ESC rights. Reservations made by Bangladesh to some important provisions of the Covenant also have severely limited its implementation at the domestic level” (BNHRC 2012, foreword).

Another direct implication of this project of transplanting human rights is the constructed need for expert knowledge; in other words, ‘professionalization’ and ‘bureaucratization’ of human rights (Marks 2012: 318). As Odinkalu (1999) emphasizes, human rights in its operation in global south has been an object of specialized knowledge, while human rights advocacy remains a privileged realm with limited participation by, even less accountability to, the constituencies it is supposed to protect. On the one hand, he despairs, with overseas donors as sources of reference and accountability, the only obligations local human rights NGOs have are reporting requirements arising under grant contracts; “[l]ocal human rights groups exist to please the international agencies that fund or support them” (p. 3). On the other hand, proliferation of human rights institutions and procedures has necessitated effective and efficient experts to manage these institutional mechanisms, and through the bureaucratic indicators of efficiency and effectiveness “a vision of the world is fostered in which we too hastily assume that more meetings, more reports, more monitoring mechanisms, and more treaty ratification equate to better social conditions” (Marks 2012: 318).

However, it is not to undermine various contributions that human rights organizations in Bangladesh have made in the field of gender justice, health, labor rights, environment, and so on. Perhaps the question is more about inclusivity and agency: to what extent NGO-activism for human rights could accommodate subaltern perspectives on human rights, and to what extent the authors of human rights in Bangladesh could use an alternative vocabulary of human rights, different from the one handed down by their donors and ‘partners’, to engage with the primary stakeholders of rights – the targets of human rights activism? Interestingly enough, as the baseline survey reveals, when asked about the most common places where people had heard about human rights only 3% (the lowest) of the respondents mentioned NGOs (BNHRC 2011a).

It is largely because of this alien nature of human rights, one might infer from Odinkalu’s argument in African context, that most Africans “do not describe their problems in human rights terms,” for the knowledge of the contents of universal human rights norms will hardly advance their miserable condition. And as he rightly concludes: “People will struggle for their rights whether or not the language of human rights is accessible to them. But they will not build their struggle around the notion of human rights unless that language and those who wish to popularize it speak directly to their aspirations and survival” (Odinkalu 1999: 3). This ‘crisis of human rights’, by no means, is peculiar to Africa as the foregoing discussion on approaches to human rights in Bangladesh substantiates.

**4. Conclusion**

‘Human rights’, therefore, appears as a paradox for countries like Bangladesh: on the one hand, it offers a necessary language to contain state’s exercise of coercive power, on the other hand, this very language then shapes the discourses on rights in a particular (and for this reason, hegemonic) way, and thereby undermines other more inclusive ways of popular resistance. Seen in this way, ‘human rights’ is a part of problem as much as an important part of solutions of existing social injustices. Hence, dismantling human rights as a mere alien concept would not take us much further; perhaps the real challenge remains in finding ways to rearticulate human rights in a more accommodative fashion, to explore emancipatory potentials of human rights in a non-hegemonic way. The success of human rights in Bangladesh will largely depend on this promising project of rearticulating human rights itself.

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1. Notes:

 Wrongful confinement means restraining a person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits. [↑](#endnote-ref-1)
2. See also, the preamble, and articles 7 (1) and 59 (1) of the Constitution. [↑](#endnote-ref-2)
3. Emphasis added. [↑](#endnote-ref-3)