



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Consideration of reports submitted by States
parties under Article 40 of the Covenant**

Initial reports of States parties due in 2001

Bangladesh^{*}, ^{}**

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* The present document is being issued without formal editing.

** Annexes can be consulted in the files of the Secretariat.



Introduction

1. The Government of Bangladesh ('the GoB') hereby submits this initial report under article 40 of the International Covenant on Civil and Political Rights, 1966. Bangladesh acceded to the Covenant on 6 September 2000. The present report goes systematically through the provisions of the Covenant so as to reflect the Government's compliance with its legal obligations under the said Covenant.

2. This report has been prepared by collecting and analysing information received from primary and secondary sources. The primary sources consist of Acts of Parliament, Presidential Order, Ordinance, Rules and decisions of the Supreme Court. The secondary sources include the national report submitted by GoB for the second cycle of the universal periodic review, reports prepared by the Ministries and information available on the government websites. The GoB held a series of consultations involving relevant Ministries/ Divisions/ Agencies, and also held a National Consultation with the participation of the National Human Rights Commission and non-governmental organizations (NGOs) (list furnished in annex 7) dealing with human rights issues.

The Covenant and the international legal obligation of Bangladesh

3. While acceding to the Covenant, the GoB placed a reservation to article 14 which is as follows- "The Government of the People's Republic of Bangladesh reserve apply paragraph 3 (d) of Article 14 in view of the fact, that, while the existing laws of Bangladesh provide that, in the ordinary course a person, shall be entitled to be tried in his presence, it also provides for a trial to be held in his absence if he is a fugitive offender, or is a person, who being required to appear before a court, fails to present himself or to explain the reasons for non-appearance to the satisfaction of the court".

4. In addition to the aforesaid reservation, the GoB made declarations in regard to the first part of paragraph 3 of article 10, article 11 and paragraph 3(d) and 6 of article 14.

5. As regards the first part of paragraph 3 of article 10, the GoB made the following declaration- "So far as the first part of paragraph 3 of Article 10 relating to reformation and social rehabilitation of prisoners is concerned, Bangladesh does not have any facility to this effect on account of financial constraints and for lack of proper logistics support. The last part of this paragraph relating to segregation of juvenile offenders from adults is a legal obligation under Bangladesh law and is followed accordingly".

6. As regards article 11, the GoB made the following declaration- "Article 11 providing that "no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation," is generally in conformity with the Constitutional and legal provisions in Bangladesh, except in some very exceptional circumstances, where the law provides for civil imprisonment in case of willful default in complying with a decree. The Government of People's Republic of Bangladesh will apply this article in accordance with its existing municipal law".

7. As regards paragraph 6 of article 14, the GoB declared as follows- "So far as the provision of legal assistance in paragraph 6 of Article 14 is concerned, a person charged with criminal offences is statutorily entitled to legal assistance if he does not have the means to procure such assistance. The Government of the People's Republic of Bangladesh, notwithstanding its acceptance of the principle of compensation for miscarriage of justice, as stipulated in Article 14, paragraph 6, is not in a position to guarantee a comprehensive implementation of this provision for the time being. However, the aggrieved has the right to realise compensation for miscarriage of justice by separate proceedings and in some cases, the court *suo moto* grants compensation to victims of

miscarriage of justice. Bangladesh, however, intends to ensure full implementation of this provision in the near future”.

Implementation of the provisions of the Covenant in the domestic sphere

8. Like other common law countries, Bangladesh follows the doctrine of incorporation which means that international treaty provisions are not automatically incorporated and applied in the domestic legal system until a statute has been enacted to give effect to the treaty provisions at domestic level.

9. From the domestic legal viewpoint, the Constitution of Bangladesh is the supreme law of the land. The Constitution incorporates a Bill of rights and guarantees that all fundamental rights and freedoms are justiciable. While guaranteeing non-discrimination and equal protection of law for all citizens, the Constitution allows affirmative action favouring betterment of women, children and the underprivileged sections of the citizens. In addition to the Constitution, statutes of Parliament, executive decisions, judgments of the Supreme Court, legal doctrines and policy measures constitute the domestic legal regime.

Article 1

Right to self-determination

10. Bangladesh is a nation born of a heroic War of Liberation with the sacrifice of 3 million martyrs and honour of 200,000 women only to realize its aspirations for democracy, development, human rights, non-communalism and justice.

11. Bangladesh is a unitary Republic. The Constitution declares that all powers in the Republic belong to the people, and their exercise on behalf of the people will be effected only under, and by the authority of, this Constitution.¹ The Constitution further provides that Bangladesh will be a democracy in which fundamental human rights and freedoms will be guaranteed and effective participation by the people through their elected representatives in administration at all levels will be ensured.²

12. In order to prevent illegal overthrow of a democratically elected government, Article 7A of the Constitution has expressly declared act of abrogation or suspension of the Constitution as sedition and made it punishable with the highest punishment provided by law.

13. In Bangladesh the plenary power of legislation has been vested in the Parliament which consists of members elected by direct election. The executive power of the state is exercised by the Cabinet which mainly comprises the elected members of the Parliament. In addition, the Constitution provides for establishment of local government institutions, e.g. City Corporation, Poursava, Zilla Parishad, Upazilla Parishad, Union Parishad etc., composed of representatives freely elected by the citizens. Thus, the peoples’ right to participation in the government is being ensured at every level of administration through their elected representatives.

Right of the people over natural resources

14. The Constitution recognizes the sovereignty of the people over the natural resources and wealth. The Constitution provides that all minerals and other things of value underlying any land of Bangladesh, all lands, minerals and other things of value underlying the ocean

¹ The Constitution of the People’s Republic of Bangladesh, 1972, art. 7.

² *Ibid*, art. 11.

within the territorial waters, or the ocean over the continental shelf constitute property of the state.³

Article 2

15. The Constitution of Bangladesh contains a set of civil and political rights as fundamental rights, such as- (i) equality before law, (ii) non-discrimination on grounds of religion, (iii) equality of opportunity in public employment, (iv) prohibition of foreign titles, (v) right to protection of law, (vi) protection of right to life and personal liberty, (vii) safeguards as to arrest and detention, (viii) prohibition of forced labour, (ix) protection in respect of trial and punishment, (x) freedom of movement, (xi) freedom of assembly, (xii) freedom of association, (xiii) freedom of thought and conscience, and of speech, (xiv) freedom of profession or occupation, (xv) freedom of religion (xvi) rights to property, (xvii) protection of home and correspondence, and (xviii) enforcement of fundamental rights.⁴ The Constitution recognizes the abovementioned fundamental rights as justiciable rights and can be enforced through the Supreme Court of Bangladesh.

Rights of aliens

16. According to the Constitution, a certain number of the aforementioned fundamental rights are also available for the persons who are not the citizens of Bangladesh. These rights are as follows: (i) protection of right to life and personal liberty, (ii) safeguards as to arrest and detention, (iii) prohibition of forced labour, (iv) protection in respect of trial and punishment, (v) freedom of religion, and (vi) enforcement of fundamental rights. The Constitution extends to the non-citizens, like citizens, the protection of the aforementioned fundamental rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Measures to give effect to the rights recognized under the Covenant

17. The Constitution has invested the Parliament with the authority to make laws in order for giving effect to the fundamental rights enshrined therein. The Constitution also prohibits that the Parliament will not enact any laws inconsistent with the fundamental rights and any laws so made will be void to the extent of such inconsistency.⁵

18. In Bangladesh the laws which primarily give effect to the provisions of the Covenant are as follows (in alphabetical order): the Acid Crime Control Act, 2002; the Bangladesh Citizenship (Temporary Provisions) Order, 1972; the Bangladesh Judicial Service Commission Rule, 2007; the Birth and Death Registration Act, 2004; the Child Marriage Restraint Act, 1929; the Children Act, 2013; the Christian Marriage Act, 1872; the Citizenship Act, 1951; the Code of Civil Procedure, 1908; the Code of Criminal Procedure, 1898; the Control of Entry Act, 1952; the Control of Pornography Act, 2012; the Dissolution of Muslim Marriages Act, 1939; the Divorce Act, 1869; the Electoral Rolls Act, 2009; the Evidence Act, 1872; the Extradition Act, 1974; the Foreigners Act, 1946; the Guardians and Wards Act, 1890; the Hindu Widows Re-Marriage Act, 1856; the International Crimes Tribunal Act, 1973; the Labour Act, 2006; the Land Commission Resolution Act, 2001; the Legal Aid Services Act, 2000; the Legal Remembrance's Manual, 1969; the Local Government (Union Parishad) Act, 2009; the Muslim Family Law Ordinance, 1961; the Muslim Marriages and Divorces (Registration) Act, 1974; the

³ *Ibid*, art. 143.

⁴ *Ibid*, arts. 27-44.

⁵ *Ibid*, art. 26.

National Human Rights Commission Act, 2009; the Naturalization Act, 1926; the Passport Act, 1920; the Passport Rules, 1966; the Penal Code, 1860; the Pornography control Act, 2012; the Prevention and Suppression of Human Trafficking Act, 2012; the Prevention of Cruelty to Women and Children Act, 2000; the Prisons Act, 1894; the Railway Act, 1890; the Representation of the People Order, 1972; the Right to Information Act, 2009; the Small Ethnic Group Cultural Institutions Act, 2010; the Special Marriage Act, 1872; the Special Powers Act, 1974; the Telecommunication Act, 2001; the Domestic Violence (Prevention and Protection) Act, 2010; the Local Government (Pourashavas) Act, 2009; the Torture and Custodial Death (Prevention) Act, 2013; and the Transfer of Property Act, 1882 etc.

Institutional mechanism

19. The Constitution of Bangladesh provides for legislative, judicial and administrative mechanisms to enforce fundamental rights. The Parliamentary Standing Committees for the Ministries of Law, Justice and Parliamentary affairs, Home Affairs and Foreign Affairs play an important role in monitoring the human rights issues as well as recommend to the GoB for making necessary laws related therewith.

Supreme Court

20. The Supreme Court of Bangladesh is the apex Court of the country. It consists of the Appellate Division and the High Court Division (HCD).⁶ According to the Constitution, the right to move the HCD for enforcement of the fundamental rights is also a fundamental right. The Constitution provides that without prejudice to the powers of the HCD under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.⁷ A person can apply to the HCD in case of any violation or apprehension of violation of fundamental rights. As regards remedy, the Constitution provides that the HCD may give such directions or orders to any person or authority in connection with the affairs of the Republic as may be appropriate for the enforcement of the fundamental rights.⁸

21. The decision of the HCD will be binding on all of the subordinate courts of Bangladesh. In order to give full effect to the remedies granted by the HCD, the Constitution stipulates that all authorities, executive and judicial, in the Republic will act in aid of the Supreme Court.⁹ In case of any default to comply with the decision of the HCD, the Constitution provides that the Supreme Court will have all the powers of such a court including the power subject to law to make an order for the investigation of or punishment for any contempt of itself.¹⁰

22. In addition to Constitution, the Code of Criminal Procedure, 1898 empowers the HCD to issue direction in the nature of habeas corpus in cases of illegal detentions.¹¹

Statutory institutions

23. The GoB has established a number of institutions such as National Human Rights Commission, Bangladesh; Bangladesh Law Commission; Anti-Corruption Commission;

⁶ *Ibid*, art. 94(1).

⁷ *Ibid*, art. 44.

⁸ *Ibid*, art. 102 (1).

⁹ *Ibid*, arts. 111-112.

¹⁰ *Ibid*, art. 108.

¹¹ The Code of Criminal Procedure, 1898, s. 491.

Information Commission; Public Service Commission etc. with a view to ensuring the fundamental rights.

National Human Rights Commission, Bangladesh

24. The National Human Rights Commission, Bangladesh (BNHRC) was constituted under the National Human Rights Commission Act, 2009 in the light of ‘the Paris Principles’ to promote and protect human rights in Bangladesh.

25. The functions of the BNHRC include investigation and inquiry, recommendation, legal aid and human rights advocacy, research and training on human rights norms and practices. Its mandate extends to, inter alia, to summoning explanation from the Law Enforcement Agencies (LEAs) and other public authorities, visiting jails, prisons or correctional centres, filing writ petitions with the HCD on behalf of an aggrieved person and exercising the powers of a civil court while conducting any inquiry.

Law Commission of Bangladesh

26. The Law Commission is a statutory body which make recommendations for enactment, amendment or repeal of laws. It prepares draft laws. While preparing draft laws, the Law Commission solicits, consults and considers submissions from various stakeholders.

27. The Law Commission has prepared a number of reports on reform of laws for promotion of human rights, including abolition of corporal punishment, prevention of sexual harassment in educational institutions and workplaces, prevention of violence against women, protection of victims and witnesses to grave offences, ensuring speedy disposal of civil and criminal cases, and reform of Hindu family laws. The Law Commission is currently working on reports on the Protection of the Rights of the Marginalized and Disadvantaged Sections, and the enactment of new laws on medical negligence.

Legal Aid Services Organization

28. The GoB, under the authority of the Legal Aid Services Act, 2000, has set up National Legal Aid Services Organization (NLASO) in order to facilitate poor citizens access to justice as well as enforcement of their rights. The NLASO has put in place hotline numbers accessible by the people. The NLASO provides service through District Legal Aid Committees operating in all districts. Each District Legal Aid Committees reserves a legal aid fund financed by the government.

29. During 2009–12, 46,737 people including 234 children received legal aid. A total 18,625 legal aid supported cases have been disposed of. Since 2010, full-time legal aid staff has been assigned in all 64 Districts and have been trained on effective utilization of the legal aid funds.

Information Commission

30. The Information Commission has been established under the Right to Information Act, 2009 with a view to ensuring access to information from the governmental authorities. The Information Commission retains the power to impose legal sanctions for the failure on the part of any public or private organizations to provide information to anyone who may apply.

31. The Information Commission began to receive complaints from February of 2010. During 2010–14, the Information Commission has received 807 complaints. The Information Commission disposed of 420 complaints after full hearing. Of the remaining

complaints, the Information Commission disposed of 360 complaints by issuing directives to the concerned authorities for providing information, 23 complaints were disregarded on legal grounds, and the rest have been carried over to the present year for disposal.

Anti-Corruption Commission

32. The Anti-Corruption Commission (ACC) acts as an independent institution to investigate and prosecute offences related to corruption. The ACC has formed Corruption Prevention Committees in 9 Metropolitan areas, 62 districts and 421 *upazillas* (sub-districts) with a view to raising awareness and promoting anti-corruption movement among citizens.

33. During 2008-12, the ACC investigated 4,790 complaints and filed 1,213 cases for alleged corruption and submitted charge sheets in 2,087 cases. The ACC has been able to bring illegally laundered money back to Bangladesh. The ACC has also formed 14,097 Integrity Alliances in educational institutions across the country. The Cabinet has approved the National Integrity Strategy in 2012 for a comprehensive and coordinated initiative to eliminate corruption in all spheres of national life, including the public sector.

National Election Commission

34. The Election Commission (EC) is vested with the task of conducting elections in Bangladesh. The President appointed a new Chief Election Commissioner through a consultative selection process in 2012. The Election Commission Act, 2009 and subsequent reforms have delinked the EC from the Executives so as to guarantee its independence. The EC has also been given financial autonomy.

Bangladesh Public Service Commission

35. Bangladesh Public Service Commission (BPSC) is a quasi-judicial body established under articles 137 - 141 of the Constitution. The main functions of the BPSC include – (a) selecting suitable candidates for the service of the Republic on equal opportunity basis, (b) help the GoB in formulating appropriate service condition for its employees, and (c) to help the GoB in maintaining discipline in the service.

Article 3

Protection against discrimination on the grounds of sex

36. Bangladesh is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women, 1979. The Constitution of the People's Republic of Bangladesh enshrines the principle of equality for all citizens irrespective of sex.

Positive measure for the empowerment of women

37. The Constitution guarantees equal rights of women in all spheres of the State and of public life.¹² In addition, the Constitution of Bangladesh recognizes that affirmative actions are necessary for the overall development of women in the society. Therefore, the Constitution provides that the GoB will not be precluded from making any special provision in favour of women.¹³ Moreover, in order to facilitate empowerment of women, the Constitution provides that it is a duty upon the GoB to take endeavours to ensure equal

¹² *Supra note 1*, art. 28(1)(2).

¹³ *Ibid.*, art. 28(4).

opportunity and participation of women in all spheres of national life.¹⁴ The National Women Development Policy, 2011 aims at creating conducive environment for empowerment and development of women as well as elimination of all forms of violence and discrimination against them.

38. The Parliament of Bangladesh has a remarkable number of elected female legislators - the number of whom has increased consistently. In the 8th Parliament (2001-2006), there were 7 directly elected female Members of Parliament, and among them one female member was appointed as Minister. In the 9th Parliament (2009-2013) there were 21 female Members of Parliament. Of them, 3 were designated as Ministers, 2 as State Ministers, 1 as Deputy Leader of the House and 1 as Whip. In the 9th Parliament, the Prime Minister and the Leader of the Opposition were both females also. In the current 10th Parliament, Bangladesh has the unique distinction of having women in the positions of the Prime Minister, the Speaker, the Leader of the Opposition and the Deputy Leader. The 10th Parliament also has 70 female Members of Parliament, including those at the reserved seats. There are at present four women members in the Cabinet. The EC has set rules that require the registered political parties to increase women's nomination up to 30% in elections by 2020 and to ensure 33% women membership within their ranks. Bangladesh consistently ranks among the first ten countries around the world in terms of reducing gender gap in the political sphere as per the Gender Gap Index prepared by the World Economic Forum.

39. The ratio of men and women currently employed in the government service from 1st class rank to 4th class rank is 74.8:25.2. A total of 137 women are currently serving as senior government officials in the government services. Among them, 4 have the designation of Secretary, 24 women have the designation of Additional Secretary and 109 have the designation of Joint Secretary.

40. The Judiciary has considerable number of female judges. There are 7 female Judges in the Supreme Court of Bangladesh. Among them 6 Judges are serving the High Court Division and 1 Judge is serving the Appellate division. At present, two female Vice-Chancellors are serving two leading public universities, and also another female is serving as a Deputy Governor of the Central Bank.

41. In order to ensure equal opportunity and participation of women in public life, the Constitution incorporates provisions of fifty reserved seats for female members in Parliament.¹⁵ In addition, The Local Government (Union Parishad) Act, 2009 provides that a Union Parishad will consist of one Chairman and twelve members and among the members three positions are to be filled up by the females only (with one Vice-Chair position retained for a woman). The Local Government (Pourashavas) Act, 2009 also provides that one-third of the councilors in the pourashavas will be women.¹⁶

Equality in education for woman

42. The Constitution of Bangladesh provides for a uniform, mass oriented and universal system of education and extending free and compulsory education to all children.¹⁷ The Compulsory Primary Education Act, 1990 has made primary education free in all governmental schools for all children, both girls and boys. In addition, the GoB has taken special measures in education sectors to ensure the advancement of female education, with girls being given special financial support to continue education at the secondary level.

¹⁴ *Ibid*, art. 19(3).

¹⁵ *Ibid*, art. 65(3).

¹⁶ The Local Government (Municipality) Act, 2009, ss. 7(1) & 10.

¹⁷ *Supra note 1*, art. 7.

Equality as to transmission of mother's nationality to children

43. The Citizenship Act, 1951 provides that a person born after the commencement of the Act will be a citizen of Bangladesh by descent if either of the parents is a citizen of Bangladesh at the time of his/her birth.¹⁸

Equal right of women in regard to marriage and dissolution of marriage

44. Marriage and dissolution of marriage between persons professing same religion are regulated according to the concerned personal law. Marriage between persons professing different religions is solemnized under the Special Marriage Act, 1872. Despite some restrictions as regards the women's right to dissolution of marriage in some personal laws, there are statutory provisions that empower women to dissolve marriages like their male counterparts.

Protection of life of women

45. The Constitutional guarantee that no person will be deprived of life or personal liberty saves in accordance with law is equally applicable to men and women alike.¹⁹

46. In addition to the Constitutional safeguard, the Penal Code, 1860 and other special laws have provided for stringent punishment for certain crimes against woman. The Penal Code, 1860 prescribes punishment for causing an illegal abortion (if such abortion be not caused in good faith for the purpose of saving the life of the woman). Causing abortion without the consent of the woman will be punished with imprisonment for life or with imprisonment for a term up to ten years and fine. Furthermore, if anyone causes a woman to miscarry or thereby causes the death of such woman, will be punished with imprisonment and fine.²⁰

Protection of women against gender-based violence

47. The Penal Code, 1860 provides that whoever causes death or attempts to cause death to any woman or a child by burner, corrosive poisonous substance, he or she will be punished with death or transportation for life and also with fine not exceeding one lac taka. Moreover, whoever commits rape will be punished with rigorous imprisonment for life and with fine. If in consequence of rape or any act by him after rape, the woman or the child so raped, died later, the man will be punished with death or with transportation for life and also with fine not exceeding one lac taka. Furthermore, whoever commits sexual oppression against a woman will be punished with imprisonment for either description which may extend to ten years but not less than three years of rigorous imprisonment and also with fine.²¹ The Pornography Control Act, 2012 provides that, contracting, coercing or inducing a woman to perform in any pornographic production or taking video, still picture or motion picture for that purpose with or without knowledge of a woman is a penal offence and punishable with seven years rigorous imprisonment and fine up to 2,00,000 in Bangladeshi currency.²²

48. The Domestic Violence (Prevention and Protection) Act, 2010 incorporates legal provisions with a view to protecting women and children from all forms of domestic violence. There are six shelter homes for the victims of domestic violence in six divisional

¹⁸ The Citizenship Act, 1951, s. 5.

¹⁹ *Supra note 1*, art. 32.

²⁰ The Penal Code, 1860, ss. 312-314.

²¹ The Prevention of Cruelty to Women and Children Act, 2000, ss. 4, 9 & 10.

²² The Pornography Control Act, 2012, s. 8.

headquarters under women support programme. The victims are accommodated in these homes till disposal of their complaints or cases. The victims are provided with food, clothing and medical assistance free of cost. These shelter homes have the facility to provide primary education to the children accompanying such victim women. In addition, the victims are given vocational training on different trades so that they can make their livelihood after they have left the shelter homes. The GoB has started conducting regular national surveys on violence against women in order to gain an evidence-based understanding of the magnitude of the problem.

Prohibition against dowry

49. In Bangladesh, taking or demanding dowry in consideration of marriage is an offence. The laws of Bangladesh are very strict against the person who is involved with dowry as well as any other offence committed as result of dowry. The Dowry Prohibition Act, 1980 provides that if any person gives or takes or abets the act of the giving or taking of dowry, such person will be punished with imprisonment or fine or both. Demanding dowry directly or indirectly from the parents or guardians of a bride or bridegroom has been made punishable with imprisonment up to a term of five years and fine.²³ Moreover, the said law also provides that if the husband of a woman or the husband's relatives on behalf of the husband causes death or attempts to cause death or injury to a woman will be punished with imprisonment and fine.²⁴

50. During 2009-2014, a number of 29,464 cases involving different kinds of violence on women were disposed of by trial. These cases include violence for dowry, kidnapping/abduction, acid throwing, rape, murder, hurt and other kinds of violence. In these cases 3676 persons were convicted.

Separation of men and women in prisons

51. In order to protect the female prisoners from any kinds of abuse from male prisoners; the Prisons Act, 1894 provides that in a prison containing female as well as male prisoners, the female prisoners will be imprisoned in separate buildings or separate parts of the same building as the case may be.²⁵

Equal rights of women to enjoy fundamental rights

52. The Constitution guarantees equal rights for women. Fundamental rights, like, equal treatment of law, non-discrimination, equality of opportunity in public employment, right to protection of law, protection of right to life and personal liberty, safeguards as to arrest and detention, protection in respect of trial and punishment, freedom of movement, freedom of assembly, freedom of association, freedom of thought, conscience and speech, freedom of profession or occupation, freedom of religion, right to property, right to enjoy privacy are guaranteed on equal basis for women.

Articles 4 and 5

Proclamation of emergency

53. The Constitution provides that the President may issue (with the prior counter signature of the Prime Minister) Proclamation of Emergency if he is satisfied that the

²³ The Dowry Prohibition Act, 1980, ss. 3 & 4.

²⁴ *Supra note* 21, s. 11.

²⁵ The Prisons Act, 1894, s. 27(1).

security or economic life of Bangladesh or any part thereof is critically endangered, or is threatened by war or external aggression or internal disturbance. A Proclamation of Emergency may be made even before an actual occurrence of war or disturbance if the President is satisfied that there is imminent danger thereof.²⁶ A Proclamation of Emergency will cease to operate at the expiration of 120 days unless it has been approved by an earlier resolution of the Parliament.

54. The Constitution also provides that during an Emergency Article 36 (right to freedom of movement), Article 37 (right to freedom of assembly), Article 38 (right to freedom of association), Article 39 (right to freedom of speech and expression), Article 40 (right to freedom of profession or occupation) and Article 42 (rights to property) will not prevent the Parliament from making any laws, or the Executive from taking any actions on the grounds of their inconsistency with the relevant provisions of the Constitution. Accordingly, the GoB may pass laws or take executive actions which may be inconsistent with certain fundamental rights only temporarily during an Emergency. However, any such laws or executive actions made or taken during an Emergency will cease to have effect to the extent of its inconsistency as soon as the Proclamation ceases to operate.²⁷

No derogation of the non-derogable provisions of the Covenant

55. It deserves mention that the non-derogable provisions of the Covenant deal with the right to life (Article 6), freedom against torture, inhumane and degrading treatment (Article 7), prohibition of slavery and servitude (Article 8 paragraphs 1 and 2), protection from civil imprisonment (Article 11), protection against ex-post facto law (Article 15), right to be recognized as person (Article 16) and freedom of thought, conscience and religion (Article 18). The provisions of the Constitution in respect of which the GoB may pass or take inconsistent laws or executive actions as the case maybe during an Emergency are not analogous to the non-derogable provisions of the Covenant. Thus, the Constitution of Bangladesh does not make any provision for derogation of the non-derogable provisions of the Covenant during an Emergency.

Justiciability of fundamental rights beyond the Covenant

56. The Constitution of Bangladesh, besides the rights analogous to that of the Covenant, incorporates a few other rights as fundamental rights. They include right to property (Article 42), right to freedom of profession or occupation (Article 40) and making special provision in favour of women or children or for the advancement of any backward section of citizens (Article 28 clause 4). These fundamental rights are justiciable and have similar status in the Constitution alongside those rights which are analogous to that of the Covenant.

57. The GoB is committed to give full effects to the rights enumerated in the Covenant. The GoB maintains that rights and freedoms recognized in the Covenant are indivisible and not mutually exclusive. The recognition and enforcement of one particular right does not necessarily mean taking away of or yielding to another right. The GoB believes that respect, recognition and enforcement of the rights and liberties as mentioned in the Covenant are strictly subject to such exceptions, limitations and restrictions as are permitted by the Covenant itself.

²⁶ *Supra note 1*, art. 141A.

²⁷ *Ibid*, art. 141B.

Article 6

Safeguard against arbitrary deprivation of life

58. The Constitution of Bangladesh has incorporated the right to life as one of the fundamental rights. The Constitution provides that no person will be deprived of life or personal liberty save in accordance with law.²⁸ This provision obligates the GoB to protect the citizens and the non-citizens alike against arbitrary deprivation of life.

Crimes punishable by the death penalty

59. In Bangladesh, death penalty is the highest form of punishment for the most heinous crimes. While the GoB acknowledges the international initiatives for abolition of death penalty, nevertheless, death penalty for some heinous crimes appears necessary as a deterrent measure. Even if there is provision for death penalty in Bangladesh laws, its application is restricted to very selective cases of the most heinous crimes.

60. The Penal Code, 1860 provides that certain grave offences should be punished with death penalty. These offences include: (i) Waging War against Bangladesh²⁹ (ii) Abetting Mutiny³⁰ (iii) Giving or Fabricating False Evidence with Intent to Procure Conviction of Capital Punishment³¹ (iv) Culpable Homicide amounting to Murder³² (v) Abetment of Suicide of Child or Insane Person³³ (vi) Attempt to Murder by Life Convicts³⁴ (vii) Kidnapping of a Child Under the Age of Ten³⁵ (viii) Dacoity with Murder.³⁶

61. In the face of increasing number of incidents of violence against women and children, the Parliament has enacted the Prevention of Cruelty to Women and Children Act, 2000 which provides death penalty for the following offences- (i) Murder or Attempt to Murder Involving Corrosive Poisonous Substances, (ii) Trafficking of Women and Children for Illegal or Immoral Acts, (iii) Fetching from Abroad or Smuggling Abroad a Child for Any Illegal or Immoral Purpose etc (iv) Kidnapping, (v) Rape or Sexual Assault, (vi) Dowry Killing.³⁷ The Acid Crime Control Act, 2002 provides for death penalty for certain crimes.³⁸

62. The Special Powers Act, 1974 provides that offences, for example, Sabotage, Hording or Dealing in Black Market, Counterfeiting, Smuggling, Adulteration of Food or Sale of Adulterated Food, Drink³⁹ will be punished with death penalty. The Official Secrets Act, 1923 provides that any person convicted of offence of spying may be punished with death penalty in certain cases.⁴⁰ In addition, the Intoxicant Control Act, 1990 provides that if any person cultivates, produces, manufactures, uses and consumes any intoxicant materials will be punished with death penalty.⁴¹

²⁸ *Ibid*, art. 32.

²⁹ *Supra note* 20, s. 121.

³⁰ *Ibid*, s. 132.

³¹ *Ibid*, s. 194.

³² *Ibid*, s. 302.

³³ *Ibid*, s. 305.

³⁴ *Ibid*, s. 307.

³⁵ *Ibid*, s. 364A.

³⁶ *Ibid*, s. 396.

³⁷ *Supra note* 21, ss. 4, 5, 6, 8, 9(2) & 11.

³⁸ The Acid Crimes Control Act, 2002, s. 5.

³⁹ The Special Powers Act, 1974, ss. 15, 25, 25A, 25B & 25C.

⁴⁰ The Official Secrets Act, 1923, s. 3(3).

⁴¹ The Intoxicant Control Act, 1990, s. 19.

63. In *BLAST vs. Bangladesh*,⁴² the Supreme Court held that any provision of law which provides for mandatory death penalty as the sole form of punishment is not in accordance with the Constitution and would be void.

Persons under 18 and pregnant women

64. As regards minimum age for death penalty, the Children Act, 2013 provides that no child will be sentenced to death.⁴³ Moreover, the Code of Criminal Procedure has incorporated provisions prohibiting execution of a pregnant woman.⁴⁴ The said Code provides that if a woman sentenced to death is found to be pregnant, the HCD will order the execution of the sentence to be postponed and also may commute the sentence to transportation for life.

Courts competent to impose capital punishment

65. The Code of Criminal Procedure, 1898 provides that the HCD may pass any sentences authorized by law including a death sentence. Moreover, the Court of Sessions or Additional Sessions Judge is invested with the power to pass death sentence; but any sentence of death passed by any such Judge will be subject to confirmation by the HCD.⁴⁵ In addition, Tribunals established under the Special Powers Act, 1974, the Prevention of Cruelty to Women and Children Act, 2000, the Acid Crime Control Act, 2002 may also pass death sentences.

Review of death sentence by higher courts

66. The law provides that the Supreme Court reviews propriety of a death sentence before it is carried out even if the convicted person does not prefer an appeal. The Code of Criminal Procedure, 1898 provides that when the Court of Session passes a death sentence, the proceedings should be submitted to the HCD and the sentence will not be executed unless it is so confirmed by the HCD.⁴⁶

67. In addition to the foregoing, a convict who has been sentenced to death may prefer an appeal to the Appellate Division from a judgment, decree, order or sentence of the HCD will lie as of right where the HCD has confirmed a sentence of death or sentenced a person to death or to imprisonment for life.⁴⁷ From 2009 to March 2015, a total 468 death sentences have been passed and of them the HCD confirmed 39, commuted 41 death sentences to lesser punishment. The remaining 388 sentences are pending for disposal.

Pardon and commutation of death sentence

68. The Constitution of Bangladesh has empowered the President to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.⁴⁸

⁴² [2011] 63 DLR 10.

⁴³ The Children Act, 2013, s. 33(1).

⁴⁴ *Supra note* 11, s. 382.

⁴⁵ *Ibid*, s. 31.

⁴⁶ *Ibid*, s. 374.

⁴⁷ *Supra note* 1, art. 103(2)(b).

⁴⁸ *Ibid*, art. 49.

Number of executions

69. Bangladesh maintains an extremely low rate of execution of death sentences. During 2009-14, death sentence has been carried out against 21 persons.. No woman or juvenile has been executed during the same period of time. There was no execution in 2014.

Article 7

70. Bangladesh acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 on 5 October 1998.⁴⁹

71. The Constitution of Bangladesh provides for normative stipulation about protection against torture. Article 35(5) of the Constitution which provides for protection of any persons against torture or cruel, inhuman, or degrading punishment or treatment, is a justiciable fundamental right. The protection against torture extends to citizens and non-citizens alike. Article 26 of the Constitution provides that any law inconsistent with fundamental rights will to the extent of its inconsistency become void.

Law giving effect to article 7 of the Covenant

72. The Parliament has passed the Torture and Custodial Death (Prevention) Act, 2013 with a view to preventing acts of torture in furtherance of its obligation under UNCAT as well as Article 35(5) of the Constitution.

Definition of torture

73. The Torture and Custodial Death (Prevention) Act, 2013 incorporates the definition of torture in line with the Convention against Torture. Section 2(6) of the Torture and Custodial Death (Prevention) Act, 2013 provides that “torture” means physical and psychological torture causing pain; beside this- (a) obtaining from any person or a third person information or confession; (b) punishing an accused or a convict; (c) intimidating a person or a third person through him; or (d) for any reason based on discrimination, inducement or provocation, consent or in virtue of the power of a public officials or of the government- such acts will also be regarded as torture.

Punishment for acts of torture

74. The Torture and Custodial Death (Prevention) Act, 2013 provides for punishment of any government official convicted of torture or custodial death. Any person convicted of torture will be punished with rigorous imprisonment for a term of not less than five years and also will be liable to a fine of not less than 25,000 taka. In cases where death occurs as a result of torture, the offence has been made punishable with rigorous imprisonment for a term of not less than imprisonment for life and a fine of not less than 100,000 taka. The Torture and Custodial Death (Prevention) Act, 2013 provides for punishment of attempt, abetment or conspiracy for commission of torture. Any person who attempts to commit, or aids and abets in committing, or conspires to commit torture, will be punished with rigorous imprisonment for a term of not less than two years and also will be liable to a fine of not less than 20,000 taka.⁵⁰

75. In addition to the Torture and Custodial Death (Prevention) Act, 2013 the Penal Code, 1860 defines some offences which amount to acts of torture. For example, section

⁴⁹ U.N. Res. 39/46, U.N. Doc. A/RES/39/46 (December 10, 1984).

⁵⁰ The Torture and Custodial Death (Prevention) Act, 2013, s. 15.

348 of the Penal Code penalizes wrongful confinement of a person in order to extort a confession from him or from any other associated person. Section 323 and 324 of the Penal Code has made acts causing hurt and grievous hurt to any individual punishable offences. ‘Criminal force’ and ‘assault’ are also punishable offences under the Penal Code. Section 352 of the Code provides that the commission of assault or criminal force, unless caused in consequence of grave and sudden provocation, is punishable with imprisonment for a term which may extend to three months or with a fine up to five hundred taka. Section 506 of the Penal Code defines ‘criminal intimidation’ as threatening a person with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person has an interest, with an intention to cause harm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. Section 29 of the Police Act of 1861 provides that every police officer who would offer any unwarrantable personal violence to any person in his custody will be liable to a penalty not exceeding three months’ pay or to imprisonment, with or without hard labour, for a period not exceeding three months or both. The Prevention of Cruelty to Women and Children Act, 2000 provides that if a woman is raped in police custody, each and every person under whose custody the rape was committed will be liable for punishment up to ten years but not less than five years of rigorous imprisonment and may also be fined.⁵¹

76. The Torture and Custodial Death (Prevention) Act, 2013 provides that torture will be a cognizable, non-compoundable and non-bailable offence.⁵² No exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may be invoked in justification of torture.⁵³

Complaint procedure against torture

77. The Torture and Custodial Death (Prevention) Act, 2013 provides for two alternative ways for making complaints against purported acts of torture. Sections 4 and 5 of this Act provide that a court may order the Superintendent of Police to register a complaint of torture after due medical examination of the complainant by a registered medical practitioner. Alternatively, a complaint can be made directly to a police officer not below the rank of the Superintendent of Police.⁵⁴ The law also allows a third person to make a complaint against torture.⁵⁵

Investigation and prosecution of allegations of torture

78. The Torture and Custodial Death (Prevention) Act, 2013 provides that investigation into allegations of torture must be completed within 90 days from the date of complaint. An extension of time for completion of investigation will be permitted by a court after the investigating officer explains the reasons for delay and after hearing the accused person.

Protection of complainant and witnesses

79. Section 11 of the Torture and Custodial Death (Prevention) Act, 2013 provides that a complainant may apply to court for protection from a person accused of having committed torture. The court may order detention of the person against whom such complaint has been made for a period of not less than 7 days and may also make such order

⁵¹ *Supra note 21*, s. 9.

⁵² *Supra note 50*, s. 10(1).

⁵³ *Ibid*, s. 12.

⁵⁴ *Ibid*, s. 7(2).

⁵⁵ *Ibid*, s. 6.

as prohibiting his or her entry into a particular area for ensuring safety of any person who has petitioned the court seeking protection.

Confession as a result of torture

80. Confessions resulting from inducement or coercion are not admissible as evidence in criminal proceedings. Confessions to police-officers or made in police custody are also not legally recognized as evidence.⁵⁶

Compensation to the victims of torture

81. The Torture and Custodial Death (Prevention) Act, 2013 provides that a person convicted of torture is required to pay an amount of compensation, not less than 25,000 taka to the victim. In the event of death as result of torture, a convicted person is required to pay an amount not less than 200,000 taka as compensation to the victim.⁵⁷

Measures to prevent other acts of cruel, inhuman or degrading treatment

82. In order to eradicate the age-old practice of corporal punishment in educational institutions, the Supreme Court in Writ Petition No. 5684/2010 has issued a directive to stop all forms of corporal punishment in primary and secondary educational institutions. Accordingly, the Government has issued a circular prohibiting all forms of corporal punishment in all educational institutions.

83. In view of the allegations of sexual harassment of women, the Supreme Court, in Writ Petition No. 5916/2008, issued directives on protection of women against sexual harassment. As per the directives of the Supreme Court, Complaint Committees have been set up in all Government Ministries, Divisions, educational institutions and other workplaces to receive and address allegations of sexual harassment.

84. The Law Commission of Bangladesh has prepared a number of reports and draft laws on abolition of corporal punishment, prevention of sexual harassment in educational institutions and workplaces, prevention of violence against women, and protection of victims and witnesses to grave offences, among others. The Law Commission has recommended deletion of provisions mandating the use of corporal punishment wherever they occur in existing laws.⁵⁸

85. In 2010, the Law Commission prepared a draft Bill entitled 'the Prevention of Sexual Harassment in Educational Institution and Workplace Act, 2010'. This draft Bill defines sexual harassment, and provides for a complaint procedure, measures for the prevention of sexual harassment, measures to build awareness against sexual harassment and it requires educational institutions and authorities at workplaces to submit an annual report to a Monitoring Committee to be established for this purpose.⁵⁹

Article 8

Laws prohibiting slavery and all forms of servitude

86. Bangladesh is a signatory to the Slavery Convention, 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices

⁵⁶ The Evidence Act, 1872, ss. 24-26.

⁵⁷ *Supra note 50.*

⁵⁸ *See* < <http://www.lc.gov.bd/reports.htm>>.

⁵⁹ *Ibid.*

Similar to Slavery, 1956, the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), the ILO Abolition of Forced Labour Convention, 1957 (No. 105) and the United Nations Convention against Transnational Organized Crime, 2000. At the regional level, Bangladesh has ratified the SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution, 2002. Bangladesh and India have set up a joint task force for prevention of trafficking in children and women.

87. The Constitution provides that all forms of forced labour are prohibited and any contravention of this provision will be an offence punishable in accordance with law and this Article will not apply to compulsory labour by persons undergoing lawful punishment for a criminal offence or required by any law for public purposes.⁶⁰

88. According to the Penal Code, 1860 slavery and slave trade are criminal offences for which severe punishment has been provided. The Prevention and Suppression of Human Trafficking Act, 2012 provides that whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave will be punished with imprisonment for a term which may extend to seven years and will also be liable to fine. Moreover, the said Act provides that whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, will be punished with imprisonment for life, or with imprisonment for a term not exceeding ten years, and will also be liable to fine.⁶¹

Laws combating human trafficking

89. Human trafficking is one of those offences prevention and control of which has been given the highest priority in Bangladesh. In order to combat human trafficking as the recruitment, transportation, transfer for the purpose of any forms of exploitation including forced labour or servitude, debt-bondage, slavery or practices similar to slavery, the GoB has enacted the Prevention and Suppression of Human Trafficking Act, 2012. The law provides that whoever unlawfully forces any other person to work against his will or compels to provide labour or service or holds in debt-bondage or to exact from the person any work or service by using force or other means of pressure or by threat will be deemed to have committed an offence and will be punished with rigorous imprisonment for a term not exceeding twelve years but not less than five years and with fine not less than fifty thousand in Bangladesh currency.⁶²

90. In addition to the foregoing, the Prevention and Suppression of Human Trafficking Act, 2012 provides for severe punishment in respect of a wide range of offences related with human trafficking. If any person kidnaps, conceals or confines any other person with intent to commit the offence of human trafficking or to put that person into a state of sexual or other exploitation or oppression, such person will be punished with rigorous imprisonment for a term not exceeding ten years but not less than five years and with fine not less than taka twenty thousand.⁶³ If any person brings any other person into Bangladesh or transfers the person inside the territory of Bangladesh with a view to engaging in prostitution or any other form of sexual exploitation or oppression by means of force or fraud or seduction, will be punished with rigorous imprisonment for a term up to seven years but not less than five years and with fine not less than taka fifty thousand.⁶⁴ Kidnapping or abducting any person in order that such person may be subjected slavery

⁶⁰ *Supra* note 1, art. 34.

⁶¹ *Supra* note 20, ss. 370-371.

⁶² *Supra* note 21, s. 9.

⁶³ *Ibid*, s. 10.

⁶⁴ *Ibid*, s. 11.

will be punished with imprisonment for a term up to ten years and will also be liable to fine.⁶⁵ Whoever kidnaps or abducts any person under the age of ten in order that such person may be murdered or subjected to grievous hurt or slavery will be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and will not be less than seven years.⁶⁶

Measures to rescue and protect victims of trafficking

91. During 2012, Rapid Action Battalion (RAB) conducted 145 operations and rescued 182 victims which included children. In this connection, 276 persons had been arrested by RAB. In the same year, Border Guard Bangladesh (BGB) rescued and recovered 86 children (with another 255 women) and arrested 10 criminals in this regard.⁶⁷

92. The GoB has been closely working with the Government of India through the Rescue, Recovery, Repatriation and Integration Task Force (RRRI) on issues of trafficking. The RRRI Task Force Cell has issued 631 orders for the final repatriation of victims of trafficking through the Ministry of Foreign Affairs in 2012.⁶⁸

Prosecution of traffickers

93. Human trafficking and similar other offences are cognizable, non-bailable and non-compoundable under the Prevention and Suppression of Human Trafficking Act, 2012.⁶⁹

94. During 2009-2014, a number of 1662 human trafficking cases were lodged. 146 persons were convicted of human trafficking while 653 accused were acquitted during the same period.

Rehabilitative measures for victims of trafficking

95. The Prevention and Suppression of Human Trafficking Act, 2012 has provided for protection of victims of trafficking.⁷⁰ The mandate of this Act extends to rescue, repatriation and rehabilitation of the victims of human trafficking.⁷¹ The law also obliges the GoB to take initiatives to return any Bangladeshi nationals who would be found as victims of human trafficking abroad.⁷²

96. The Prevention and Suppression of Human Trafficking Act, 2012 provides for establishment of adequate number of safe homes and rehabilitation centres in order to facilitate physical and psychological treatment, and rehabilitation and reconciliation with the families of the victims of human trafficking.⁷³ The law also provides that the child-victims of human trafficking are not to be accused of any offences and the child witnesses or the child victims are not to be subjected to stigmatization and social ostracism. The law also permits the victims of the human trafficking to sue for compensation in any Civil

⁶⁵ *Supra note 20*, s. 367.

⁶⁶ *Supra note 20*, s. 364A.

⁶⁷ See Ministry of Home Affairs, *Combatting Human Trafficking*, Bangladesh Country Report, 2012.

⁶⁸ *Ibid.*

⁶⁹ *Supra note 21*, s. 16.

⁷⁰ The Prevention and Suppression of Human Trafficking Act, 2012, s. 14.

⁷¹ *Ibid.*, s. 32.

⁷² *Ibid.*, s. 33.

⁷³ *Ibid.*, s. 35.

Court.⁷⁴ Moreover, the government may also provide financial assistance to the victims of human trafficking.⁷⁵

Article 9

Safeguards as to arrest and detention

97. The Constitution expressly provides that no person will be deprived of personal liberty save in accordance with law.⁷⁶ In particular, Article 33 of the Constitution ensures safeguards as regards arrest and detention of any person. In addition, the Code of Criminal Procedure, 1898 has incorporated detailed provisions giving effect to the constitutional guarantees as regards arrest and detention.

98. The Code of Criminal Procedure, 1898 provides that an accused person may be arrested under a warrant of arrest issued by a judicial officer having jurisdiction to try the matter.⁷⁷ A police officer may also arrest without order or warrant from a Magistrate when such officer has the specific knowledge that the commission of a cognizable offence cannot be otherwise prevented.⁷⁸ In addition, section 54 of the Code of Criminal Procedure, 1898 provides that a police officer may arrest a person without an order or warrant from a Magistrate on certain grounds.

99. Having regard to the application of section 54 of the Code of Criminal Procedure, 1898; the Supreme Court in *BLAST vs. Bangladesh*⁷⁹ laid down the following directives with a view to safeguarding the rights of the arrested persons, i.e. (i) whenever a police officer arrests a person under section 54(1), he will disclose his identity to the person sought to be arrested; (ii) the police officer will immediately record the reasons for the arrest after bringing the arrested person to the police station; (iii) the police officer will record with the reasons the presence of any marks of injury on the body of the arrested person and will take the arrested person to the nearest hospital or to a government doctor for treatment and will obtain a certificate about the injuries; (iv) the grounds for arresting a person under section 54 should be completed not later than three hours from the time of bringing the arrested person to the police station; (v) if possible, the police officer will inform the nearest relation of the arrested person over phone or through a messenger within one hour of bringing him in the police station; and (vi) the police officer will allow the person arrested to consult a lawyer.

100. The Constitution has imposed an obligation on the law enforcement agencies that no person who is arrested will be detained in custody without being informed, as soon as may be, of the grounds for such arrest.⁸⁰ The police officer or a person executing a warrant of arrest will notify the substance thereof to the person sought to be arrested and will show him the warrant.⁸¹

⁷⁴ *Ibid*, ss. 38 & 39.

⁷⁵ *Ibid*, s. 40.

⁷⁶ *Supra note* 1, art. 32.

⁷⁷ *Supra note* 11, s. 75.

⁷⁸ *Ibid*, s. 151.

⁷⁹ [2003] 55 DLR 363.

⁸⁰ *Supra note* 1, art. 33(1).

⁸¹ *Supra note* 11, s. 80.

Length of police custody

101. The Constitution provides that every person who has been arrested or detained in police custody will be produced before the nearest Magistrate within 24 hours of arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate. No arrested person will be detained in police custody beyond 24 hours without a court's order.⁸² This position has also been reaffirmed in the Code of Criminal Procedure, 1898 which provides that the police officer or a person executing a warrant of arrest should bring the arrested person before the court without delay.⁸³ Moreover, the Code of Criminal Procedure, 1898 in conformity with the constitutional provisions provides that if any police officer has made an arrest without warrant, such arrested person will be sent before a Magistrate or officer in charge of police station without unnecessary delay. In such cases, a police officer will not detain in custody a person arrested without warrant for a period of 24 hours.⁸⁴

Right to consult a lawyer

102. The Constitution provides that an arrested person must be allowed to consult and defend by a legal practitioner of his own choice subject to the exception of an enemy alien or a person arrested or incarcerated under preventive detention.⁸⁵ In *Rowshan Bijaya Shaukat Ali Khan vs. East Pakistan*, the Supreme Court held that the right to be defended by a lawyer must be construed as having been incorporated into the law, irrespective of whether the law gives or denies the right.⁸⁶

Pre-trial detention

103. The Code of Criminal Procedure, 1898 provides that whenever investigation of an offence cannot be completed within the period of 24 hours, the police officer who is making the investigation will forward the accused to a Magistrate. The Magistrate, if deems it appropriate, may authorize detention of the accused for a term not exceeding fifteen days. If the Magistrate considers that further detention is necessary for investigation, he is required to apply his judicial mind to determine whether the circumstances justify detention of the accused in the police custody.⁸⁷

104. The Supreme Court in *BLAST vs. Bangladesh*⁸⁸ held that the Magistrate while passing an order of pre-trial detention should be satisfied that the investigation has yet to be completed, that the grounds for the arrest has been furnished to the accused, and that the accused has been given the opportunity to consult lawyer of his choice. The Magistrate must also hear the accused or his lawyer.

Special rules relating to preventive detention

105. The Constitution provides that safeguards as to arrest and detention will operate in a different way in the cases of preventive detention. The Special Powers Act, 1974 provides for the legal procedure to be followed in cases of preventive detention. The said law provides that any District Magistrate or Additional District Magistrate may, with a view to

⁸² *Supra note 1*, art. 33 (2).

⁸³ *Supra note 11*, s. 81.

⁸⁴ *Ibid.*, ss. 60 & 61.

⁸⁵ *Supra note 1*, art. 33.

⁸⁶ [1965] 17 DLR 1.

⁸⁷ *Supra note 11*, s. 167(2).

⁸⁸ [2003] 55 DLR 363.

preventing him from doing any prejudicial act, make an order to detain a person.⁸⁹ The grounds for issuing an order of preventive detention should be communicated as soon as possible.⁹⁰

106. An order of preventive detention will remain in force for 30 days unless it has been further extended with the approval of the GoB.⁹¹ However, the Constitution provides that no law providing for preventive detention will authorize the detention of a person for a period exceeding six months and the period of six months can be extended only if an Advisory Board thinks that there is sufficient cause for such detention. The Advisory Board will consist of three persons, of whom two will be persons who are, or have been, or are qualified to be appointed as judges of the Supreme Court and the other will be a senior officer in the service of the republic.⁹² The Supreme Court of Bangladesh on occasions has given directives with a view to regulating practices relating to preventive detention in a number of cases. In *Dr. Habibullah vs. Secretary, Ministry of Home*, the Supreme Court observed that the court is not required to wait for the opinion of the Advisory Board in a writ of habeas corpus dealing with preventive detention.⁹³

107. Since 2013, no person has been detained under preventive detention. A table showing the number of persons placed under preventive detention from 2009-2014 is furnished below:

<i>Year</i>	<i>Number of Persons (Under Preventive Detention)</i>
2009	34
2010	37
2011	-
2012	1
2013	-
2014	-
Total	72

Right to be released on bail

108. The Code of Criminal Procedure, 1898 has incorporated detailed provisions relating to bail. The said Code provides that when any person accused of any non-bailable offence is arrested, he still may be released on bail. The court may order that any person under the age of sixteen years or any woman or any sick or infirm person accused of an offence be released on bail. Besides, if it appears to a court at any stage of the proceeding that there are no reasonable grounds for believing that the accused has committed the alleged non-bailable offence, the accused will, pending inquiry, be released on bail.⁹⁴

109. The Code of Criminal Procedure, 1898 provides that a person accused of a bailable offence has the right to be released on bail. It is also provided that a police officer or court,

⁸⁹ *Supra note 39*, s. 3.

⁹⁰ *Supra note 1*, art. 33(5).

⁹¹ *Supra note 39*, s. 3.

⁹² *Supra note 1*, art. 33.

⁹³ [1989] 41 DLR 160.

⁹⁴ *Supra note 11*, s. 497.

if thinks appropriate, may instead of taking bail from such person, discharge him on executing a bond without sureties for his appearance.⁹⁵

110. As regards pre-trial detention, if the alleged offence is not punishable with death or life imprisonment or imprisonment exceeding ten years, the accused person may be released on bail in case the investigation cannot be completed within 120 days from the date of allegation or the order of the Magistrate for investigation.⁹⁶ Furthermore, if a trial cannot be concluded within the specified time, the accused may be released on bail.⁹⁷

111. The Code of Criminal Procedure, 1898 in line with the Constitution provides that a Magistrate will conclude the trial of a case within 180 days from the date on which the case is received by him for trial. A Sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge will conclude the trial of a case within 360 days from the date on which the case is received by him for trial.⁹⁸

Article 10

Right to be treated with humanity

112. The Prisons Act, 1894 provides that a civil prisoner or an un-convicted criminal prisoner will be permitted to maintain himself and purchase or receive from private sources at proper hours, food, clothing, bedding or other necessaries.⁹⁹ The civil prisoners and the unconvicted criminal prisoners who are unable to provide himself with sufficient clothing and bedding will be supplied by the Superintendent with such clothing and bedding as may be necessary.¹⁰⁰ In addition to that the Prisons Act, 1894 contains provisions that allow making necessary medical support available for the prisoners requiring medical attention. In this regard, the said law stipulates that in every prison a hospital or proper place for the reception of sick prisoners should be provided.¹⁰¹ Moreover, the Jailer will, without delay, call the attention of the Medical Subordinate to any prisoners desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and will carry into effect all written directions given by the Medical Officer or Medical Subordinate.¹⁰²

Number of prisons and prisoners in Bangladesh

113. In Bangladesh, there are 68 Prisons (13 central prisons and 55 district prisons) in total. The aggregate number of prisoner is 76,492. The number of the male prisoners and the female prisoners are 74,163 and 2,329 respectively only as in March, 2015.

Prison administration

114. At present, there are 62 male Jail Superintendents and 6 female Jail Superintendents. Every jail is frequently inspected by the Inspector General of Prisons, Deputy Inspector General of Prisons, the District Magistrates and the District Judges. A jail is generally inspected 3 to 4 times by officio and ex-officio visitors every month. The Jail Authority provides basic training on jail management in Jail Training Academy, Rajshahi and Jail

⁹⁵ *Ibid*, s. 496.

⁹⁶ *Ibid*.

⁹⁷ *Ibid*, s. 339C (4).

⁹⁸ *Ibid*, s. 339C.

⁹⁹ *Supra note* 25, s. 31.

¹⁰⁰ *Ibid*, s. 33(1).

¹⁰¹ *Ibid*, s. 39.

¹⁰² *Ibid*, s. 37(1).

Training Institute, Dhaka. They also get training in various Government Training Institutes such as the Bangladesh Public Administration Training Centre.

Separation of non-convicted and convicted prisoners

115. In the Prisons Act, 1894, there is provision for keeping the accused persons separated from the convicted prisoners. The said law also provides that the non-convicted criminal prisoners should be kept apart from the convicted criminal prisoners.¹⁰³ Wards, building or barrack for the convicted and the non-convicted prisoners are separately constructed. The Prisons Act, 1894 also provides that in a prison, male prisoners under the age of twenty-one will be kept separated from the other prisoners.¹⁰⁴

Separation of juveniles from adults

116. Bangladesh has ratified the Convention on the Rights of the Child, 1989 (CRC) and accordingly has adopted measures to ensure, promote and protect the rights of the child. With a view to implementing the provisions of the CRC, the Parliament has enacted the Children Act, 2013 for, inter alia, dealing with matters related to any child in conflict or contact with law as well as any child deprived of liberty having regard to the child's dignity, age, gender, incapacities, maturity and so on.¹⁰⁵ The Children Act, 2013 provides that children subjected to deprivation of liberty will not be allowed to associate with any adult persons in jail/prison. Although a child accused of offences like murder, rape, robbery or drug dealing on attaining 18 years may be transferred from Child Development Centres to jail even before the trial is complete, such a child should be kept in a separate ward from the adult prisoners or other under-trial prisoners.¹⁰⁶ When the child is kept in a safe home, the law provides that the child should not be kept in the company of adults or any convicted child offender.¹⁰⁷

117. Prisoners under 18 years of age are not kept in prisons as they are treated as juveniles. At present, 30 (thirty) juvenile prisoners are being detained, and waiting to be shifted to the adolescent development centre, correctional institute and safe homes as per the relevant government rules.

118. The juvenile prisoner while staying in prison can also take elementary and religious or ethical education. They can also contact their family or relatives through letters and physical visits at jail premises.

Food and accommodation for prisoners

119. In each cell of typical size are accommodated 1 to 3 prisoners. Cell is used to keep prisoners those are dangerous in nature, such as notorious terrorists, militants, prisoners condemned to death, habitual offenders etc. But ordinary prisoners stay in large wards in every prison. Usually 30 to 50 prisoners stay in every ward. There are sufficient toilets, bathroom facilities for day time use in each Jail. At night, the prisoners use latrine which is located inside the ward. By constructing new Jails and expanding and re-constructing old Jails, modern facilities with accommodation, treatment, training and recreation have been ensured.

¹⁰³ *Ibid*, s. 27(3).

¹⁰⁴ *Ibid*, s. 27(2).

¹⁰⁵ *Supra note* 43, s. 54(1).

¹⁰⁶ *Ibid*, ss. 33-34.

¹⁰⁷ *Ibid*, s. 44(5).

120. Proper food and nutrition are provided on the basis of diet scale and recommendation of the medical officers every day. Food is cooked and supplied to the prisoners under the direct supervision of the prison authority. Food materials are collected by way of tender and also directly from the government food warehouses. They get breakfast, lunch and supper free of cost. Some prisoners are allowed to cook their own food in prison kitchens. There are provisions to give improved diet and nutrition for the sick prisoner in prison hospital.

Prison violence

121. With a view to pre-empting and preventing prison violence a number of measures have been taken, such as improving living condition, ensuring food and nutrition, infrastructural development, improvement of management, organizing skill development training, prevention of corruption, use of modern security system etc.

122. Prisoners have the scope to complain on any issue to the concerned Jail authorities. They have right to appear before the Jail Super to share their problems or make a complaint. In addition, the Jail Super visits the prisoners' wards every day to learn about their problems. The prison authorities try to resolve the problem within their resources and regulations. Any problems or concerns beyond the jurisdiction of the local authorities are referred to the higher authorities.

Recreational facilities

123. Prisoners commence work soon after the morning parades and continue till 2.00 p.m. in winter and 2.30 p.m. in other seasons. Non-convicted prisoners are not allowed to work according to the Jail Code. Prisoners enjoy the facility to play games like carom board, card, volleyball, kabadi, chess, badminton etc. The Jail authorities organize various cultural programmes for the prisoners. Prison library is provided with the daily newspapers, books, religious scriptures and publications etc.

124. The prisoners, subject to certain conditions, have the permission to meet their relatives and legal advisors under the Prisons Act, 1894.¹⁰⁸ The convicted and non-convicted prisoners may contact their family members and relatives by letters via the prison authorities. After every fifteen days, a prisoner can write letters to his family. Family or relatives of a prisoner can meet a prisoner in-person every week.

Rehabilitation and reformation of prisoners

125. While acceding to Covenant, the GoB has made a declaration in the following terms- "So far as the first part of paragraph 3 of Article 10 relating to reformation and social rehabilitation of prisoners is concerned, Bangladesh does not have any facility to this effect on account of financial constraints and for lack of proper logistics support. The last part of this paragraph relating to segregation of juvenile offenders from adults is a legal obligation under Bangladesh law and is followed accordingly."

126. The rehabilitation of the prisoners and their reformation through employment is among the priority policies of the GoB. The existing legal framework also permits such efforts for the person deprived of liberty. The Prisons Act, 1894 provides that civil prisoners may, with the Superintendent's permission, work and follow any trade or profession. The civil prisoners, since are not maintained at the expense of the prison, will be allowed to receive the whole of their earnings only subject to deductions to be determined by the Superintendent for the use of implements and the cost of maintenance.

¹⁰⁸ *Ibid*, s. 40.

The convicted prisoners sentenced to labour or employed on labour at their own volition are not generally allowed to work more than nine hours in a day.¹⁰⁹

127. The prisoners are given training on various trades such as knitting, hand looming, carpentry, plumbing, electric goods repairing, livestock, fisheries, leather processing, tailoring, readymade garments making, printing, weaving, shoe making, bakery, hair dressing, furniture making, boutique etc.

128. In every prison, there is a prison school with library facilities for providing pre-primary or elementary education as well as religious or ethical education.

Article 11

Declaration as regards application of article 11

129. The GoB at the time of acceding to the Covenant has made a declaration that Article 11 would be implemented in accordance with the existing municipal law of Bangladesh.

No imprisonment for inability to fulfill a contract

130. Article 11 of the Covenant, providing that no one will be imprisoned merely on the ground of inability to fulfill a contractual obligation, is, in general, in conformity with the Constitutional and legal provisions in Bangladesh, except in some very exceptional circumstances, where the law provides for civil imprisonment in case of willful default in complying with a decree.

Exceptional circumstances

131. Generally speaking, imprisonment is a form of punishment under the penal laws of Bangladesh. However, the Code of Civil Procedure, 1908 in exceptional cases permits arrest of a judgment-debtor¹¹⁰ in the civil prisons¹¹¹ in execution of a decree in a civil suit. However, the Code of Civil Procedures, 1908 provides that in execution of a decree for the payment of money, the judgment-debtor will not be put to prison unless he is given the opportunity of hearing as to why he should not be committed to prison.¹¹² When such a judgment-debtor pays the outstanding dues of the decree he will be released at once.¹¹³

132. Section 491 of the Penal Code, 1860 provides that if anyone, under a lawful contract is required to attend on or to supply the wants of any helpless persons who are incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do will be punished with imprisonment and fine or with both.

Article 12

Constitutional guarantee as to free movement

133. The Constitution guarantees the right to freedom of movement and residence as a justiciable fundamental right to all citizens. Article 36 of the Constitution provides that every citizen will have the right to move freely throughout Bangladesh, to reside and settle

¹⁰⁹ *Supra note 25*, ss. 34 & 35.

¹¹⁰ Judgment-debtor means any person against whom a decree has been passed or an order capable of execution has been made. *See* the Code of Civil Procedure, 1908, s. 2(10).

¹¹¹ *Ibid*, s. 55.

¹¹² *Ibid*, s. 51.

¹¹³ *Ibid*, s. 55.

in any place therein.¹¹⁴ However, the right to freedom of movement is subject to reasonable restrictions imposed by law in the public interest.

134. The Supreme Court of Bangladesh, from time to time, has interpreted different aspects of freedom of movement, especially freedom to leave or re-enter in Bangladesh. For instance, the Supreme Court has observed that withholding or cancellation of a passport affects a citizen's right of freedom to travel abroad and hence the seizure and cancellation of a passport without following legal procedure constitutes violation of the right to freedom of movement.¹¹⁵ Restriction on free movement has been held by the Supreme Court as unreasonable if for an indefinite period.¹¹⁶

Right of citizens to leave and re-enter the country

135. The Constitution also guarantees that every citizen has the right to leave and re-enter Bangladesh.¹¹⁷

136. The Bangladesh Passport Order, 1973 governs the right to leave Bangladesh by any citizen. The said law provides that no person will depart or attempt to depart from Bangladesh unless he holds a valid passport or travel document. The law also provides that the concerned authorities have the power to impound or revoke a passport or travel documents if - (i) the passport or travel document is in wrongful possession; (ii) if the passport or travel document was obtained by suppression of material facts; (iii) if the passport authority deems it necessary to do so in the interest of sovereignty, integrity or security of Bangladesh, or in the public interest; (iv) if any of the conditions of the passport or travel document has been contravened etc. Moreover, a passport may be impounded or revoked if an order has been passed by any court in Bangladesh prohibiting departure of the holder of the passport or travel document.¹¹⁸ However, the Supreme Court held that impounding passport for the purpose of inquiry against the holder of the passport would not be lawful except in the interest of sovereignty and security of Bangladesh.¹¹⁹

Restrictions on foreigners regarding access to certain areas

137. In Bangladesh, an alien or a non-citizen subject to the conditions prescribed by law may move freely within the country and also reside in his place of choice. The Foreigners Act, 1946 provides that the GoB has the power to impose any restrictions on foreigners movements and require them to reside in a particular place.¹²⁰ Moreover, the GoB may require any foreigner to report his or her presence to a prescribed authority.¹²¹

138. During 2010-2014, the Department of Immigration and Passports (DIP) issued 1,09,13,842 passports to the Bangladeshi nationals. During the same period, 1,46,85,262 persons travelled abroad from Bangladesh with Bangladeshi passports. During 2009-2014, a number of 35,08,855 foreigners entered into Bangladesh and 34,01,132 foreigners left Bangladesh.

¹¹⁴ *Supra note 1*, art. 36.

¹¹⁵ *Syed Makbool Hussain vs. Bangladesh*, [1992] 44 DLR 39.

¹¹⁶ *Mustafa Ansari vs. Deputy Commissioner*, [1965] 17 DLR 553.

¹¹⁷ *Supra note 1*, art. 36.

¹¹⁸ Bangladesh Passport Order, 1973, arts. 3 & 7.

¹¹⁹ *H M Ershad vs. Bangladesh*, [2001] 7 BLC (AD) 67.

¹²⁰ The Foreigners Act, 1946, s. 1(2).

¹²¹ The Registration of Foreigners Act, 1939, s. 3.

Article 13

Conditions for admission of foreigners to Bangladesh

139. A valid passport endorsed with a visa is the general condition for a foreigner to enter into Bangladesh. There is prohibition that no aircraft or ship will bring into Bangladesh any foreigner who is not in possession of a valid passport including visa or other travel documents applicable for entry into Bangladesh. If any person is brought into Bangladesh in contravention to the said rules, the concerned authority may direct the owner or person in charge of the aircraft or ship to take the person back on board and remove him from Bangladesh.¹²² The GoB is invested with the power to prohibit, regulate and restrict the entry and departure of the foreigners into or from Bangladesh, and their presence therein.¹²³

Authority to enforce departure of foreigners from Bangladesh

140. The Foreigners Act, 1946 has invested the GoB with the power to provide by virtue of an order that a foreigner will not remain in Bangladesh, and may also prescribe the time, route, port or place to depart from Bangladesh.¹²⁴

Extradition of fugitive aliens

141. The Extradition Act, 1974 enables the GoB to arrest and send back a foreigner who has been either accused or convicted of an extradition offence in a country which has signed an extradition treaty with Bangladesh. The said law also provides for extradition of persons who are accused or convicted of offences within the jurisdiction of a foreign country with whom Bangladesh has not signed any extradition treaty.¹²⁵

142. The Extradition Act, 1974 provides that the provisions of the Code of Criminal Procedure, 1898 relating to bail will apply to a fugitive offender whom the requesting State is seeking to be extradited as if he or she were an accused or convicted person in Bangladesh.¹²⁶ The said Act further provides that a fugitive offender who has been taken into custody, but has not yet been conveyed out of Bangladesh within two months after such committal, may apply to the HCD in order to be discharged from custody.¹²⁷

143. During 2009-2014 a total number of 154 foreigners have been expelled from Bangladesh following applicable legal procedures. It is to be noted that no convicted prisoner has been extradited during 2009-2014. The number of persons extradited during 2009-2014 is as follows:

<i>Year</i>	<i>Number of Persons Extradited</i>
2009	-
2010	1
2011	-
2012	1
2013	-
Total	2

¹²² The Passport Rules, 1966, Rule 6.

¹²³ *Supra note* 120, ss. 3 & 4.

¹²⁴ *Ibid*, s. 3(1).

¹²⁵ The Extradition Act, 1974, s. 4.

¹²⁶ *Ibid*, s. 19.

¹²⁷ *Ibid*, s. 12.

Refugees

144. Although Bangladesh is not a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, she has been hosting refugees from Myanmar for the last three decades with full respect to the international law. Under an agreement with the Office of the United Nations High Commissioner for Refugees (UNHCR), the GoB has been hosting more than 32,000 refugees in two refugee camps in Cox's Bazar district with a total expenditure of US\$ 47.5 million per year. During 1991-2005, the GoB, in close consultation with the Myanmar Government had achieved, with support from the UNHCR, voluntary repatriation of 250,000 refugees to Myanmar. The GoB remains engaged with the Myanmar authorities to resume voluntary repatriation of the remaining refugees, as the most feasible durable solution for them under the present circumstances.

Article 14

Administration of justice in Bangladesh

145. The administration of justice system in Bangladesh comprises the Supreme Court and the Subordinate Courts.

146. The Supreme Court is the highest judicial authority and its decisions are binding on all sub-ordinate courts and judicial authorities.¹²⁸ Judicial review is the most important power of the Supreme Court for the purpose of enforcement of fundamental rights. In a good number of cases, the Supreme Court has recognized human rights which have not been expressly incorporated in the Constitution as fundamental rights and has also recognized international treaty provisions through judicial decisions.

Qualification for appointment as a judge of the Supreme Court

147. A citizen of Bangladesh who has been either an Advocate of the Supreme Court or holding a judicial office for not less than ten years may be appointed as a Judge of the Supreme Court.

Procedure for appointment of judges

148. The Chief Justice is appointed by the President. The President appoints all other Judges of the either Division of the Supreme Court after consultation with the Chief Justice and the Prime Minister.¹²⁹ According to the Constitution, the President wields the power to appoint one or more duly qualified persons as Additional Judge of the HCD or may require a Judge of the HCD to sit in the Appellate Division.¹³⁰

149. The present number of Judges in the Supreme Court of Bangladesh is 104. There are 97 Judges in the High Court Division and 7 Judges in the Appellate Division of the Supreme Court of Bangladesh. During 2009-2014, a total 37 Judges got appointed in the Supreme Court. Among them, 31 Judges have been confirmed as permanent.

Tenure of office of judges

150. A Judge of the Supreme Court will hold office till the age of sixty seven. A Judge of the Supreme Court cannot be removed from his office except by an order of the President

¹²⁸ *Supra note 1*, art. 111.

¹²⁹ *Ibid*, arts. 48(3) & 95.

¹³⁰ *Ibid*, art. 98.

passed pursuant to a resolution of Parliament supported by a majority of not less than two-thirds members of Parliament on the grounds of misbehaviour or incapacity.¹³¹

Independence of the Supreme Court

151. The Chief Justice and the other Judges of the Supreme Court are independent in the exercise of their judicial functions according to the Constitution.¹³²

Subordinate courts of Bangladesh

152. The Subordinate Courts in Bangladesh are mainly divided into civil and criminal courts. In general, in each district there is a 5-tiered civil court headed by the District Judge for adjudicating the disputes of civil nature.¹³³

153. According to the Code of Criminal procedure, 1898; the authority to try criminal cases has been vested in the Court of Sessions and the Magistrate Courts. A Sessions Division may consist of one or more districts. The Magistrates are divided into two broad classes, namely Judicial Magistrates and Executive Magistrates. The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, the Magistrate of the First Class, the Magistrate of the Second Class and the Magistrate of the Third Class comprise different levels of Magistrate Courts in the country. The Court of Sessions has three tiers, namely the Court of Sessions Judge, the Court of Additional Sessions Judge and the Court of Joint Sessions Judge.¹³⁴

154. The subordinate Courts of Bangladesh have a significant number of Judges actively working to ensure dispensation of justice. There are 1,438 Judges currently employed in the subordinate courts. During 2009-2014, a total number of 509 new Judges got appointed in the subordinate courts. In the same period, the GoB established 57 new Courts.

Special courts and tribunals

155. In Bangladesh, there are a number of laws that have incorporated provisions regarding establishment of special courts and tribunals to try certain offences. They are as follows:

1. The Labour Court (The Labour Act, 2006)
2. The Special Court (The Special Powers Act, 1974)
3. The Acid Violation Prevention Tribunal (The Prevention of Acid Violence Act, 2002)
4. The *Nari-O-Shishu Nirjatan Daman* Tribunal (The Prevention of Cruelty to Women and Children Act, 2000)
5. Money Laundering Court (The Prevention of Money Laundering Act, 2002)
6. The Children Court (The Children Act, 2013)
7. The Speedy Trial Tribunal (The Law and Order Disruption Crimes (Speedy Trial) Act, 2002)
8. The Environment Court (The Environment Court Act, 2000)

¹³¹ *Supra* note 1, art. 96.

¹³² *Ibid*, art. 94(4).

¹³³ The Civil Courts Act, 1887, s. 3.

¹³⁴ *Supra* note 11, ss. 6-9.

9. The International Crimes Tribunal (The International Crimes Tribunal Act, 1973)
10. The Village Court (The Village Court Act, 2006).

Independence of subordinate courts

156. The Constitution provides that the Judges of the Subordinate Courts and the Magistrates will be independent in the exercise of their judicial functions.¹³⁵ The Constitution also enjoins separation of the subordinate judiciary from the executive.¹³⁶

157. In *Secretary of Ministry of Finance vs. Masder Hossain*¹³⁷ the Appellate Division of the Supreme Court issued specific directives to implement the separation of the subordinate courts from the executive. They include establishment of a Judicial Service Commission; framing Rules providing for posting, promotion, grant of leave etc; establishment of a Judicial Pay Commission (JPC); ensuring primacy of the Supreme Court's views over executive in exercising control and discipline of the persons in the Judicial service; framing Rules to ensure essential conditions of judicial independence, security of tenure, salary and other benefits, etc.

158. In the light of the directives of the Supreme Court in the *Masder Hossain case*, steps have been taken to separate the subordinate judiciary completely from the executive. A number of Rules, namely (i) Bangladesh Judicial Service Commission Rules, 2007, (ii) Bangladesh Judicial Service (Pay Commission) Rules 2007, (iii) Bangladesh Judicial Service Commission (Construction of Service, Appointments in the Service and Suspension, Removal & Dismissal from the Service) Rules, 2007 and (iv) Bangladesh Judicial Service (Posting, Promotion, Grant of Leave, Control, Discipline and other Condition of Service) Rules, 2007 were enacted, and changes were brought into the Code of Criminal Procedure 1898 with a view to ensuring separation of the magistracy from the executive organs of the State.

Right to equality before courts and tribunals

159. The Constitution of Bangladesh guarantees equal protection of law as well as equality of all citizens before law. Moreover, the Constitution further provides that to enjoy the protection of the law, and to be treated in accordance with law is an inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh. The Constitution further provides that no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law.¹³⁸

Public hearing by a competent, independent and impartial tribunal

160. The Constitution provides that every person accused of a criminal offence will have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.¹³⁹

Criminal matters to be conducted publicly

161. In addition to the Constitution, the Code of Criminal Procedure, 1898 provides that criminal courts will be deemed to be open courts to which the public generally may have

¹³⁵ *Supra note 1*, art. 116A.

¹³⁶ *Ibid*, art. 22.

¹³⁷ [2000] 52 DLR (AD) 82.

¹³⁸ *Supra note 1*, arts. 27 & 31.

¹³⁹ *Ibid*, art. 35.

access. However, in certain cases, the presiding Judge or Magistrate may restrict public access in the interest of privacy, morality or decency.¹⁴⁰

Presumption of innocence

162. It is a fundamental principle of law of crimes that an accused person charged with a criminal offence will be presumed innocent until proved guilty and the accused is not required to prove his innocence. The prosecution is to prove beyond all reasonable doubts that the accused is guilty of the offence charged with. In addition, the Penal Code, 1860 provides that nothing is offence which is done by a child under nine years of age.¹⁴¹ Therefore, any proceedings against children below such age are not allowed to continue.¹⁴²

Protection against double jeopardy (*ne bis in idem*)

163. The Constitution provides that no person will be prosecuted and punished for the same offence more than once.¹⁴³ The Code of Criminal Procedure, 1898 has reinforced the constitutional protection against double jeopardy by providing that a person who has once been tried by a court of competent jurisdiction for an offence, and convicted or acquitted of, will not be liable to be tried again for the same offence.¹⁴⁴

Right of the accused to be promptly informed of the grounds of arrest and charges

164. The Constitution provides that that no person who is arrested will be detained in custody without being informed. The Code of Criminal Procedure, 1898 provides when a person is arrested he will have to be notified of the substance of the order of the arrest.¹⁴⁵

165. The Code of Criminal Procedure, 1898 provides that when a court indicts an accused person, the charges against him will be read over and explained to the accused and the accused will be asked whether he pleads guilty of the offence charged or claims to be tried.¹⁴⁶

Right of the accused to be tried without undue delay

166. The Constitution provides for speedy trial as a fundamental right.¹⁴⁷ The Code of Criminal Procedure, 1898 in line with the Constitution provides for specific time-limit for conclusion of criminal trial.¹⁴⁸

Right to legal assistance

167. The right of an accused person to legal assistance is a fundamental right guaranteed by the Constitution. The Constitution provides that an arrested or detained person will have the right to consult and be defended by a legal practitioner of his choice.¹⁴⁹ This right has been further recognized in the Code of Criminal Procedure, 1898 which provides that an accused person will have the right to be defended by a pleader.¹⁵⁰ The Supreme Court has

¹⁴⁰ *Supra note 11*, s. 352.

¹⁴¹ *Supra note 20*, s. 82.

¹⁴² *Labu Mia vs. State*, [2001] 53 DLR 218.

¹⁴³ *Supra note 1*, art. 35(2).

¹⁴⁴ *Supra note 11*, s. 403.

¹⁴⁵ *Ibid*, s. 56.

¹⁴⁶ *Ibid*, s. 265D.

¹⁴⁷ *Supra note 1*, art. 35(3).

¹⁴⁸ *Supra note 98*.

¹⁴⁹ *Supra note 1*, art. 33(1).

¹⁵⁰ *Supra note 11*, s. 340(1).

held that the arrested person must be given a reasonable opportunity to engage a counsel, and the counsel must be given a reasonable opportunity to defend him.¹⁵¹

168. The Legal Aid Services Act, 2000 provides for legal aid when the accused person is unable to appoint any counsel due to financial constraint. The said Act also authorizes establishment of an organization named National Legal Aid Services Organization.¹⁵²

169. In case of certain grave offences, there is provision that the GoB will provide legal assistance to the accused person. For example, the Legal Remembrance's Manual, 1969 provides that a pauper accused punished with capital sentence will be given legal assistance. The Supreme Court in a judgment held that every person charged with an offence punishable with death should have legal assistance during his trial and be provided with legal assistance from an advocate or pleader if the accused cannot afford to do so.¹⁵³

Right to defend oneself against criminal charge

170. The Code of criminal Procedure, 1898 provides that an accused person will be entitled to furnish his defence and adduce evidence he may have in support of his innocence.¹⁵⁴ Moreover, an accused person will be a competent witness for the defence and may give evidence to prove his innocence.¹⁵⁵

171. The Legal Remembrance's Manual, 1969 provides that engagement of pleaders to be made in time so that he/she could be able to study the case and render substantial assistance. The advocate should be given a brief similar to that prepared for public prosecutor. He/she should be supplied free of cost with copies of all the papers which an accused person is ordinarily allowed to have.¹⁵⁶

Right of the accused to be present in trials

172. The Code of Criminal Procedure, 1898 provides that the prosecutor will open a criminal case by describing the charges before the accused person. Furthermore, all evidence should be taken in the presence of the accused or in presence of his advocate as the case may be.¹⁵⁷

Right of the accused to examination of witness

173. The Code of Criminal Procedure, 1898 provides that if an accused person refuses to plead, or does not plead, or claims to be tried, the court will fix a date for examination of the witnesses.¹⁵⁸ The accused person or his/her advocate has the right to cross-examine the prosecution witnesses.¹⁵⁹

Right not to be compelled to testify against oneself or to confess

174. The Constitution of Bangladesh as well as other laws provides protection against self-incrimination. The right not to be compelled to be a witness against oneself is a

¹⁵¹ *Mouslemuddin Sikder vs. Chief Secretary*, [1956] 8 DLR 526.

¹⁵² The Legal Aid Services Act, 2000, s. 3(1). Also see paragraph 57.

¹⁵³ *The State vs. Purna Chandra Mondal*, [1970] 22 DLR 289.

¹⁵⁴ *Supra note* 11, s. 265I.

¹⁵⁵ *Ibid*, s. 340.

¹⁵⁶ *Supra note* 153.

¹⁵⁷ *Supra note* 11, ss. 265B & 353.

¹⁵⁸ *Supra note* 11, s. 265F.

¹⁵⁹ *Supra note* 56, s. 137.

constitutionally entrenched fundamental right.¹⁶⁰ Moreover, Code of Criminal Procedure, 1898 has reinforced the constitutional rights by providing that no influence, by means of any promise or threat or otherwise, will be used to induce an accused person to disclose or withhold any matter within his knowledge.¹⁶¹ The Evidence Act, 1872 contains provisions rendering forced confessions as legally inadmissible evidences. It provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the confession appears to the court to have been obtained by any inducement, threat or promise. Moreover, law forbids use of a confession made to a police-officer as evidence against the accused person making it. Besides, confession, made in the custody of a police-officer unless made in the immediate presence of a Magistrate, is not legally admissible as evidence against the accused person making it.¹⁶²

Right to free assistance of an interpreter

175. The Code of Criminal Procedure, 1898 provides that whenever any evidence is given in a language not understood by the accused, it will be interpreted to him in open court in a language understood by him. Moreover, if evidence is given in a language other than the language of the court which is not understood by the pleaders, such evidence will be interpreted to such pleaders.¹⁶³

176. The Code of Criminal Procedure, 1898 provides that the judgment in every criminal trial of original jurisdiction will be pronounced in the language of the court or in some other language which the accused or his pleader understands.¹⁶⁴

Right to have convictions reviewed by a higher court/tribunal

177. The right to appeal against convictions is available in the legal system of Bangladesh. The Constitution provides that the Appellate Division of the Supreme Court will have the power to hear and determine appeals from judgments, decrees, orders or sentences of the HCD.¹⁶⁵ The Code of Criminal Procedure, 1898 also contains extensive provisions on appeal. In Bangladesh an appeal may lie on a matter of fact as well as on a matter of law.¹⁶⁶

178. In cases when any person is convicted by a Magistrate of the second or third class may appeal to the Chief Judicial Magistrate. An accused person convicted by a Sessions Judge or an Additional Sessions Judge may appeal to the HCD. However, provisions relating to appeal will not be applicable to an accused person who has pleaded guilty and has been convicted by a Court of Sessions or a Metropolitan Magistrate or Magistrate of the First Class on such plea (except to the extent of legality of the sentence).¹⁶⁷

179. In addition to the appeal, the Sessions Court and the HCD have been conferred criminal revisional power. The Code of Criminal Procedure, 1898 empowers the HCD and the Court of Sessions to call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself as to the correctness, legality or

¹⁶⁰ *Supra note 1*, art. 35(4).

¹⁶¹ *Supra note 11*, s. 343.

¹⁶² *Supra note 56*, ss.24-26.

¹⁶³ *Supra note 11*, s. 361(1).

¹⁶⁴ *Ibid*, s. 366(1).

¹⁶⁵ *Supra note 1* art. 105.

¹⁶⁶ *Supra note 11*, s. 418.

¹⁶⁷ *Ibid*, ss. 407, 410 & 412.

propriety of any findings, sentences or orders and as to the regularity of any proceedings of such inferior Court.¹⁶⁸

Number of pending and disposed of cases

180. During 2009-2013, a total number of 11,59,523 civil suits were instituted in the Civil Courts of subordinate judiciary and 6,33,957 civil suits were disposed of while the number of pending civil suits by the end of 2013 was 10,18,623. During the same period, a total number of 11,14,538 cases were filed before the Courts of Sessions and 8,43,594 cases were disposed of while the numbers pending cases before the Courts of Session by the end of 2013 was 4,63,626. Moreover, Judicial Magistracy and Metropolitan Magistracy accepted filing of 37,69,807 criminal cases and disposed of 3,21,98,99 cases during 2009-2013. The number of criminal cases pending before the Magistracy during the same period was 9,27,435.

Article 15

Non-retrospective application of the penal laws

181. The principle of non-retroactivity of the penal laws is a fundamental right. In this regard, the Constitution provides that no person will be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.¹⁶⁹

Exception to the principle of non-retroactivity

182. The Constitution, however, makes an exception to the principle of non-retroactivity of the penal laws in relation to detention, prosecution or punishment of a person who is a member of any armed or defence or auxiliary forces or any individual, group of individuals or organization, or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law.¹⁷⁰

183. In practice, the application of the aforesaid exception is limited to the trials of the perpetrators of genocide, war crimes, crimes against humanity and other international crimes committed during the Liberation War of 1971- a long cherished aspiration of the citizens of Bangladesh. It is one of the most heinous genocides of the 20th century the perpetrators of which are currently being tried by a competent tribunal constituted under the International Crimes Tribunal Act, 1973. The International Crimes Tribunal, Bangladesh was established pursuant to the complementarity principle of the Rome Statute of the International Criminal Court. Bangladesh acceded to the Rome Statute on 23 March 2010. It deserves mention that Bangladesh had also acceded to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 on 5 October 1998.

184. The trials under the International Crimes Tribunal Act, 1973 are being conducted in the open courts by the independent judges witnessed by media and independent observers. The prosecution and defence procedures have been made digitalized. The Rules of Procedures of the Tribunals provide for victim and witness protection measures.

¹⁶⁸ *Ibid*, ss. 435 & 439.

¹⁶⁹ *Supra note 1*, art. 35(1).

¹⁷⁰ *Ibid*, art. 47(3).

185. At present, there are 10 pending cases under the International Crimes Tribunal Act, 1973. Of them, 05 cases are pending before the International Crimes Tribunal-1 and 05 cases are pending before the International Crimes Tribunal-2. Until now, altogether 18 cases have been disposed of by the International Crimes Tribunals.

Article 16

Legal personality of every born human being

186. In Bangladesh, every born human being has a legal status as a person in the eye of law. The Constitution specifically guarantees respect for the dignity and worth of the human person.¹⁷¹

Legal personality of the unborn child

187. In some cases, the laws of Bangladesh recognize the legal personality of an unborn child as well. The Transfer of Property Act, 1882 recognizes and protects the proprietary rights of an unborn child.¹⁷²

188. The Penal Code 1860 contains a number of provisions aiming for punishing offences relating to unborn child.¹⁷³ The Penal Code provides that whoever before the birth of any child does any act with the intention of preventing that child from being born alive or causing it to die after its birth (if such act is not done in good faith for the purpose of saving the life of the mother) will be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both. Moreover, the said law also provides that whoever causes death of a quick unborn child (under such circumstances that if he thereby would have caused death he would be guilty of culpable homicide) will be punished with imprisonment of either description for a term which may extend to ten years, and will also be liable to fine.¹⁷⁴

Birth registration

189. The Birth and Death Registration Act, 2004 provides that the Registrar will register the fact of birth of every person without distinction as to religion, race, sex, colour etc.¹⁷⁵ The GoB is fully committed to register births of children born within the territory of Bangladesh, including the refugees.

Article 17

Protection against interference with privacy, family, home or correspondence

190. The Constitution of Bangladesh guarantees protection of home and correspondence. It provides that every citizen will have the right: (a) to be secured in his home against entry, search and seizure, and (b) to the privacy of his correspondence and other means of communication subject to any reasonable restrictions imposed by law in the interest of the security of the state, public order, public mortality or public health.¹⁷⁶ In a number of cases, the Supreme Court of Bangladesh has reaffirmed the right to be secured in one's home

¹⁷¹ *Supra note 1*, art. 11.

¹⁷² The Transfer of Property Act, 1882, s. 13.

¹⁷³ *Supra note 20*, ss. 312-318.

¹⁷⁴ *Ibid*, ss. 315 & 316.

¹⁷⁵ The Birth and Death Registration Act, 2004, s. 5(1).

¹⁷⁶ *Supra note 1*, art. 43.

against entry, search and seizure. Particularly, in *Government of Bangladesh and Others vs Hussain Mohammad Ershad*, the Supreme Court has reaffirmed the right of a person to be secured in his home against entry, search and seizure as per article 43(a) of the Constitution.¹⁷⁷

Lawful search by the authorities

191. In furtherance of the Constitutional protection against unlawful entry, search and seizure; the Code of Criminal Procedure, 1898 lays down the lawful procedure for searching a place. Search can only be conducted with a duly issued search warrant by a competent Court under section 96 the said Code. As regards civil cases, a dwelling-house will not be entered after sunset and before sunrise for the purpose of making an arrest.¹⁷⁸

Non-interference with personal communication

192. The Constitution guarantees that personal communication of a citizen will not be interfered by anyone. The Telecommunication Act, 2001 provides that a person commits an offence if he intentionally listens to a telephone conversation between two other persons, and for such offence he will be liable to be sentenced to imprisonment for a term not exceeding six months or to a fine not exceeding fifty thousand taka or to both.¹⁷⁹

Protection for personal honour and reputation

193. The Pornography control Act, 2012 provides that if a person harms the social or personal reputation of a person through pornographies or threaten anyone to procure money or torture any person mentally through any video captured with or without knowledge of that person will be punished with rigorous imprisonment for five years and with fine of two hundred thousand taka.¹⁸⁰

Penalty for interference with the rights to home and correspondence

194. The Penal Code, 1860 has incorporated a number of penal provisions in order to punish the offences relating to criminal trespass. The Penal Code provides that whoever enters into or upon property in the possession of another with intent to commit an offence or intimidate, insult any person in possession of such property will be punished with imprisonment up to three months or with fine up to five hundred taka or with both. Criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property has been made punishable with imprisonment for a term up to one year or with fine up to one thousand taka or both. Furthermore, offences like trespass amounting to house-breaking; house breaking by night or house breaking by night for causing hurt, assault or wrongful restraint; and trespass for committing any offences punishable with death have been made punishable with imprisonments of different descriptions and also fine.¹⁸¹

¹⁷⁷ *The Government of Bangladesh and Others vs. Hussain Mohammad Ershad*, [2000] 52 DLR (AD) 162.

¹⁷⁸ *Supra note* 110, s. 55(1).

¹⁷⁹ The Bangladesh Telecommunication Act, 2001, s. 71.

¹⁸⁰ *Supra note* 22, s. 8(2).

¹⁸¹ *Supra note* 20, ss. 441, 442, 445, 447, 448, 449, 453, 456 & 458.

Article 18

Freedom of thought, conscience and religion

195. The right to freedom of thought, conscience has been unconditionally guaranteed to all persons residing within the jurisdiction of Bangladesh.¹⁸² In addition, the Constitution provides that every citizen of Bangladesh has the freedom to adopt a religion or belief of his own choice. Moreover, every citizen of Bangladesh has the right to profess, practice or propagate any religion. Every religious community or denomination has the right to establish, maintain and manage its religious institutions.¹⁸³

Secularism and State religion

196. The Constitution has incorporated secularism as one of the guiding principles to be followed by the GoB in performing its functions, duties and etc. The Constitution provides that the principles of nationalism, socialism, democracy and secularism constitute the fundamental principles of state policy. The Constitution further provides that the principle of secularism will be realized by (i) the elimination of communalism in all its forms, (ii) the granting by the State of political status in favour of any religion, (iii) the abuse of religion for political purposes, and (iv) any discrimination against, or persecution of, persons practicing a particular religion.¹⁸⁴

197. Along these lines, the Constitution provides that the State religion of the Republic is Islam, and also recognizes equal status and equal right in respect of practising Hindu, Buddhist, Christian or other religions. The GoB actively promotes non-communalism and peaceful coexistence, including through propagation of a 'Culture of Peace and Non-violence'. The GoB also maintains a 'zero tolerance' approach to any form of violence and discrimination against the religious minorities under any pretext.

Religious education

198. The Constitution provides that no person attending any educational institution will be required to receive religious instruction, or to take part in or attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.¹⁸⁵ The GoB understands that religious and moral education is important for building a just and conscience society based on morality and virtues. The National Education Policy, 2010 provides that the GoB will take measures so that children are imparted suitable religious and moral education.

Permissible restrictions on free exercise of religion

199. The right to freedom of religion is subject to law, public order and morality. The Supreme Court of Bangladesh while explaining the aforesaid restrictions observed that the expression subject to law does not mean that the right to profess, practice and propagating can be taken away by law; it merely means that Parliament may by law regulate the manner of professing, practicing and propagating religious beliefs and working of religious institutions.¹⁸⁶ The Supreme Court in another case held that the right to profess, practice and propagate under article 41 (1) might not be regulated unless they were contrary to public

¹⁸² *Supra note 1*, art. 39(1).

¹⁸³ *Ibid*, art. 41(1).

¹⁸⁴ *Ibid*, arts. 8 & 12.

¹⁸⁵ *Ibid*, art. 41(2).

¹⁸⁶ *Jibendra Kishore vs. East Pakistan*, [1957] 9 DLR 21.

health, public order or morality or economic, commercial or political activities associated with religious practices.¹⁸⁷

Punishment for offences against the free exercise of religion

200. The GoB is fully committed to preventing any forms of communal violence or religious riot or discontents in the country. The Penal Code, 1860, in a number of provisions, provides for punishment of any acts amounting to destruction of religious rights. The penal provisions incorporated in the Penal Code for this purpose include: (i) destroying, damaging or defiling any places of worship, or any objects held sacred by any class of persons with the intention of insulting the religion of any class of persons, (ii) voluntarily causing disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, (iii) hurting the religious sentiments of any person by uttering any word or making any sound in the hearing of that person or making any gesture in the sight of that person or places any object in the sight of that person, (iv) hurting the feelings of any person by committing any trespass in any place of worship or on any place of sculpture or any place of funeral rites or for the remains of the dead, offering any indignity to any human corpse, causing disturbance to any persons assembled for the performance of funeral ceremonies, (v) outraging the feelings of any class of citizens by words, either spoken or written, or by visible representation of insults to the religion or religious beliefs of that class.¹⁸⁸

Religious welfare

201. There are 3 minority religious institutions currently operating under the Ministry of Religious Affairs. These are: a) Hindu Religious Welfare Trust, b) Buddhist Religious Welfare Trust, and c) Christian Religious Welfare Trust. The functions of these trusts include promotion of the concerned religious practices, giving financial aid for proper administration and maintenance of the religious institutions, taking necessary steps to protect the sanctity of the religious sites and institutions, and using the funds given to the trusts for the development of the concerned religious communities. During 2014-2015, the allocated budget for these three institutions is as follows: 2,86,30,000 taka for the Hindu Religious Welfare Trust, 1,60,000 taka for the Buddhist Religious Welfare Trust, and 15,00,000 for the Christian Religious Welfare Trust.

Article 19

202. The Constitution guarantees the right to freedom of expression and speech as fundamental rights of the citizens of Bangladesh. The Constitution categorically provides that the right of every citizen to freedom of speech and expression and the freedom of the press are guaranteed.¹⁸⁹ The right to freedom of expression and speech includes the right to express freely one's conviction and opinion on any matter orally or by writing, printing or any other mode related therewith.

Press and the broadcasting media

203. In order to strengthen the freedom of press, the GoB has established national institutions like the Press Council, Bangladesh News Agency and others. These institutions

¹⁸⁷ *Dewanbagh Darbar Sharif vs. Bangladesh*, [2002] 54 DLR 413.

¹⁸⁸ *Supra note 20*, ss. 295, 295A, 296, 297 & 298.

¹⁸⁹ *Supra note 1*, art. 39(2).

ensure that the news agencies and the media can function freely and remain unconstrained in disseminating news and information.

204. The publication of newspaper and ownership of printing press is regulated by the Printing Presses and Publications (Declaration and Registration) Act, 1973. The said Act provides that every book should contain the name of the printer, the place of printing, the name of the publisher and the place of publication and every newspaper will contain the name of the editor of the newspaper printed clearly.¹⁹⁰

205. In an efforts to encourage a vibrant media and free flow of information across the country, The GoB adopted the Broadcasting Policy 2014 for the development of the broadcasting media as well as protecting the interest of the stakeholders. The GoB is currently taking measures to draft a Broadcasting Act under the purview of the policy in consultation with all relevant stakeholders, including media personnel and experts.

Control on freedom of expression, of speech and of the press

206. The Constitution of Bangladesh provides that the right to freedom of expression and speech is subject to reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.¹⁹¹ However, in practice the restrictions as mentioned in the Constitution are not often strictly implemented – the press has the freedom to print or not to print any matter it chooses and the government cannot interfere.¹⁹²

207. The Prevention of Cruelty to Women and Children Act, 2000 has made publishing any news or information revealing or disclosing the identity of a woman or child victim in newspapers or in any news punishable.¹⁹³

208. In exercise of freedom of speech and expression, it is expected that no person would interfere with the administration of justice or degrade the prestige or authority of the court.¹⁹⁴ The Constitution empowers the Supreme Court to investigate and punish any act amounting to contempt of itself.¹⁹⁵

Legislation on libel and defamation

209. The Penal Code, 1860 provides that whoever defames¹⁹⁶ another person will be punished with simple imprisonment for a term up to two years, or with fine, or with both. Printing or engraving defamatory matters has been made punishable with simple imprisonment for a term up to two years, or with fine. Furthermore, sale of printed or engraved substance containing defamatory matters will be punished with simple imprisonment for a term up to two years, or with fine.¹⁹⁷

210. In order to safeguard indecency and public morality, the Pornography Control Act, 2012 has made act of taking video, still picture or motion picture of a child without his/her knowledge for the purpose of pornography punishable. Moreover, the Information and Communication Technology Act, 2006 provides that if any person deliberately publishes or

¹⁹⁰ The Printing Presses and Publications (Declaration and Registration) Act, 1973, ss. 3 & 5.

¹⁹¹ *Supra note 1*, art. 39(2).

¹⁹² *Begum Zebunnissa vs. Pakistan*, (1958) 10 DLR 44.

¹⁹³ *Supra note 21*, s. 14.

¹⁹⁴ *Reazudding vs. Mahmudur Rahman*, [2011] 63 DLR (AD) 29.

¹⁹⁵ *Supra note 1*, art. 108.

¹⁹⁶ *AKM Emanul Haque vs. Mizanur Rahman & Others*, [1994] 14 BLD 201.

¹⁹⁷ *Supra note 20*, ss. 500-502.

transmits or causes to be published or transmitted in the website or in electronic form any material which is fake and obscene or its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it will be guilty of an offence.¹⁹⁸

211. The Bangladesh Telecommunication Regulatory Commission has an important role in preventing the use of telecom network and internet for illegal activities. In this regard, the Bangladesh Telecommunication Act, 2001 provides that if a person offers another person engaged in the operation of a telecommunication apparatus or radio apparatus to send an obscene, threatening or grossly insulting message will be punished with imprisonment up to six months and fine.¹⁹⁹

Safeguards as to arrest of journalists for defamation

212. The provisions of Code of Criminal Procedure, 1898 regarding issuance of warrant of arrest for defamation cases has been made inapplicable to the effect that journalists would not be arrested or harassed without being notified well ahead about the allegations brought against them.

213. During 2009-2014, 82 cases were lodged in different police station for violence against journalists and of them 67 were investigated and 15 cases are still under investigation.

Right to information

214. The GoB with the view to ensuring the citizens' right to information has enacted the Right to Information Act, 2009. The said law provides that every citizen has the right to seek information from any governmental or statutory authority and such an authority will be bound to provide information when requested by a citizen. In addition, the Right Information Act, 2009 obliges every governmental or statutory authority to publish all information in an indexed manner which is easily accessible to the citizens regarding any decision taken, proceeding or activity executed or proposed.²⁰⁰

Article 20

Non-interference as international policy

215. Renunciation of the use of force in international relations as well as general and complete disarmament are included in the constitutionally mandated objectives that the GoB always strives for. With that end in view, the Constitution provides that the GoB should maintain its international relations on the basis of non-interference in the internal affairs of other countries, respect for national sovereignty and equality, peaceful settlement of international disputes and respect for international law and the principles enunciated in the Charter of the United Nations.²⁰¹

Legislative measures prohibiting propaganda for war

216. Propaganda for war and any kind of advocacy of national, religious or racial hatred that constitutes incitement to discrimination, hostility or violence have been penalized in Bangladesh. The Penal Code, 1860 provides that whoever wages war against Bangladesh or

¹⁹⁸ The Information and Communication Technology Act, 2006, s. 57.

¹⁹⁹ *Supra note* 179, s. 69.

²⁰⁰ The Right to Information Act, 2009, ss. 4 & 6.

²⁰¹ *Supra note* 1, art. 25.

attempts to wage such war, or abets the waging of such war, will be punished with death or imprisonment for life and also fine. The Penal Code also provides that waging war against any Asiatic power in alliance with Bangladesh will be punished with imprisonment and fine.²⁰²

Prohibition of advocacy of national, racial or religious hatred

217. Inciting or promoting feelings of enmity or hatred between different classes of the citizens of by words either spoken or written, by signs, by visible representations, or any other means has been made punishable by the Penal Code, 1860 with imprisonment up to two years or with fine.²⁰³

Article 21

Constitutional guarantee of peaceful assembly

218. Right to peaceful assembly is a fundamental right guaranteed by the Constitution for the citizens of Bangladesh. The Constitution provides that every citizen will have the right to assemble and to participate in public meetings and processions peacefully and without arms. The freedom of assembly is not an absolute right and is made subject to reasonable restrictions imposed by law in the interests of public order or public health.²⁰⁴

Requirement for peaceful assembly

219. To convene any public meeting or assembly, permission is required from the concerned authority of the GoB. The Police Act, 1861 provides that the District Superintendent or Assistant District Superintendent of Police on being satisfied that any number of persons want to convene an assembly in any public place which, if uncontrolled, might cause a breach of the peace may require that such persons should obtain a prior license/approval. Such a license may specify the names of the licensees and define the conditions on which such assembly or procession may be permitted to take place.²⁰⁵

Restrictions as regards right to assembly

220. As has been provided in the Constitution, the right to freedom of assembly may be restricted in certain cases. The provisions of the Code of Criminal Procedure, 1898 authorize a Magistrate to issue temporary orders to prohibit meetings, processions in order to prevent obstructions, annoyance or injury, danger to human life, health and safety, disturbance of the public tranquility, riot, or affray.²⁰⁶ In Metropolitan Area, the Police Commissioner may prohibit any assembly or procession whenever and for so long as he considers such prohibition to be necessary for the preservation of the public peace or safety.²⁰⁷ As regards imposing restrictions on the freedom of assembly, the Supreme Court of Bangladesh has remarked that where an order banning public meetings does not disclose any nexus between the prohibited act and the apprehension of danger to public order, the

²⁰² *Supra note* 20, ss. 121 & 125.

²⁰³ *Ibid*, s. 153A.

²⁰⁴ *Supra note* 1, art. 37.

²⁰⁵ The Police Act, 1861, s. 30.

²⁰⁶ *Supra note* 11, s. 144.

²⁰⁷ The Dhaka Metropolitan Police Ordinance, 1976, s. 29.

order would be held inconsistent with the freedom of assembly guaranteed in the Constitution.²⁰⁸

221. An Executive Magistrate or a police officer may order that an unlawful assembly likely to cause a disturbance of the public peace be dispersed, and if necessary by using reasonable force.²⁰⁹ In this regard, the Supreme Court of Bangladesh has observed that laws prescribing punishment for unlawful assembly or authorizing the use of force to disperse an unlawful assembly to maintain public order or public health are not inconsistent with the provisions of article 37 of the Constitution.

222. According to the Penal Code, 1860, an assembly of five or more persons could be designated as an “unlawful assembly” if the common object of the assembly is, by criminal force, to interfere with, exercise of the lawful power of such public servant, execution of any legal process, committing mischief or criminal trespass or other offences etc. A member of an unlawful assembly is to be punished with imprisonment of either description for a term up to six months, or with fine.²¹⁰

223. As regards the question of legality of *Hartal* or strike the Supreme Court of Bangladesh has observed that *Hartal* or strike *per se* enforced through persuasion unaccompanied by threat, intimidation, force or violence is a democratically recognized right of the citizens guaranteed under the constitution.²¹¹

Article 22

Right to freedom of association

224. The Constitution of Bangladesh recognizes the right to freedom of association by providing that every citizen will have the right to form associations or unions. This right includes the right to form political parties, trade unions and others only subject to reasonable restrictions imposed by law in the interests of morality or public order.

225. The Constitution provides that a person will not have the right to form, or be a member of the an association or union if- (i) it is formed for the purposes of destroying the religious, social and communal harmony among the citizen; (ii) it is formed for the purposes of creating discrimination among the citizens, on the ground of religion, race, caste, sex, place of birth or language; (iii) it is formed for the purposes of organizing terrorist acts or militant activities against the State or the citizens or any other country; (iv) its formation and objects are inconsistent with the Constitution.²¹²

Right to organize associations for political purpose

226. The Political Parties Ordinance, 1978 provides for procedure for formation and regulation of political parties in Bangladesh subject to the condition that no political party will be formed with the object of propagating opinion, or engaged in activities prejudicial to the sovereignty, integrity or security of Bangladesh. Moreover, a person will not be allowed to form or associate with a political party solely funded by foreign aid. The said Act further prohibits that a political party will maintain any secret or underground organization, group

²⁰⁸ *Oali Ahad vs. Bangladesh*, [1974] 26 DLR 376.

²⁰⁹ *Supra* note 11, ss. 127-132.

²¹⁰ *Supra* note 20, ss. 141 & 143.

²¹¹ *Abdul Mannan Bhuiyan vs. State*, [2008] 60 DLR (AD) 49.

²¹² *Supra* note 1, art. 38.

or agency or engage in any secret or underground activity including any armed cadre, volunteer corps likely to operate like a disciplined force.²¹³

227. The Political Parties Ordinance, 1978 provides that where the Government is of the opinion that a political party has been formed or is operating in unlawful manner, it may refer the matter to the HCD for final determination and the concerned political party will stand dissolved and its properties and funds will be forfeited if the HCD determines so.²¹⁴ At present, there are 40 registered political parties in Bangladesh.

Right to form trade unions

228. Bangladesh is a signatory to the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Constitution of Bangladesh also recognizes the right to form and be a member of trade union subject to regulation as enumerated by the laws related thereto. In this regard, the Supreme Court of Bangladesh has held that the right to form an association or union essentially embraces the right to form a trade union.²¹⁵

229. The Labour Act, 2006 specifically deals with formation and regulation of the trade unions in Bangladesh. The Labour Act, 2006 provides that all workers, without distinction whatsoever, will have the right to form trade union. The Labour Act, 2006 prohibits functions of an unregistered trade union.²¹⁶

230. The Labour Act, 2006 lays down certain restrictions regarding the activities of the trade unions. The said law provides that no worker or trade union of workers and no person acting on behalf of such trade union will influence any person to become, or refrain from becoming or continuing as a member or officer of a trade union by way of intimidation, coercion or inducement.²¹⁷ As part of the ongoing labour reform initiatives, a total of 203 trade unions in ready-made garments sector have been registered by the Department of Labour during January 2013-July 2014.

Article 23

Right to marriage

231. In Bangladesh, the right to marriage is mainly governed by personal laws whenever the parties to a marriage profess the same religion. Statutory laws apply in other cases where the parties to a marriage profess different religions.

232. According to Islamic law, marriage is a civil contract between men and women of marriageable age as prescribed by the law. Under the Muslim law if any adult sane person does not consent to marriage or the consent is obtained by coercion or fraud, there will be no marriage at all.²¹⁸ In Bangladesh, a Muslim marriage has to be registered.²¹⁹ Offer and acceptance in front of the adult and sane witnesses are the pre-requisite of a Muslim marriage in Bangladesh. According to the Christian Marriage Act, 1872, marriage between the Christians can only be solemnized after a notice in writing to the Minister of

²¹³ The Political Parties Ordinance, 1978, ss. 2, 3 & 4.

²¹⁴ *Ibid*, s. 6.

²¹⁵ *Aircraft Engineers vs. Registrar, Trade Union*, [1993] 45 DLR (AD) 122.

²¹⁶ The Labour Act, 2006, ss. 176 & 192.

²¹⁷ *Ibid*, s. 196.

²¹⁸ *Dr. A.L.M. Abdullah vs. Rokeya Khatoon and Another*, [1969] 21 DLR 213.

²¹⁹ The Muslim Marriages and Divorces (Registration) Act, 1974, s. 3.

Religion/Registrar and submission of a declaration of belief and before at least two witnesses. Registration of Christian marriage is compulsory.²²⁰

233. Among the Hindus, marriage is governed by the Hindu personal law. The Hindu Widows Re-Marriage Act, 1856 provides that no marriage contracted between Hindus will be invalid and the issue of no such marriage will be illegitimate only because the woman had been previously married or betrothed to another person who was dead at the time of such marriage.²²¹ The Hindu Marriage Registration Act, 2012 has made provisions for registration of Hindu marriages, albeit on optional basis.

234. In Bangladesh, there are legal provisions allowing for inter-religious marriage. The Special Marriage Act, 1872 provides that marriages may be solemnized under this law between persons of different religious faiths.²²² Under the Special Marriage Act, 1872, marriage may be solemnized between persons either of whom may be a Hindu, Sikh, Buddhist or Jain, or a person who does not profess the Christian, Hindu, Muslim, Jewish, Buddhist, Sikh or Jain faiths.

Minimum marriageable age for men and women

235. On 5 October 1998, Bangladesh acceded to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962. The minimum marriageable age for men and women in Bangladesh is 21 years and 18 years respectively. The Child Marriage Restraint Act, 1929 provides whoever performs, conducts or directs any child marriage will be punished with simple imprisonment up to one month, or with fine.²²³ The GoB is currently working on enhancing the penal provision in the law.

Acquiring nationality by marriage

236. The law permits acquisition of nationality by way of marriage to a Bangladeshi citizen. The Citizenship Act, 1951 provides that a woman who has been married to a citizen of Bangladesh or to a person who but for his death would have been a citizen of Bangladesh will be entitled to be registered as a citizen of Bangladesh subject to procedural formalities.²²⁴

Right to dissolution of marriage

237. Dissolution of marriage is also governed by the personal laws of the respective religious communities of Bangladesh. In addition, statutory laws also have provisions regarding dissolution of marriage as the case may be.

238. According to Muslim law, marriage may be dissolved by the mutual consent of the husband and wife without the intervention of a court. Moreover, a Muslim woman is entitled to obtain a decree for the dissolution of marriage on certain grounds.²²⁵

239. A Muslim wife can divorce her husband without his consent under a contract made either before or after the marriage.²²⁶

²²⁰ The Christian Marriage Act, 1872, s. 27.

²²¹ The Hindu Widows Re-Marriage Act, 1856, s. 1.

²²² The Special Marriage Act, 1872, s. 2.

²²³ The Child Marriage Restraint Act, 1929, ss. 4-5.

²²⁴ *Supra note* 18, s. 10 (2).

²²⁵ The Dissolution of Muslim Marriages Act, 1939, s. 2.

²²⁶ The Muslim Family Law Ordinance, 1961, s. 8.

240. The Divorce Act, 1869 provides for dissolution of marriage of the Christian persons. A Christian husband or wife can file a petition for divorce on the grounds of adultery. A Christian husband or wife can have his/her marriage annulled on other grounds.²²⁷

241. The Hindu personal law allows a Hindu woman to stay separately from her husband on certain grounds of any justifiable cause.²²⁸

Protection of the child's interest at the dissolution of a marriage

242. At the time of the dissolution of a marriage, the Court in appropriate case may pass an order for appointment of a guardian for a child.²²⁹ A guardian when so appointed is under obligation to take care of the child's well-being, health and education etc.²³⁰

Article 24

Rights of the child in the Constitution

243. The Constitution makes specific reference to children in two separate articles. Article 17 of the Constitution provides for establishing a uniform, mass oriented and universal system of education and extending free and compulsory education to all children. Article 28 of the Constitution allows the legislature to enact special provisions in favour of children.

Birth registration and right to have a name

244. The Birth and Death Registration Act, 2004 provides for registration of every child born in Bangladesh irrespective of race, colour, sex, language, religion, national or social origin, property or birth. Birth registration is to be completed within 45 days of birth of a child. The said Act provides that before registration of birth the child has to be given a name.

Right to acquire a nationality

245. Every child born in Bangladesh is a citizen of Bangladesh if one of his parents is a citizen of Bangladesh at the time of his birth.²³¹

Minimum age of criminal responsibility

246. The Penal Code 1860 provides that a child under 9 years of age has no criminal responsibility (MACR). However, the criminal responsibility of a child above 9 years of age and under 12 years of age is to be determined having regard to maturity of understanding to adjudge the nature and consequences of his conduct.²³² In case a child becomes subject to criminal liability, in such cases that child cannot be sentenced to death, imprisonment for life or even imprisonment of any length.²³³

²²⁷ The Divorce Act, 1869, ss. 10 & 18.

²²⁸ The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, s. 2.

²²⁹ The Guardians and Wards Act, 1890, s. 7.

²³⁰ *Ibid*, s. 24.

²³¹ *Supra note* 18, s. 3.

²³² *Supra note* 20, ss. 82 & 83.

²³³ *Supra note* 43.

Right to legal assistance

247. The Children Act, 2013 provides that it is the duty of the probation officer to ensure legal representation of the child including legal aid through the District Legal Aid Committee. Moreover, no court should proceed with the trial of a child without ensuring legal representation on his behalf. If no legal counsel is appointed on behalf of a child, the juvenile court will appoint a lawyer from the panel of advocates of the District Legal Aid Committee or of the Supreme Court to conduct the case.²³⁴ If the lawyer engaged for the child is regularly absent from the court without reasonable excuse, or his negligence in conducting the case is apparent, the juvenile court may release the lawyer and may treat his behaviour as misconduct and report him to the Chairman of the District Legal Aid Committee, the Bar Council and the concerned Bar Association.²³⁵

Right to speedy trial

248. The juvenile court is supposed to complete a trial within 360 days of the child's first appearance before the court. If the trial cannot be completed within this time limit, the court will be given another 60 days as grace period to complete the trial. If the trial is not concluded within the extended time limit, the court will discharge the child. Any appeal or revision has to be disposed of within 60 days from the date it will be filed.²³⁶

Avoidance of detention before and during the trial

249. The Children Act, 2013 expressly provides that pending any trial a child should be kept in safe custody as a measure of last resort and for the shortest possible period of time. If it is necessary to keep the child in safe custody for a longer period, the juvenile court may order to send the child to the certified institutes situated within a reasonable distance from the court. Moreover, the Children Act, 2013 provides that no child below the age of 9 years should be arrested under this Act. No child should be arrested or detained under any law relating to preventive detention. When a child is arrested, the concerned police officer should immediately inform the juvenile police officer of the reasons for such arrest and other details. The child should be taken to the nearest safe home if there is no safe place in the police station. A child guilty of an offence which is punishable with death or imprisonment for life should be detained in a Child Development Centre (CDC) for a period not less than 3 years and not more than 10 years.²³⁷

250. A child found guilty of an offence not punishable with death or life imprisonment may be detained in Child Development Centre (CDC) for a maximum period of three years. A child who has not been accused of murder, rape, robbery or drug dealing may be released as soon as he reaches 18 years of age if there are positive changes in his behavior, character and personality. However, a child accused of offences like murder, rape, robbery or drug dealing may be transferred from CDC to Jail even before the trial is complete when he reaches 18 years of age. If a child in conflict with law reaches the age of 18 before completion of trial, the juvenile court after completion of the trial may send him directly to jail. The juvenile court may order that a child is to be discharged or released on probation instead of being detained in CDC. Alternatively, the government may also release a child from CDC or certified institutes with or without condition.²³⁸

²³⁴ *Ibid*, ss. 6 & 55(3).

²³⁵ *Ibid*, s. 57.

²³⁶ *Ibid*, ss. 32 & 41.

²³⁷ *Ibid*, ss. 26, 44 & 34(1).

²³⁸ *Ibid*, ss. 34 & 35.

Prevention of child labour

251. Bangladesh signed the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) on 12 March 2001. The GoB has taken numerous steps to reduce child labour in Bangladesh. In particular, the Labour Act, 2006 provides that employment of children below the age of 14 is prohibited, and that the minimum age for admission to employment is 14. However, as a matter of exception, the Labour Act, 2006 provides that a child who has completed 12 years of age will be engaged in such type of works as not to interfere with the child's education.²³⁹ The GoB has ascertained that certain thrust sectors, such as ready-made garments, were entirely free from child labour. The GoB is also implementing projects with its own resources towards eliminating child labour by, inter alia, taking children back to schools.

Measures against child prostitution

252. The Prevention of Cruelty to Women and Children Act, 2000 provides that trafficking in girl child with the intention of engaging her in prostitution will be punishable with death sentence or life imprisonment or rigorous imprisonment.²⁴⁰ The Prevention and Suppression of Human Trafficking Act, 2012 provides punishment for trafficking in girl child with the intention of engaging her in prostitution.²⁴¹

Right to education

253. The Constitution of Bangladesh declares 'education' as one of the basic necessities of life. The Constitution further provides that the State will adopt effective measures for the purpose of establishing a uniform, mass oriented and universal system of education and extending free and compulsory education to all children to such stages as may be determined by law.²⁴² The Compulsory Primary Education Act, 1990 has made the five-year primary education program free in all governmental schools. The GoB is currently working on making compulsory education up to Grade 8 pursuant to the National Education Policy, 2010.

254. The GoB has adopted a number of policies in order to ensure primary education for all children. The National Child Labour Elimination Policy, 2010 has been adopted with the aims for ensuring compulsory and free primary education for all children who are engaged as child-workers by 2016. In addition to that, the National Children Policy, 2011 particularly aims at achieving, among others, the following objectives: (i) to bring all children under secondary education, (ii) to provide quality education, vocational and technical education, (iii) to increase the level of proficiency in English as a foreign language in the primary and secondary levels, (iv) To prohibit all forms of physical and mental punishment in educational institution, (v) to ensure equal opportunity of higher education for all, (vi) to take initiatives for raising the quality and standard of education, (vii) to take steps to make available child friendly books, magazine, and papers to children, and (viii) to ensure regular attendance of the female children in educational institutions.

²³⁹ *Supra* note 216, s. 44.

²⁴⁰ *Supra* note 21, s. 5(1).

²⁴¹ *Ibid*, s. 11.

²⁴² *Supra* note 1, arts. 15 & 17(a).

Article 25

Right of citizens to participate in public affairs

255. The Constitution provides that all powers in the Republic belong to the people, and their exercise on behalf of the people will be effected only under, and by the authority of, the Constitution. The Constitution declares that Bangladesh will be a democracy in which effective participation by the people through their elected representatives in administration at all levels will be ensured.²⁴³

256. The Parliament due to its plenary powers of legislation is the most important national institution for promotion and protection of human rights. The Parliament consists of 350 members elected from single territorial constituencies by direct election.²⁴⁴ Since 2009, the Parliament passed many legislations addressing the political, socio-economic and cultural rights of the people, especially women, children, ethnic minorities, workers, socially marginalized people etc. These national legislations have been enacted with a view to better realization of international human rights obligations.

Electoral system

257. The Constitution itself lays down that in order to be enrolled as a voter for the purpose of elections to the Parliament, a person: (a) should be a citizen of Bangladesh; (b) must attain 18 years of age; (c) must not have been declared by a competent court to be of unsound mind; (d) should be deemed by law to be a resident of that constituency; and (e) has not been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972. According to the Constitution, it is the duty of the Election Commission to prepare one electoral roll for each constituency for the purposes of elections to Parliament. The Constitution prohibits preparation of electoral roll according to religion, race, caste or sex.²⁴⁵

258. In addition, the Electoral Rolls Act, 2009 provides that a person who has been detained in a prison or legal custody will be deemed to be a resident of the electoral area in which he would have been resident if he had not been so detained.²⁴⁶ Moreover, if any prisoner wants to cast his or her vote, he or she may apply to the Returning Officer of the concerned area.²⁴⁷

259. On 01 January 2015, the total number of the registered voters in Bangladesh was 9,61,98,652. The number of male voters was 48,451,642 and the number of female voters was 47,747,010. The ratio of male and female voter is 50.37:49.63.²⁴⁸ The percentage of voters who cast votes in the 9th Parliamentary elections is 87.13%. The percentage of voters who cast votes in the 10th Parliamentary elections is 40.04%.

Right to be elected as a member of parliament

260. A citizen of Bangladesh attaining the age of 25 may run for parliamentary elections. However, a citizen of Bangladesh will not be qualified to be a member of parliament if he: (a) is declared by a competent court to be of unsound mind; (b) is an undischarged insolvent; (c) acquires the citizenship of, or affirms or acknowledges allegiance to, a

²⁴³ *Ibid*, art. 11.

²⁴⁴ *Ibid*, art. 65.

²⁴⁵ *Ibid*, arts. 121 & 122.

²⁴⁶ The Electoral Rolls Act, 2009, s. 8.

²⁴⁷ The Representation of the People Order, 1972, art. 27.

²⁴⁸ <http://ec.org.bd/NewsFilesEng/250.pdf>

foreign state; (d) has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years and a period of five years has elapsed since his release (e) has been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972; (f) holds any office of profit in the service of the Republic other than an office which is declared by law not to be disqualified its holder; or (g) is disqualified for such election by or under any law.²⁴⁹

Right to take part in the governance and public affairs

261. In Bangladesh, the Executives of the Government are chosen from and by the Parliament. The President who is the Head of the state is elected by the Parliament. In Bangladesh, the Constitution has vested the executive power in the hands of the Prime Minister. The Prime Minister is a Member of Parliament and nominates other ministers mostly from the members of Parliament, who as a whole form the Cabinet and are collectively responsible to the Parliament. The citizens of Bangladesh thus take part in the conduct of the public affairs through their chosen representatives.

Establishment of local government

262. In addition to the Parliament, the Constitution provides for establishment of Local government for the purpose of, among others, administration and the work of public officers, maintenance of public order and the preparation and implementation of plans relating to public services and economic development. The Constitution provides that such local government bodies will be composed of elected persons.²⁵⁰ Bangladesh considers a strong local government system to be critical for development at the grass root level.

263. In conformity with the constitutional mandate, a number of laws have been enacted to establish local government bodies at different levels. These laws include: the Local Government (City Corporation) Act, 2009; the Local Government (*Pourashavas*) Act, 2009 and the Local Government (Union *Parishad*) Act, 2009. These Local Government bodies are run by the elected representatives of the people.

264. During 2009-2014, 57,373 Chairmen and Members in 4,421 Union Councils, 1,446 Chairmen and Vice Chairmen in 482 *Upazillas*, as well as 9 Mayors and 414 Councilors in 09 City Corporations got elected. Apart from this, during 2009-2012, a total 3,782 Mayors and Councilors got elected in 282 Municipalities. In 2014, the Election Commission held elections for 482 *Upazilla* (sub-district) Councils.

Article 26

Equality before the law

265. Non-discrimination and equal protection of law are the basic tenets of the Bangladesh Constitution. Article 27 of the Constitution provides that all citizens are equal before law and are entitled to equal protection of law. Article 31 of the Constitution provides that the protection of law to be enjoyed by citizens and persons residing in Bangladesh and, in particular, in respect of life, liberty, body reputation and property. Articles 27 and 31 have been designated as justiciable fundamental rights. Article 29 of the

²⁴⁹ *Supra note 1*, art. 66.

²⁵⁰ *Ibid*, art. 59(1).

Constitution provides that there will be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.²⁵¹

Non-discrimination on the grounds of race and sex

266. Bangladesh acceded to the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 on 11 June 1979. The Constitution has also incorporated both general and particular non-discrimination clauses. Article 28 of the Constitution in general sets out the principle of non-discrimination by providing that no citizen will be discriminated on the grounds only of religion, race, caste, sex or place of birth. In particular, the Constitution also prohibits that no citizen will on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort or admission to any educational institution. Moreover, no citizen will, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.²⁵²

267. In Bangladesh, equal protection of law means all persons in like circumstances will be treated alike and no discrimination will be made in conferment of privileges and imposition of liabilities. The Constitution prohibits class legislation but it does permit reasonable classification for the purpose of legislation.²⁵³ The Constitution also allows for affirmative action for advancement of the backward sections of the society. For example, Article 28 of the Constitution provides that making special provision in favour of women or children or for the advancement of any backward section of citizens by the GoB will be permissible.²⁵⁴

Socially marginalized groups

268. The GoB has taken initiatives to protect various marginalized segments (*Dalits, Harijans*) of the population from discrimination and stigmatization. The Prime Minister's Office has instructed concerned authorities to reserve minimum 80% quota for their employment in special positions in Government, autonomous and private agencies and special quota in educational institutions. They have also been included in the Social Safety Net Programmes and free housing scheme for vulnerable groups. In order to address social discrimination against the underprivileged segments of the population the Law Commission has prepared a draft anti-discrimination law which remains under the GoB's consideration.

269. In 2012-13, the GoB allocated Taka 167.5 million to the Ministry of Social Welfare for promoting the well-being of *hijra's*, gypsies and others. The GoB is working with NGOs to sensitize the wider section of the populations about the rights of the socially marginalized groups.

Article 27

Right of minorities to enjoy their cultures

270. The Constitution of Bangladesh mandates affirmative actions as are necessary to uphold the cultural, linguistic and other related rights of the minority communities. In this regard, the Constitution provides that measures to conserve the cultural traditions and

²⁵¹ *Ibid*, arts. 27 & 29(1).

²⁵² *Ibid*, arts. 28(3) & 29(2).

²⁵³ *Sheikh Abdus Sabur vs. Returning Officer*, [1989] 41 DLR (AD) 30.

²⁵⁴ *Supra note 1*, art. 28 (4).

heritage of the people, and to foster and improve the national language, literature and the arts are to be taken so that all sections of the people have the opportunity to participate in the enrichment of the national culture.²⁵⁵

271. The Constitution of Bangladesh obliges the GoB to take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.²⁵⁶ The Parliament has enacted the Small Ethnic Cultural Institutions Act, 2010 which seeks to preserve and promote cultures of ethnic minorities. Till date, three such cultural institutions have been set up across the country.

272. The National Children Policy, 2011 provides that the right to development of the children belonging to the ethnic minority groups will be ensured, and steps will be taken to develop and maintain their own tradition and culture.

Right of minorities to profess and practice their own religions

273. Bangladesh is a country with diverse ethnic, religious communities. The Constitution of the People's Republic of Bangladesh guarantees equality for all citizens of Bangladesh. The Constitution ensures that every religious community or denomination has the right to establish, maintain and manage its religious institutions.

Right of minorities to use their language

274. The National Education Policy, 2010 provides for initiatives to impart education to the ethnic children in their own languages. The GoB has initiated efforts to teach children from ethnic minorities their mother tongues in schools, which will be further scaled up from 2016. No child attending any educational institution will be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his or her own.

275. In the Chittagong Hill Tracts, under the project named Promotion of Development and confidence Building in the Chittagong Hill Tracts, 8380 students got primary schooling and 2299 got pre-primary schooling in multi-language based education system. Net enrolment rate in schools increased to 90% in 2011. In order to facilitate their secondary education, additional 4 residential schools were established during 2009-2013. 810 students have so far completed their education from these schools. There is also reserved quota for them in higher education institutions.

Right of minorities to participate in the conduct of public affairs

276. The Constitution guarantees equality of opportunity for all citizens in respect of employment or office in the service of the Republic. No citizen will be discriminated against or regarded as ineligible in respect of any employment or office in the service of the Republic on the grounds only of religion, race, caste, sex or place of birth. Moreover, the Constitution further provides that the State will not be prevented from: (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic; (b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination; (c) reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.²⁵⁷

²⁵⁵ *Ibid*, art. 23.

²⁵⁶ *Ibid*, art. 23A.

²⁵⁷ *Supra note 1*, art. 29.

277. In order to enhance employment opportunities for the ethnic minority groups, the GoB has allocated 5% quota for them in public sector employment.

Implementation of the Chittagong Hill Tracts Peace Accord

278. In order to establish peace, stability and development in the three hill districts, the GoB signed the Chittagong Hill Tracts (CHT) Peace Accord 1997 with the *Parbattya Chattagram Janasanghati Shamity*, representing all people of CHT. The GoB remains firmly committed to further accelerate the implementation of the Accord. To this effect, the CHT Accord Implementation Monitoring Committee has been reconstituted in 2009, with the Deputy Leader of the Parliament as Chair. The CHT Regional Council, three Hill District Councils and CHT Development Board are working in tandem to coordinate various development activities in CHT. The Ministry of Chittagong Hill Tracts Affairs was established in 1998 as the direct outcome of the Accord. A total 1,28,364 families as refugees were identified and 64,612 refugees were rehabilitated in the immediate aftermath of the signing of the Accord.

279. Till date, 48 out of the 72 clauses of the Accord have been implemented, while 15 have been partially implemented and 9 remain under process of implementation. So far, 30 departments out of the mandated 32 have been transferred to the three CHT District Councils. 238 army camps have already been withdrawn. The present Government has taken initiative to further review and amend the Land Commission Resolution Act, 2001 in consultation with the CHT Regional Council. 3,500 neighbourhood centres have been set up to provide education, healthcare and sanitation services, even in remote and difficult terrains.

Concluding remarks

280. As a Least Developed Country, Bangladesh is beset with certain structural and systemic challenges that pose persistent impediments to ensuring the full enjoyment of all the human rights of all of its people. Some of the key challenges include: poverty and income inequality; resource constraints; capacity deficit; gap between national priorities and donor policies; climate change impacts; socio-cultural mindset; lack of human rights awareness; inadequate protection of migrant workers; and legal enforcement gap. In the midst of such challenges, Bangladesh continues to progressively realize the human rights aspirations of its people, inter alia, for civil liberties and building a more pluralist and inclusive society.

281. To this effect, Bangladesh remains seized with developing and updating its enabling national legislations for ensuring compliance with international human rights norms and standards. At the same time, Bangladesh remains committed to further strengthening the institutions that promote human rights, democracy, good governance and the rule of law. In this process, the GoB works in close partnership with NGOs, civil society organisations and private sector to strive towards continuous improvement in the human rights regime.

282. This report makes an effort to capture some of the recent, salient trends in enhancing of enjoyment of civil and political rights, including the fundamental rights and freedoms. In so doing, Bangladesh continues to draw inspiration from its Constitution that encapsulates the civil, and political rights enshrined in the Covenant. This has been accompanied by robust and sustained efforts at promoting social, economic and cultural rights on the basis of a pro-people, pro-poor socio-economic development agenda. As Bangladesh continues to make greater strides in socio-economic progress, so it expects to further consolidate its vibrant, pluralistic parliamentary democracy and its multi-faith, multi-ethnic and multicultural society.