

Core Nine International Human Rights Instruments and Bangladesh: An Overview

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1. Introduction

The concept of HRs is a buzzing phrase while the core nine IHRs instruments are exponentially significant for everyone to survive and to live with dignity¹ leading towards social order, peace, prosperity and harmony. But, there are ample of examples of infringement of HRs everywhere in the world, though HRs is designed to protect all people everywhere from the clutch of severe political, legal, and social abuses. In true sense, the realization of HRs is overwhelmingly ambitious as well as a daunting task for all stakeholders involved in global, regional and national spheres. The recognition and fulfillment of the IHRs instruments depend on an array of cross-cutting issues such as the political commitment, institutional capacity and cooperation and overall respect for good governance and rule of law of a particular region or a country. Nonetheless, there are manifold challenges entangled with the realisation of HRs depending not only on structural and procedural issues but also on government's commitment, interests, views and policies. As a result, the implementation of HRs is at crossroad in most developing countries including Bangladesh. As part of its sovereign political commitment, and as a developing one Bangladesh has shown a lot of respects towards IHRs in theory by becoming party to eight out of core nine but in practice, it is lagging behind as to effective compliance of IHRs like some other South Asian nations. Despite widespread hue and cry from different quarters in and outside of Bangladesh; it has been contravening basic HRs of people unflinchingly and is still out the purview of the ICPPED resulting in more enforced disappearances. Apart from enforced disappearances, the other forms of State sponsored HRs abuses have raised numerous questions and shackled the very existence of HRs in the country frustrating its commitment towards the regime of IHRs. Through assessment and analyses of the core nine IHRs instruments and their reflections in domestic laws, this paper presents an overview of the gradual pledge and performance of Bangladesh as to IHRs instruments.

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¹ Conor O'Mahony, There is No Such Thing as a Right to Dignity, *International Journal of Constitutional Law*, 10(1), 2012, 551, 552.

2. Background

The root of HRs norms and values may be traced back to religious scriptures primarily.² The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran, and the Analects of Confucius are five of the oldest written sources which address questions of people's duties, rights, and responsibilities. The Constitution of Medina, 622 AD instituted a number of rights for the Muslim, Jewish and other communities of Medina and over the years indoctrinated in international, regional and national legal instruments. The historical traces of HRs are visible in the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration of the Rights of Man and the Citizen (1789), and the Bill of Rights in the United States Constitution (1791). Early philosophical proponents of HRs include Francisco Suarez (1548–1617), Hugo Grotius (1583–1645), Samuel Pufendorf (1632–1694), John Locke (1632–1704), and Immanuel Kant (1724–1804). The American Declaration of Independence, 1776 focused on right to life, liberty and the pursuit of happiness reflecting the essence of HRs. The foundation stone of the League of Nations pioneered protecting HRs at international level after World War I. The core nine IHRs instruments are the aftermaths of the creation of the United Nations (UN) in 1945 but the body is yet to be desirably successful in developing and implementing HRs mechanism.³ The Universal Declaration of Human Rights (UDHR), 1948 has cemented and fomented the foundation of all IHRs from the ashes of the World War II. Later, from 1965 to 2006, a total of core nine IHRs instruments are born with a bundle of solemn vows to protect all humans from the curse of abuses of rights. Following the model of the UDHR, the regional IHRs instruments are adopted for the Europe in 1950, America in 1969, Africa in 1981 and Arab in 2008, except Asia having few declarations only.

3. Notion of Human Rights

The German philosopher Emmanuel Kant opined that humans are rational beings and hence they are worthy of HRs with dignity and respect. Generally, HRs as a set of norms and values protects all people everywhere from severe political, legal, and social abuses. Generally, HRs is inherent, inalienable, universal, indivisible, interdependent and interrelated to all humans regardless of their identity.⁴ Specifically, the HRs is a combination of moral principles entailing certain standards of human behaviour with obligations to protect natural and legal rights through national, regional and international legal instruments.⁵

² Amartya Sen, *Identity and Violence: The Illusion of Destiny*, Allen Lane, London, 2006, 62.

³ Interview of David Weissbrodt with Uttam Kumar Das, *The Daily Star*, 25 September 2010.

⁴ The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993.

⁵ Louis Henkin, *The Rights of Man Today*, (Boulder, CO: Westview Press, 1978) xiv, 173.

The Preamble and articles 1(3), 10, 13(1) (b), 56, 68, 76(c) of the UN Charter, 1945 reaffirmed the faith in basic HRs and dignity of all humans urging all member States to promote, protect and fulfill HRs amid fundamental freedoms, equality and justice without distinction of race, gender, language, nationality, ethnicity, religion, or any other status. After the creation of the UN, a comprehensive body of HRs was designed gradually for all nations to subscribe, comply and aspire. Subsequently, in 1948, the UN brought HRs in the sphere of international law varying from soft legal instruments like declaration to binding ones like Covenants or Conventions or Protocols. The UN has also established mechanisms to recognize, promote and protect these rights and to assist State parties to carry out their obligations.

In fact, HRs covers every spectrum of human beings from embryo to exhumation. The core HRs includes right to life and liberty, freedom from slavery and torture, equality before law or non-discrimination, fair trial, freedom of expression, religion, right to education and employment, right to franchise etc. In Bangladesh, according to section 2(f) of the National Human Rights Commission (NHRC) Act, 2009, HRs means right to life, right to liberty, right to equality and right to dignity of a person guaranteed by the Constitution of the People's Republic of Bangladesh, 1972 and other IHRs documents as ratified by the State and enforceable by the judiciary.

As propagated by experts, HRs has diverse classes, such as civil and political (CP) rights, economic, social and cultural (ESC) rights or the first, second and third generation rights. First generation includes CP rights like right to life, equality of before law, freedom of speech, right to free from torture, fair trial, freedom of religion, right to vote etc. The second generation rights are ESC rights including right to food, housing, shelter, education, health care, employment, social security, unemployment benefits etc. The third generation rights extend the first two-generation rights and include right to self-determination, right to environment, right to development, right to sustainability etc. These three generations of HRs are also known as 'blue', 'red' and 'green' rights implying respectively western liberalism, socialism or communism and nationalism with priority on right to development and environment.⁶

4. Journey of HRs Laws in Bangladesh

Manifold exploitation and oppression in terms of CP and ESC rights of people of East Pakistan by the West Pakistani rulers led to the war of independence costing a sea of blood heralded independence as a ray of hope for HRs in Bangladesh. Since the birth of Bangladesh, the journey of HRs legally started with the inception of the Bangladesh Constitution. The people of Bangladesh in their quest for freedom and

⁶ John C Mubangizi, 'Towards a new approach to the classification of human rights with specific reference to the African context', *African Human Rights Law Journal* 4(1) (2004), 93, 98.

justice were involved in the creation of a new state.⁷ The Declaration of Independence on March 26, 1971 by Bangabandhu Sheikh Mujibur Rahman, crafted the spirit of HRs claiming the right to self-determination, liberty, basic freedoms, and dignity. The Proclamation of Independence on April 10, 1971 as the first Constitutional document vowed to ensure equality, human dignity and social justice and the Second one i.e. the Provisional Constitutional Order on 11 January 1972 introduced Westminster model of parliamentary form of government replacing the presidential one. Accordingly on 23 March 1972 a Constituent Assembly was formed and on 10 April 1972 it created a 34-member Constitution Drafting Committee (CDC) headed by Dr. Kamal Hossain for drafting a full-fledged Constitution. The CDC was successful to draft a Constitution only after 325 days of independence. Adopted on 4 November and enforced on 16 December in 1972, the Constitution in its Preamble along with Part II and Part III indoctrinated the notion of HRs ranging from ESC rights to CP ones from articles 8 to 44 in broader sense. In Para two of the Preamble, the four basic ideals, namely nationalism, socialism, democracy and secularism have reflected the notion of HRs while Para three directly envisaged HRs pledging to secure an exploitation free socialist society through democracy ensuring rule of law, freedom, equality and justice in all spheres. Upholding the supremacy of the Constitution, Para four extended the commitment of Bangladesh towards international peace and aspiration of mankind covering HRs entailing mutual cooperation. HRs is enshrined in Part II (articles 8-25) in the name of Fundamental Principles of the State Policy (FPSP) which are treated as ESC rights. But the regime of the FPSP entails a set of guidelines towards responsibilities of three government organs in making, enforcing and analyzing laws but these rights are ornamental in nature due to non-enforceability under article 8(2). Part III (articles 26-44) deals with fundamental rights which are basically CP rights with constitutional protection. In shaping these two Parts of the Constitution in endorsing some core HRs, the UDHR had a profound impact.

The journey of HRs is facing hurdles even after the independence of Bangladesh. All successive governments have resorted to violation of HRs through aggressive ruling with iron fist and a large number of people were the worst victims of HRs violation during military regime from 1975 to 1990 halting the journey of democracy and HRs. The rejuvenation of the democracy started in 1991 paving the way for promotion of HRs. But, the heinous killing of Bangabandhu and his family members on 15 August 1975 blackened the country's HRs chapter. From 1991 to 2006, the democratic trends went steady but from January 2007 to December 2008, the military back government halted it restoring the same in December 2008 election and went well till December 2013. But, the ongoing parliamentary democratic trends from

⁷ Kamal Hossain, *Bangladesh: Quest for Freedom and Justice* (Dhaka, The University Press Ltd., 2013), 1.

2014 to present are far away from the country's commitment under the Constitution resulting in absence of strong opposition party along with poor checks-and-balances.⁸ Allegations are unabated regarding violation of democratic norms, suppression of opposition voices and snatching of people's voting rights during 5 January 2014 and 30 December 2018 elections, aggravating democratic practice and State sponsored HRs violation. As per Transparency International Bangladesh (TIB) report, there were massive (94%) irregularities in the 11th Parliamentary election in 2018.⁹ Apparently, democracy is in a stagnated position and a report reveals the velocity of crisis requiring ailment.¹⁰ The norm of domestication of opposition party has inculcated sidelining the constructive role of it. Though, in recent years, Bangladesh has been successful in alleviating poverty, ensuring gender parity, reducing infant and maternal mortality rate, this progress has not been steady in protecting over all HRs in the country.¹¹

The absence of political hegemony is also responsible for the rampant violation of HRs leading political elites resorting to coercion and to seek remain unaccountable.¹² However, the ups and downs in establishing democracy have not waylaid in enacting laws on diverse aspects of HRs including environment, labour and employment, education, women and children. Showing respect to IHRs instruments Bangladesh has adopted some laws in the last two decades. These include the Bangladesh Environment Conservation Act 1995, the Women and Children Repression Prevention Act 2000, the Legal Aid Services Act, 2000, the Anti-corruption Commission Act 2004, the Bangladesh Labour Act, 2006, the Right to Information Act 2009, the Consumer Rights Protection Act 2009, the Anti-Terrorism Act 2009, the Domestic Violence (Prevention and Protection) Act 2010, the Vagrant and Homeless Persons Rehabilitation Act 2011, the Public Interest Information Disclosure (Whistleblowers Protection) Act 2011, the *Prevention and Suppression of Human Trafficking Act 2012*, the *Rights and Protection of Persons with Disabilities Act 2013*, the *National Food Security Act 2013*, the *Overseas Employment and Migrants Act 2013*, the *Parents Maintenance Act 2013*, the *Children Act 2013*, the Bangladesh Water Act 2013, The National River Protection Commission Law 2013, the Torture and Custodial Death (Prevention) Act 2013,

⁸ USAID, 'Democracy, Human Rights and Governance' 29 October 2018 <<https://www.usaid.gov/bangladesh/democracy-human-rights-and-governance>> accessed 23 January 2019.

⁹ Mehedi Al Amin, '11th general election: TIB finds irregularities in 47 constituencies; EC rejects' *The Dhaka Tribune*, 15 January 2019.

¹⁰ BTI Country Report, 'Bangladesh' <https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018_Bangladesh.pdf> accessed 31 January 2019.

¹¹ Amnesty International, 'Bangladesh: Enforced Disappearances, Torture and Restrictions on Freedom of Expression' (September, 2014), <<https://www.amnesty.org/download/Documents/4000/asa130052014en.pdf>> accessed 30 January 2019.

¹² Ali Riaz, "Electoral Democracy and Human Rights in Bangladesh" in *Human Rights in Bangladesh: Past, Present and Future*, (ed.) Imtiaz Ahmed, (Dhaka, The University Press Ltd., 2014), 133.

the Non-Formal Education Act 2014, the Formalin Control Act 2015, the Child Marriage Restraint Act 2017, The Bangladesh Biodiversity Act 2017, and the Dowry Prohibition Act 2018.

To fulfill the vacuum of specific law and institutional set up on HRs, the enactment of the NHRC Act, 2009 sparked a glimpse of hope to people but the aspiration has ended in dashed hope vilifying the Paris Principles, 1991.¹³ The NHRC since its functional journey from 2010 to 2018 is able to cast a little shadow of success. As part of statutory commitment, this body authorizes to enquire into any HRs abuses, review HRs situation and can advise government for actions but the law does not empower it to take any direct action against any abuser. Since the body is devoid of having any executive authority, it performs like a clawless tiger providing lips services to the victims. In fact, the NHRC can only report the HRs abuses to concerned authorities and recommend to President for further actions and measures.

5. Core Nine IHRs Instruments and Bangladesh

Core nine IHRs instruments from 1965 to 2006, created under the auspices of the UN emanating directly or indirectly from the fabric of the UDHR 1948, have expanded the horizon of HRs.¹⁴ Each of these IHRs instrument has established a separate treaty body of experts (Committee) to monitor implementation of the IHRs instruments by its State parties. The UDHR since its inception, on 10 December 1948, is treated as the most visionary document of the 20th century and also a corner stone of all HRs with translation over 500 languages in its 70 years in 2018.¹⁵ It envisages a common standard of achievement regarding freedoms and rights for all people and nations by progressive implementation measures. In fact, it has deontological value and turned into a living tree for all branches of HRs but unfortunately, it is not legally binding. The UDHR in its 30 articles recognizes two sets of rights namely CP rights and ESC rights but with no distinction between them.

Considering its contribution in the global landscape of HRs, the UDHR is called the Magna Carta of HRs. Subsequently in 1966, the principles of the UDHR are reflected in the International Covenant on Civil and Political Rights (ICCPR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The spirit of the American Revolution of 1776 and the French Revolution of 1789 mirrored in the ICCPR while the Russian Revolution in 1917 cascaded in the ICESCR. Recognizing the value of the

¹³ **Tamanna Hoq Riti**, 'Some Questions on the Role of NHRC', *The Daily Star*, 28 January 2019.

¹⁴ Interview with Claude Welch, 'Universal Declaration of Human Rights: Why does it matter?', UBNOW, (17 December 2015) < http://www.buffalo.edu/ubnow/stories/2015/12/qa_welch_udhr.html > accessed 23 January 2019.

¹⁵ United Nations, 'Human Rights' <<http://www.un.org/en/sections/issues-depth/human-rights/>> accessed 24 January 2019.

UDHR, ICCPR together with ICESCR, the UN has branded them as the International Bill of HRs for the entire mankind.

The following box discourses on the chronological overview of core nine IHRs instruments and the commitment of Bangladesh along with its reservations and declarations:

SL	IHRs Instruments (State Parties up to 2018)	Adoption and Enforcement Date	Signature, Accession/Ratification by Bangladesh	Reservations/Declarations by Bangladesh, if any
1	ICERD (179)	21 December 1965 (Adopted) and 4 January 1969 (Enforced)	11 June 1979 (Acceded)	
2	ICCPR (179)	16 December 1966 (Adopted) and 23 March 1976 (Enforced)	6 September 2000 (Acceded)	Articles 10(3), 11 and 14(3)(d)
3	ICESCR (169)	16 December 1966 (Adopted) and 3 January 1976 (Enforced)	5 October 1998 (Acceded)	Articles 1, 2, 3, 7, 8, 10 and 13
4	CEDAW (189)	18 December 1979 (Adopted) and 3 September 1981 (Enforced)	6 November 1984 (Signed and Ratified)	Article 2 and 16(1) (C)
5	CAT (164)	10 December 1984 (Adopted) and 26 June 1987 (Enforced)	5 October 1998 (Acceded)	Article 14(1)
6	CRC (196)	20 November 1989 (Adopted) and 2 September 1990 (Enforced)	26 January 1990 (Signed) and 3 August 1990 (Ratified)	Articles 14(1) and 21
7	ICMW (54)	18 December 1990 (Adopted) and 1 July 2003 (Enforced)	7 October 1998 (Signed) and 4 August 2011 (Ratified)	

8	CRPD (177)	13 December 2006 (Adopted) and 3 May 2008 (Enforced)	9 May 2007 (Signed) and 30 November 2007 (Ratified)	Article 14(1)
9	ICPPED (59)	20 December 2006 (Adopted) and 23 December 2010 (Enforced)	Bangladesh yet to sign or ratify it	

5.1 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965

Responding aftermaths of increasing racial discrimination in the 1950s and 1960s, the ICERD was adopted following structures of the UDHR, the ILO Convention No. 111 of 1958 and the Convention against Discrimination in Education, 1960. It has 25 articles in three parts conceptualizing and condemning of racial discrimination, xenophobia, exclusion, prohibition of incitement, hate speech, intolerance and taking effective measures to combat these. Its monitoring body named the Committee of Elimination of Racial Discrimination (CERD) considers individual complaint and dispute settlement.

In fact, Bangladesh is a liberal and pluralist country with social, communal, ethnic and religious harmony and the practice of discrimination is mostly absent here even before becoming its party. Article 23A of its Constitution requires the government taking steps for protection of culture and tradition of tribes, minor races, ethnic sects and communities. Article 28 provides for the anti-racial discrimination and even article 28(4) obliges the State making special provisions for the protection and advancement of vulnerable or backward community. However, Bangladesh made a declaration under article 14(1) of the ICERD denying any individual complaint of victimization to the ICERD.¹⁶ It reaffirmed the commitment by the Durban Declaration against Racism, 2001. Apart from a separate ministry representing ethnic minority in Chittagong Hill Tracts (CHT) region, it has incorporated some laws including the CHT Land Disputes Resolution Commission Act 2001 and the Bangladesh Indigenous Peoples Rights Act 2015 for minority protection. Even Bangladesh is also a party from 1972 to the Indigenous and Tribal Populations Convention, 1957.

5.2 The International Covenant on Civil and Political Rights (ICCPR), 1966

¹⁶ 'Acceptance of individual complaints procedures for Bangladesh'

<https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=EN> accessed 24 January 2019.

The ICCPR as the foundation of freedom, equality, justice and peace recognizes inherent dignity of all humans and urges State parties to promote conditions necessary for the enjoyment of CP rights. Its 53 articles divided into six parts, obliges every member to protect core HRs through legislative, administrative and judicial initiatives. The main essence of the ICCPR is reflected in articles 2 and 3 guaranteeing availability of certain rights and respect for men and women equally within the territory of all member States. But article 4 permits State parties to derogate from their responsibilities regarding national interest emanating from emergency. However, they may not derogate from rights under articles 6, 7, 8(1) (2), 11, 15, 16 and 18. The Human Rights Committee (HRC), under article 28, is empowered to monitor the State Parties' compliance. This Covenant has two optional protocols- the first one allows hearing of individual complaint for HRs violation while the second one aims to abolish the death penalty. Bangladesh is yet to be party in both.

The reflection of the ICCPR is visible in articles 26 to 44 of Bangladesh Constitution as enforceable rights. However, Bangladesh made some reservations in the ICCPR limiting its application. Its reservations under article 10(3), 11 and 14(3) (d) portray its financial, legal and logistic inadequacy along with conflicting laws such as Code of Criminal Procedure (CrPC) 1898, the Special Powers Act (SPA) 1974 and the Digital Security (DS) Act, 2018. Accepting the principle of compensation for miscarriage of justice under article 14(6), Bangladesh is unable to implement. But, its Apex Court has discretion to compensate the victims of miscarriage of justice by invoking original and extraordinary jurisdictions including epistolary and *suo moto* ones. But the law-enforcing agencies and prison administration are in need of reform regarding respect and realization of CP rights.

5.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Containing 31 articles in five parts, the ICESCR recognizes right to self determination pursuing ESC goals. Article 2 recognizes the principle of progressive realization of the ESC rights without any discrimination but such rights may be justifiably curtailed subject to national law and ESC capability. The Committee on ESC Rights monitors compliance of State implementation. The ICESCR bears an Optional Protocol establishing individual complaints mechanism. Bangladesh is not a party to it.

The pledge of the ICESCR is incorporated in the Preamble and articles 8 to 25 under Part II of Bangladesh Constitution but these ESC rights are not directly enforceable under article 8(2). However, the State is striving to enforce these rights gradually and has kept declarations to articles 1, 2, 3, 7, 8, 10 and 13 of the ICESCR. Impoverish socio-economic background coupled with Islamic Shariah law on personal matters instigated the country to keep these reservations. Bangladesh declaration in article 1 of the ICESCR on

right of self-determination of people arises out of colonial domination and similar situations. Making declaration on articles 2 and 3 as to equality of men and women, Bangladesh refers its Constitutional and statutory limitations under the Shariah Law Application Act, 1937. Despite Constitutional obligations under articles 10, 11, 14, 19, 27, 29, 34, 36-39 and 40, Bangladesh has declared not to conform with article 7 and 8 of the ICESCR ensuring right to enjoyment of just and favourable conditions of work along with trade union. As part of progressive implementation of such rights, Bangladesh has enacted some laws including the BLA with its amendment in 2013, 2018 and its Rules framed in 2015 to comply these provisions. Bangladesh has formed separate Ministry for the protection of women and children and adopted statutory measures but the declaration resembles the incapacity of the country to comply. The declaration under article 10 of the ICESCR regarding right to family along with protection of mother and child, reflects the pledges of Bangladesh as to progressive implementation keeping consistency with existing economic conditions and development plans. Due to demographic density, Bangladesh has a two child policy. Despite such declarations, Bangladesh Constitution under article 19(2) ensures equality of men and women and even in article 28(4), there are provisions uplifting women, children and backward section of people. In spite of provisions under articles 15 (basic necessities) and 17 (free and compulsory education) of Bangladesh Constitution, it has declared not to comply with article 13 of the ICESCR. Education up to class V is free and compulsory, but there are gaps in ensuring inclusive education for all in elementary and tertiary levels and the privatization of higher education is beyond the reach of low income people.

5.4 International Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

The CEDAW is often described as an international bill of rights for women setting out a comprehensive bundle of rights for all women in their CP and ESC arenas. It consists of six parts with 30 articles conceptualizing elements of discrimination against women and establishes an agenda for national action to eradicate such discrimination. It obliges members to incorporate the principle of equality of men and women in education, health, employment and all other spheres, abolishing all discriminatory laws and undertaking measures. Article 17 provides a Committee on the Elimination of Discrimination Against Women to oversee the State parties' compliance. Its Optional Protocol allows to enquiry and individual complaint mechanisms on grave or systematic violation of this Convention. Bangladesh is also a party to it.

Initially, Bangladesh kept four reservations to the CEDAW. Later in 1997, it withdrew two reservations under articles 13 (a) providing women's right to family benefits and 16 (1) (f) entailing to take appropriate measures ensuring equality of men and women with regard to rights and responsibilities on guardianship, wardship, trusteeship and adoption of children. But it is yet to withdraw another two reservations under article 2 and 16(1) (c). Article 2 enshrines gender equality in national laws through repealing all discriminatory legislations and making new enactments to shun any kind of discrimination. Article 16 (1) (c) binds State parties to eliminate discrimination relating to marriage and family relations. The reserve provisions under these two articles are considered as the most crucial as to women's equality. However, Bangladesh made commitments to withdraw the reservations while submitting its periodic report in 2004. A Law Commission report in 2013 and the NHRC's opinion in 2017 also indicate the justification of their withdrawal. Though Bangladesh is not ruled by the Sharia law, the personal and family matters of the 90% Muslims are governed by it. The rest 10% percent of the population belongs to other religious groups who are not governed by the Sharia law. A total of 29 Islamic countries out of 57 Organization of Islamic Cooperation (OIC) members have ratified the CEDAW without any reservation.¹⁷ So, these reservations are contradictory with articles 10, 19, 27, 28 and 29 of Bangladesh Constitution but the Oxfam report represents the irony of fate of Bangladeshi women who are six times lower than men in terms of land ownership and possess only 20 to 30 percent of total wealth impeding their empowerment.¹⁸

5.5 The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (commonly known as CAT), 1984

In its 33 articles under three parts, the CAT valiantly endeavours to prevent all forms of torture, cruelty, inhuman or degrading treatment or punishment. The Convention binds State parties to take effective measures preventing torture in any territory within their jurisdiction and refrain from transport people to any country where there is a minimum possibility of inflicting torture. A Committee Against Torture oversees implementation of the Convention by the State parties and to entertain individual's complaints. Its domain is extended by an Optional Protocol facilitating visits by any national or international body

¹⁷ Sisters in Islam, 'CEDAW and Muslim Family Law: In Search of Common Ground' (2011) 1, 5 <http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition_1.pdf > accessed 23 January 2019.

¹⁸ 'Land Ownership: Men possess 6 times that of women' *The Daily Star*, 22 January 2019 <<https://www.thedailystar.net/bangladesh/male-landowners-six-times-higher-women-in-bangladesh-1690681> > accessed 23 January 2019.

to places of torture. Bangladesh is not a party to it. Rather, Bangladesh puts a reservation in article 14(1) that bars ensuring adequate compensation and rehabilitation for the victims of torture, inhuman and degrading treatment and their dependants. The country prioritizes national law over the CAT and allegedly its law enforcing agencies often violate this provision despite Constitutional safeguard under article 33 and 35. Furthermore, section 197 of the CrPC, restricts filing cases against public officials, for their offence committed in official capacity, without the government's prior permission. Despite reservation, the country has enacted the Torture and Custodial Death (Prevention) Act, 2013 portraying the promise towards IHRs instruments but it is inadequate as to compensation and rehabilitation and also is hardly enforced.

Journey of crossfire since 2004 to present by the law enforcing agencies is going unabated. According to a report of 2018, a record number of 466 people were the victims of extrajudicial killings and the number of such victims from 2001 to 2017 is 2,987. Moreover, 1,011 children were tortured and 444 were raped or sexually harassed in 2018 while 283 children were killed, 108 committed suicide and 28 died mysteriously. A total of 732 women were raped in 2018 and 63 of them were killed and 7 committed suicide after rape. On the other hand, 470 incidents of electoral violence were reported in which 34 people were killed in between the announcement of the 11th parliamentary election schedule on November 8 to December 31 in 2018.¹⁹

Ironically, Bangladesh being obliged to submit an initial report within a year of becoming State party under article 19 of the CAT but yet to submit it. However, the NHRC of Bangladesh submitted its alternative report on the same in 2015.²⁰ Besides, the CAT, the country is also obliged to safeguard people against torture under its Constitution [article 35(5)] and under various international instruments such as ICCPR (Article 7), Rome Statute of the ICC [(Article 7(1)(f) and 8(2)(a)(ii) & (c)(i)], the Four Geneva Conventions on the Protection of Victims of Armed Conflicts, 1949 (Common Article 3 and the grave breaches provisions). Furthermore, 'protection against torture' has been treated as *Jus Cogens* and the State cannot avoid its repercussion.

¹⁹ Tapos Kanti Das, Record 466 Extrajudicial Killings in 2018, *The New Age*, 11 January 2018, <http://www.newagebd.net/article/61404/extrajudicial-killings:-ask-demands-judicial-commission->, accessed 12 January 2019.

²⁰ **Quazi Omar Foysal**, 'Overdue state party report of Bangladesh on the UNCAT', *The Daily Star*, January 08, 2019 < <https://www.thedailystar.net/law-our-rights/news/overdue-state-party-report-bangladesh-the-uncat-1684297>> accessed 23 January 2019.

5.6 The Convention of the Rights of the Child (CRC), 1989

Historically, the CRC is the most comprehensive legal instrument on child rights ever formulated and is the most widely-ratified IHRs instrument. Every phrase of the CRC crafts human dignity focusing harmonious development of children. It contains 54 articles in three parts adopting four core principles namely equality or non-discrimination; devotion to child's best interests; right to life (survival and development) and respect for the views of the child. Article 1 defines 'child' as a person below 18 years of age, unless domestic laws of a State party prescribe otherwise. The Committee of the CRC monitors State parties' fulfillment of commitment as to the Convention. It has three Optional Protocols- first one bars involvement of children in armed conflict and sale while the second one prohibits using children in prostitution and child pornography and the third one empowers children with individual complaints or communications procedure. Bangladesh is a party to the first two Protocols. Among the South Asian countries, Bangladesh next to Bhutan ratified the CRC in 1990 as part of its commitment but also kept reservations to article 14(1) and 21 concerning child's freedom of thought, conscience and religion plus adoption respectively.

As part of the compliance of the CRC, side by side with Constitutional commitment, Bangladesh has formulated the Children Act, 2013 and the Child Rights Policy, 2011 demarcating age of children as 18 but in some other laws such as Penal Code, the BLA, Women and Children Repression Prevention Act, 2000 and the Child Marriage Restraint Act 2018 consider as children under 18 years of age. Besides, the Partial Small Ethnic Group Cultural Institution Act 2010, and the Pornography Control Act, 2012 ensure stringent measures against child abuses. However, the grim picture of HRs violation of children is a shattering reality. According to a report of 2018, at least 418 children were victimized of murder while 4,566 others faced manifold violence across the country. Some 298 children committed suicide, 627 killed in road accidents, 606 died by drowning, 80 were killed by lightning strikes, 60 were electrocuted, 46 died due to wrong treatment and seven others were killed in inland water way accidents. Absence of specialized department and child commission for child protection, the occurrences of child abuse are aggravating requiring effective steps.²¹

²¹ '418 children murdered in 2018: BSAF report', *The New Age*, 24 January 2019 < <http://www.newagebd.net/article/62727/418-children-murdered-in-2018-bsaf-report> > accessed 30 January 2019.

5.7 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), 1990

The ICMW in its 93 articles divided in nine parts focuses on migration and HRs. Referring to the ILO Conventions on Migrant Workers of 1949 and 1975 and also the Convention on Discrimination in Education of 1960, it fosters the rights of both documented and undocumented migrant workers and their families through imposing obligations upon State parties which are equitable and humane. It has a Committee on Migrant Workers monitoring implementation of the Convention. Sadly, most migrant-receiving countries in Western Europe, North America, Australia, Middle East, South Africa and India have not ratified the Convention. In comparison to other IHRs instruments, this Convention is lacking authority to oversee the violation of rights under its belt and remains neglected.

As part of Constitutional framework, Bangladeshi migrants living in overseas possess equal rights like other natural born Bangladeshi citizens. Bangladesh being a State party has taken some administrative and legal initiatives that include the Anti Trafficking Act 2012, the Overseas Employment and Migration Act 2013, the Migration Policy 2016. The Bureau of Manpower Employment and Training (BMET) since 1976 and a separate Ministry since 2001 are working to regulate the overseas employment issues. According to a report, Bangladesh is the 9th highest recipient of remittances jointly with Vietnam in 2018 with US \$15.9 billion.²² In 2015, migrants remitted US \$15 Billion which was 13 times higher than foreign investment. Around 10 million Bangladeshis migrated to about 160 countries as documented and undocumented workers. From 2005 to 2017, a total of 33,112 Bangladeshi migrant workers lost their lives at overseas workplace mostly in the Middle Eastern countries.²³ At least 3,793 Bangladeshi migrant workers have died in overseas countries in 2018 surprisingly of strokes or heart attacks raising concerns of their safety and security.²⁴

The major migrant receiving Middle Eastern countries along with East Asian, European, North American ones are reluctant to be party to this Convention. Countries of the aforesaid region are more enthusiastic

²² **Ben O. de Vera**, 'World Bank projects growth in remittances to PH slowing to 2.8%' *The Philippine Daily Inquirer*, 14 December 2018 <<https://business.inquirer.net/262185/world-bank-projects-growth-in-remittances-to-ph-slowng-to-2-8> > accessed 22 January 2019.

²³ Rayhan Ahmed Topader, 'Migration, a Major Pillar for the Bangladesh Economy', *The Asian Age*, 9 January 2019 <<https://dailyasianage.com/news/157976/migration-a-major-pillar-for-the-bangladesh-economy>> accessed 22 January 2019.

²⁴ '3793 Bangladeshi Migrant Workers Die Abroad in 2018' *Migration News*, 11 January 2019 <<http://www.migrationnewsbd.com/news/view/32037/38/3793-Bangladeshi-Migrant-Workers-Die-Abroad-in-2018> > accessed 22 January 2019.

to preach than to protect HRs of migrant workers and hesitant to consider the ICMW as a core IHRs instrument resulting poor fate of them.

5.8 The Convention on the Rights of Persons with Disabilities (CRPD), 2006

Across the world, the CRPD, comprised of 50 articles, is called the code of justice for persons with disabilities intending to protect their rights and dignity. It obliges the State parties to promote, protect and ensure the full enjoyment of HRs of disable persons endorsing the principle of equality. It serves as the dominant catalyst of rights based approach towards the global movement of disability rights. Furthermore, the CRPD is the sole IHRs instrument with an unequivocal sustainable development dimension. It is not only a landmark international treaty but also a comprehensive HRs Convention and international development tool, and is at the heart of the disability rights movement. It has an Optional Protocol in which Bangladesh is a party and the Committee on the CRPD is the body to monitor implementation of the Convention by the members.

Through its ratification, Bangladesh shifted its paradigm towards rights based approach from the charity approach for the protection of disability rights resulting in enactment of the Rights and Protection of Persons with Disabilities Act, 2013. Besides, Constitutional safeguard, this law aims at HRs protection of disable people providing for inclusive education, the reservation of seats in public transports, accessibility provisions in all public places, equal opportunities in employment and the protection of inherited property rights. Another law on the Neurodevelopmental Disability Protection Trust Act 2013 was made providing for care, security and rehabilitation of persons with autism. Bangladesh has around 16 million disable people who are bigger than the combined population of Sweden and Denmark.²⁵ Here, disability is treated as a curse of society and major cause of discrimination. Despite laws on disability rights, the stigmatized societal attitude and lack of socio-economic ability, mainstream social protection is still absent for them.

5.9 The Convention for the Protection of All Persons from Enforced Disappearance (CPPED), 2006

²⁵ Rezaul Haque, 'Global Goals and Persons with Disabilities' *The Daily Star*, 14 November 2015 < <https://www.thedailystar.net/op-ed/politics/global-goals-and-persons-disabilities-171946>> accessed on 22 January 2019.

The CPPED is the first universally binding treaty defining and prohibiting enforced disappearance as one of the gravest violations of HRs. In 45 articles, under three parts, it created a beacon of hope in the darkest clouds of enforced disappearance with a motto to prevent offenders and combat their impunity. It discusses specific procedural safeguards from enforced disappearance recognizing the rights including reparation of the victims and their dependants. The Convention mostly follows the model of the CAT with a Committee on Enforced Disappearances to monitor compliance and to review reports of members and also accepts individual complaints including '*habeas corpus*' issue. Every State party is required to take sufficient measures to criminalize enforced disappearance under its existing criminal law. Under the Convention, the widespread and systematic practice of enforced disappearance amounts to crime against humanity under the Rome Statute, 1998.

Enforced disappearance as an 'undefined crime' in Bangladesh is practiced rampantly. Starting in 1971 by the Pakistani military rulers against the intellectuals of Bangladesh, this crime again alarmingly restarted in 2009. Following the instances of enforced disappearance, the UN Working Group on Enforced and Involuntary Disappearances (WGEID) urged Bangladesh to visit the country in March 2013 and reminded the government in November 2015 but the government paid no heed to it. Among the victims since 2009, a large majority are members and activists of opposition political parties. The allegations of such victimizations go to the law enforcing agencies specifically members of Rapid Action Battalion (RAB) or the Detective Branch of the Police.²⁶ Besides extrajudicial killings, at least 310 people have been the victims of enforced disappearance in Bangladesh between 2014 and 2018. Out of them, 44 dead bodies were traced, 33 returned alive while 45 were later shown arrested.²⁷ In absence of specific laws on enforced disappearance, these offences are treated as the crimes of kidnapping and abduction under sections 362 to 365 of the Penal Code, 1860. Bangladesh Constitution as per articles 31, 32, 33 and 35 guarantees the inalienable right to equal protection, life, liberty and access to justice along with fair trial for all. Bangladesh as a party to the ICCPR and CAT cannot indulge in any such act. Moreover, as a party to the Rome Statute 1998, it must refrain from such practice as the Statute defines the widespread or systematic practice of enforced disappearance as a crime against humanity. If

²⁶ International Commission of Jurists, 'No More "Missing Persons": The Criminalization of Enforced Disappearance in South Asia' (August 2017), < <https://www.icj.org/wp-content/uploads/2017/08/South-Asia-Enforced-Disappearance-Publications-Reports-Thematic-Reports-2017-ENG.pdf> > accessed 22 January 2019.

²⁷ **SM Abrar Aowsaf and Kamrul Hasan, 'International Day of the Disappeared: Families of the missing continue to struggle', *The Dhaka Tribune*, 30 August 2018 < <https://www.dhakatribune.com/bangladesh/2018/08/30/families-of-the-missing-continue-to-struggle> > accessed on 22 January 2019.**

Bangladesh ratifies the ICPPED, the victims of enforced disappearance could have reparation rights along with prompt, fair and sufficient compensation from the State as per article 24(4).

6. Role of Bangladesh Supreme Court in Promoting and Protecting HRs

As the guardian of the Constitution and the court of last resort, the role of Supreme Court (SC) of Bangladesh, comprising of the High Court Division (HCD) and the Appellate Division (AD), is immense in promoting and protecting HRs as envisaged in Part II denoting FPSP and Part III stating fundamental rights.

Regarding the judicial application of the FPSP, the AD in *Kudrat-E-Elahi v Bangladesh* held that the FPSP under part II is a mere collection of principles not law with enforceability.²⁸ The AD also observed:

“They (ESC rights) are in the nature of people’s program for socio-economic development of the country in peaceful manner, not overnight but gradually. Implementation of these programs requires resources, technical know-how and many other things including mass education. Whether all the prerequisites for a peaceful socio-economic revolution exist is for the state to decide.”

Referring to the FPSP, the HCD enforced ‘right to shelter and housing’ in *Ain o Shalish Kendra v Bangladesh*²⁹ (*Slum case*) and ‘right to health and medical care’ in *Advocate Zulhasuddin v Bangladesh*³⁰ by making a ‘progressive interpretation’ of ‘right to life’. In *Modhumala v Director, House Building Research Institute & Others*³¹, *Kalam & Others v Bangladesh & Ors*³² and *Aleya Begum v Bangladesh*³³ the HCD held the same view saying that the wholesale eviction of slum dwellers without prior notice and alternative accommodation is violative of right to livelihood and ‘right to life’. However, ESC rights include both positive and negative dimensions and more recently, the HCD in *Major General K.M. Shafiullah & Another v Bangladesh*³⁴ directed the government to adopt measures for protecting **all places of historical importance** (positive dimension) and also to refrain from disfiguring them by development activities (negative dimension).

Upholding the spirit of the FPSP, the AD in the landmark case of *Dr. Mohiuddin Farooque v Bangladesh* directed the government to take initiatives in realizing these rights.³⁵ In absence of specific domestic laws,

²⁸ [1992] 44 DLR (AD) 319.

²⁹ [1999] 19 BLD (HCD) 488.

³⁰ (2010) 30 BLD (HCD) 1.

³¹ [2001] 53 DLR (HCD) 540.

³² [2001] 21 BLD (HCD) 446.

³³ [2001] 53 DLR (HCD) 63.

³⁴ Writ Petition No. 4313 of 2009, decided on 8 July 2009.

³⁵ [1997] 49 DLR (AD) 1.

there is no bar to apply IHRs instruments. In *Professor Nurul Islam v Government of Bangladesh*³⁶, the HCD embraced a progressive attitude even by endorsing the Resolution of the World Health Organization (WHO) banning advertisements of cigarettes and its related products while interpreting of right to life (article 32) considering the health hazards. In *Bangladesh v Professor Nurul Islam*³⁷, the AD has extended the term right to life incorporating the protection of health, enjoyment of pollution free air and water, maintenance and improvement of public health. In line with article 22 of Bangladesh Constitution, the verdict of AD in *Secretary, Ministry of Finance v Masdar Hossain*³⁸ on the separation of judiciary from the executive, is a good gesture but the judiciary was separated taking eight years, leading to the creation of the Bangladesh Judicial Service Commission to ensure judicial independence in term of appointment of judges of subordinate courts while the apex court has political leanings in appointment of judges. The HCD in *State v Secretary, Ministry of Law, Justice and Parliamentary Affairs*³⁹ made some recommendations to implement the provisions of the CRC enacting or amending the existing laws serving the best interest of the children in terms of determination of age, standard of living, anti-torture, deprivation of liberty and justice. Accordingly, the Children Act 2013 replacing the Act of 1974 conformed the CRC. In *State v Deputy Commissioner, Satkhira and Others*, the HCD held that no child is to be charged with or tried for any offence together with an adult and the Child must be tried in the Juvenile Court and not in the ordinary Court.⁴⁰ Similarly, in *Shiplu and Another v State*, the HCD held that any order of conviction and sentence passed by the Trial Court not being a Juvenile Court in respect of an accused below the age of 16 years is liable to be set aside for want of jurisdiction, in view of the Children Act.⁴¹ The HCD in *BNWLA v Bangladesh and Others*⁴² issued an order on May 14, 2009 to form a five-member harassment complaint committee, headed by a woman in their respective organizations to investigate allegations of sexual harassment. The HCD in the same case issued groundbreaking directives to prevent sexual harassment at workplace and in public places. However, the HCD observed that it will not even enforce any ratified IHRs instrument unless it is a part of the *corpus juris* of the State through incorporation in the domestic laws. The parallel approach of the Court was reflected in *BNWLA v Government of Bangladesh and others*⁴³, where the HCD orchestrated ‘eve teasing’ as ‘sexual harassment’

³⁶ [2000] 52 DLR HCD 413.

³⁷ [2016] 68 DLR (AD) 378.

³⁸ [1999] 52 DLR (AD) 82.

³⁹ [2009] 29 BLD (HCD) 656.

⁴⁰ [1993] 45 DLR (HCD) 64.

⁴¹ [1997] 49 DLR (HCD) 53.

⁴² [2009] 14 BLC (HCD) 694.

⁴³ [2011] 31 BLD (HCD) 331.

increasing its domain by incorporating ‘stalking’. The Court further directed to frame laws in the light of relevant IHRs instruments where there is vacuum of domestic laws.

The HCD in *BLAST and Others v Bangladesh*⁴⁴ observed that Sections 54 and 167 of the CrPC are not fully consistent with the fundamental rights as enshrined in articles 27 (equality before law), 31 (right to protection of law) 32 (right to life and personal liberty), 33 (safeguards as to arrest and detention) and 35 (protection regarding trial and punishment) of the Constitution. Safeguarding against the cruel, inhuman and degrading treatment and punishment, the SC laid down a 15-point guidelines including necessary amendments of both sections of the CrPC along with other provisions of relevant laws regarding exercise of powers of arrest and interrogation of an accused. The AD in *Bangladesh v BLAST* upheld the judgment of the HCD and reflected the principles of some IHRs instruments as envisaged in the UDHR, ICCPR and CAT.⁴⁵ The AD in *Tayeeb and Others v Bangladesh*⁴⁶ held that any act of extra-judicial punishment in pursuance of *fatwa* (religious edict) affecting the rights, reputation or dignity of any person would be completely illegal and punishable offence. Even, the HCD in *Badiul Alam Majumdar and others v Information Commission, Bangladesh and another*⁴⁷ has facilitated the disclosure of information as to financial matters of political parties of Bangladesh and outlawed the plea of secrecy of information reflecting the spirit of article 19 of the UDHR and ICCPR.

The recent attitude of the SC in burying the cruel, inhuman and degrading treatment towards women is laudable. The HCD in *BLAST and Others v Bangladesh* bans the ‘two finger test’ of the rape victims since it undermines the integrity or dignity of women and girls directing the lawyers not to ask any question to the rape victims that jeopardizes their dignity. This case has impliedly reflected the spirit of the CEDAW, 1979 and CAT, 1984.⁴⁸ But in *Hussain Muhammad Ershad v Bangladesh and Others*⁴⁹, the AD observed that universal norms of HRs enshrined in the UDHR and other Covenants are not directly enforceable in domestic Courts but the Court should not straightaway ignore international obligations. It also observed that if domestic laws are not clear enough then it should take help from international IHRs instruments. Similarly, in *Bangladesh v Hasina*⁵⁰, the AD opined that the courts would not enforce IHRs treaties, even

⁴⁴ [2003] 55 DLR 363.

⁴⁵ [2016] 8 SCOB AD 1.

⁴⁶ [2015] 67 DLR (AD) 57.

⁴⁷ [2017] 69 DLR (HCD) 100.

⁴⁸ Writ Petition No. 10663 of 2013 and decided on 12 April 2018.

⁴⁹ II ADC (2005) 371.

⁵⁰ 60 DLR (AD) (2008) 90.

if ratified by Bangladesh, unless these were enunciated in national laws. But in the same case, the Court took proactive approach in interpreting the provisions of life, liberty and other rights under the Constitution in parity with the UDHR and the ICCPR.

The above discussion divulges that the judicial precedents set by the SC as to domestic acceptance and enforceability of IHRs instruments enumerate mixed reactions regarding its commitments towards IHRs standard. If IHRs instruments do not contradict with domestic laws, it may be considered for implementation in line with the pledge of article 25 and 145A of Bangladesh Constitution. But the inherent limitation of the SC arises when President declares the state of emergency under article 141A suspending the application of articles 36-40 and 42 of the Constitution entailing some CP rights. In *Shamsul Huda and Others v Bangladesh*⁵¹, the HCD aptly said that the judiciary stands between the people of the country and the State as a shield against all pressures and misuse of power by the executive authority. Besides, the SC can take any *suo moto* initiative for the protection of HRs as part of discretionary power in the form of judicial activism. Nevertheless, in practice, the SC generally prioritizes domestic law over international law like other common law countries. More specifically, it follows the notion of dualism rather than monism concerning interpretation of Constitution and its attachment with international laws including IHRs instruments.

7. Challenges and Opportunities

Bangladesh is far ahead in term of being State party in core nine IHRs instruments in comparison to other South Asian countries. As part of Bangladesh's commitment towards ensuring freedom, equality, justice, peace, security and solidarity for uplifting human dignity and welfare, it has embraced eight core IHRs instruments out of nine as a State party. The commitment of the country is expected to be reflected with responsible behaviour. For the promotion and protection of HRs, democratic development plays a crucial role. Rule of law as a tenet of democracy, attempts to safeguard individual's freedoms and rights.⁵²

However, there are enormous political, economic, social and cultural challenges taking more time in fulfilling the commitment of the IHRs instruments. Since independence in 1971, Bangladesh is facing numerous hurdles, like poverty, natural and human induced disaster, unemployment, partisanship, domestic violence, socio-economic upheaval, political intolerance, pervasive corruption, money laundering, bureaucratic complexity, decentralization of powers, independence of judiciary, over

⁵¹ [2009] 61 DLR (HCD) 523.

⁵² Hilaire Bernet, '*Constitutional & Administrative Law*', Cavendis Publishing Ltd. (2002) 591.

population etc. in establishing democracy, rule of law and good governance and to overcome these hurdles in inculcating the culture of HRs protection is not easy. Some other challenges include lack of awareness, dearth of resources and backward mindset of people, unskilled manpower, divided Civil Society Organizations (CSOs), lack of coordination among the State entities with CSOs, inefficient institutional set up, less proactive judiciary, poor education and research on HRs etc. About 50% people of the country are not familiar with the concept of HRs.⁵³ Application of HRs protection mechanism is still in far behind for the downtrodden and poverty stricken people which is seemingly a rhetoric.

In Bangladesh, HRs are mostly being intermittently violated by the State itself along with influential quarters and very often the opposition political party members and activists are the worst victims. Professor Mizanur Rahman, the former chairman of the NHRC from 2010 to 2016 stated that 70 % of the allegations of HRs violations go against the law-enforcement agencies.⁵⁴ Among the common infringements, extrajudicial killing, enforced disappearance, institution of ghost or fictitious cases, arbitrary arrest, torture, domestic violence, detention, persecution in the name of interrogation, oppression on minority, curtailing of freedom of expression, freedom of press, corruption, vote rigging etc. are worth mentioning. The rising number of extrajudicial killings, enforced disappearances, blocking of freedom of expression and other forms of HRs violation are exposing the absence of rule of law and accountability of the law enforcement agencies and of the government. Out of 113 countries, Bangladesh has ranked 102 in rule of law index.⁵⁵ From 2006 to 2015, about US\$81.74 billion was siphoned off Bangladesh.⁵⁶ Considering the deplorability of HRs, eminent jurist Shahdeen Malik opined that in bringing the trust back on the law enforcing agencies, each HRs violation issue should be neutrally investigated for unearthing the truth taking punitive actions.⁵⁷

⁵³ Mizanur Rahman, 'National Human Rights Commission: Six Year of Aspirations and Accomplishments (2010-2016)', *Human Rights Theory, Law and Practice in Bangladesh: Lectures and Essays*, New Warsi Book Corporation, Dhaka, 2018, p. 294.

⁵⁴ Ridwanul Hoque, 'Clashing Ideologies' Development and Cooperation, 5 August 2015 <<https://www.dandc.eu/en/article/bangladeshs-crisis-civil-liberties-and-human-rights>> accessed 22 January 2019.

⁵⁵ 'Bangladesh ranks 102 out of 113 countries on WJP rule of law index', *The Daily Star*, 31 January 2018 <<https://www.thedailystar.net/country/bangladesh-ranks-102-out-113-countries-wjp-rule-law-index-1527916>> accessed 4 February 2019.

⁵⁶ **Bertil Lintner**, 'Illicit money gushing out of Bangladesh', *Asia Times*, 30 January 2019 <<http://www.atimes.com/article/illicit-money-gushing-out-of-bangladesh/>> accessed 4 February 2019.

⁵⁷ Prapti Rahman, 'Human Rights Watch Slams Bangladesh Over Forced Disappearances', *Benar News*, 6 July 2017 <<https://www.benarnews.org/english/news/bengali/disappearance-report-07062017161444.html>> accessed 31 January 2019.

Though the State agencies including the NHRC, Information Commission, Anti Corruption Commission, Public Service Commission and Election Commission are functional in snail's pace, they are highly politicized and reluctant to serve their duties transpiring their rhetoric mindset as to HRs commitment. For example, the NHRC is striving to promote and protect HRs but it lacks in terms of its active visibility and functionality owing to over dominance of government officials, shortage of manpower, logistic support and budgetary allocation.

The overall HRs situation is now very alarming and is gradually aggravating putting the safety and security of people at stake. The prevailing shabby state of HRs in Bangladesh is revealed by the UN Human Rights Council (UNHRC) through a process of Universal Periodic Review (UPR), where the non-compliance of several HRs issues such as torture, enforced disappearance, marital rape, defamation and freedom of expression, abolition of death penalty, labour rights, and LGBT issues are addressed by the body giving a long list of recommendations. Of those recommendations, Bangladesh accepted some of them but refused quite a few.⁵⁸ On the contrary, the role of CSOs in promoting and safeguarding HRs through their different actions such as awareness building, publication of reports, filing cases, policy advocacy etc. is acclaimed by both national and international bodies. But in many cases, the donor driven attitudes of the CSOs along with their divided role in prioritizing their vested interests and in some cases partisanship cannot be refuted.

International community has expressed cynicism to the vow of the country concerning the objective implementation of eight IHRs instruments in which Bangladesh is a party.⁵⁹ Human Rights Watch and Amnesty International have expressed serious concerns on the deterioration of HRs issues of enforced disappearance, extrajudicial killing, torture, arbitrary arrest, freedom of expression etc. They urged the government to show more respect towards the basic HRs for its citizens as the government is serving for the rights of the Rohingya.⁶⁰ However, because of several reservations to IHRs instruments, the pledge of Bangladesh reflects a piecemeal pledge and a metaphor in realizing HRs. Above all, like other Asian countries including Bangladesh, the notion of HRs is treated as a Western concept and the IHRs system

⁵⁸ *The Daily Star*, 25 May 2018, <<https://www.thedailystar.net/star-weekend/human-rights/7-human-rights-recommendations-1581010>>, (accessed on 11 January, 2019).

⁵⁹ Kawser Ahmed, 'Doubtful Commitment to Human Rights', *The Daily Star*, December 13, 2016 <<https://www.thedailystar.net/law-our-rights/doubtful-commitment-human-rights-1329391>> accessed 20 January 2019.

⁶⁰ 'HRW: Bangladesh skirts human rights issues at UN', *The Dhaka Tribune*, 17 May 2018 <<https://www.dhakatribune.com/bangladesh/2018/05/17/human-rights-watch-bangladesh-avoids-major-issues-at-the-un>> accessed 19 January 2019.

as Eurocentric paving the way for reluctance in advancing comprehensive promotion and protection of HRs.⁶¹

Despite boundless challenges, Bangladesh is making tremendous economic progress in the last couple of decades with the contribution of the readymade garment and migrant workers and so economic development can help realizing HRs through eradication of poverty. The blooming economy has been elevated to 41st position among 193 countries.⁶² Besides, the incumbent government has initiated couple of visionary plans up to 2021, 2041 and 2100 with a view to attaining various goals including the Sustainable Development Goals (SDGs) amid realization of HRs. Since around half of the population of Bangladesh is less than 18 years of age and the literacy rate is enhancing gradually, there is a possibility of sensitization of HRs protection. From 1990, there is tremendous development in term of women empowerment. In fact, 50 reserved seats⁶³ in the Parliament, inclusion of 33% women leadership in political party charters by 2020⁶⁴ and participation of women in different job sectors and other representative bodies under various sectoral laws which will further empower them to claim and realize their core HRs. As part of Constitutional and legislative obligations, there is an opportunity to establish the office of the Ombudsperson to check back the anomalies of government agencies. Also, there is necessity for continuous reformation of police personnel sensitizing them for HRs compliance. However, a large number of development organizations including INGOs and NGOs especially BRAC, Grameen Bank, along with various media outlets play a crucial role in awareness building, conducting research and policy advocacy on HRs issues. To reflect the commitment of IHRs instruments several domestic laws are enacted and now in operation to secure the various aspects of HRs. The higher judiciary has been seen slightly proactive in interpreting and applying the IHRs instruments through PILs as part of judicial activism.

8. Recommendations

⁶¹ Abdullah Al Faruque, *International Humans Law: Protection Mechanisms and Contemporary Issues*, (Dhaka, New Warsi Book Publication, 2012), 149, 150.

⁶² 'Study: Bangladesh ranked 41st largest economy in 2019', *The Dhaka Tribune*, <<https://www.dhakatribune.com/bangladesh/nation/2019/01/07/study-bangladesh-ranked-41st-largest-economy-in-2019>> accessed 5 February 2019.

⁶³ The provision of reserved seats for women was introduced in the 1st parliament in 1973, with 15 seats reserved for women in addition to the 300 general seats. Later in 1990, the 4th parliament increased the reserved seats to 30 for the next 10 years. The 8th parliament increased the numbers to 45 for the next 10 years by passing the constitution's 14th amendment act in 2004. The 9th parliament by the 15th amendment in 2011 raised it to 50. The 10th parliament by the 17th amendment in 2017 has kept intact same reserve seats for the next 25 years.

⁶⁴ Section 90(B) (1) (b) (ii) of the RPO-1972 (Amendment made with effect from 19th August 2008).

- i) Since there are ample of instances of HRs violation, such as extrajudicial killing, torture, domestic violence, arbitrary arrest and detention, Bangladesh is obliged to comply with international standard as State party to eight out of core nine IHRs instruments. Hence, implementation of Constitutional pledge under Preamble, Part I and II along with other existing laws to ameliorate the gaps of HRs compliance is required.
- ii) As Part II of Bangladesh Constitution bearing ESC rights is not directly enforceable under article 8(2), the parliament should consider removing this restriction after almost 50 years of independence of the country.
- iii) Some provisions of existing laws especially sections 54, 167 and 197 of the CrPC, sections 17, 18, 21, 25, 28, 29, 31, 32, and 43 of the DS Act, sections 2, 3, 16, 17, 18, 19 and 20 of the SPA which are inconsistent with IHRs instruments and are in need of amendment or repeal.
- iv) As the practice of enforced disappearance is widespread, Bangladesh should sign and ratify the ICPPED, 2006 without further delay. Moreover, the reservation as to victim's compensation and rehabilitation under the CAT and application of the Shariah law contrary to CEDAW may be lifted.
- v) As the law enforcing agencies are found to be perpetrators of HRs violation in most cases, they should be sensitized through awareness and education being equipped with institutional capacity, specialized training in institutionalizing the culture of HRs. Their transparency and accountability need to be ensured amid rewards for good practices or penalty for malpractices.
- vi) Strengthening of the State entities especially the NHRC, through amendment of relevant provisions of its law by incorporating provisions of adequate manpower including panel lawyers, curtailing dominance of government officials in its functionary, should be done for its effective functioning.
- vii) All stakeholders including the NHRC, CSOs, development partners and the higher judiciary should work hand in hand through mutual cooperation in fulfilling the mandate of HRs. For ensuring child protection, formation of a separate 'Child Commission' may be actively considered. The creation and implementation of 'Ombudsperson' may be considered for eradicating government anomalies.
- viii) Bangladesh Constitution along with other national laws and IHRs instruments bearing provisions of HRs may be introduced in elementary to tertiary level education so that people of all strata remain aware of their basic HRs and claiming their progressive realization.

- ix) The parliament should be activated as the hub of all actions including HRs issues amidst ensuring the presence of strong opposition party. The mentality of ruling party to accept the constructive criticisms by the opposition party or CSOs should be practiced properly.
- x) For securing HRs for all, the independent judiciary is imperative. So, the initiative of 1 November 2007 as to separation of judiciary from the executive should be made more meaningful in realizing the rule of law and other basic HRs.

9. Concluding Remarks

Apparently, Bangladesh has shown positive commitment towards core IHRs instruments but mostly state-sponsored repeated violations of HRs has vitiated its commitment tarnishing the image of the country. Only political commitment is not enough for the realization of HRs rather economic development is also necessary for fulfilling the cherished commitment. In 50 years of independence, Bangladesh is in need of rethinking of its ESC rights as enforceable rights while the enforceable CP rights should be streamlined in terms of application. People of all walks of life are eagerly waiting to see the rejuvenating attitude of all the stakeholders especially government entities in ensuring core HRs including freedom, equality, rule of law and justice aiming at the welfare, dignity and peace of all citizens and non-citizens. Successive governments showed little respect towards compliance of global HRs standard. Politicians in power and in opposition are at loggerheads in their commitments and positive actions for HRs protection. The political parties in power are reluctant towards realizing the commitments for HRs *vis a vis* when in opposition they take a sharp u-turn in raising voice as if they are pro- HRs activists. Lastly, it may be stated that in ensuring the promotion and protection of HRs, the State-owned entities as part of their obligations arising out of core nine IHRs instruments and national HRs instruments and the CSOs can play a pivotal role.