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## PROTECTING HUMAN RIGHTS IN BANGLADESH: DIFFICULTIES DURING THE PERIOD OF THE COVID-19 PANDEMIC

### *Summary*

*When the Covid-19 outbreak started, Bangladesh, as a developing nation, did not have adequate resources to fight against it compared to other developed nations. To the government of Bangladesh, the primary challenge was to protect the citizens' health and ensure their safety from the outbreak with limited resources. Moreover, this public health-related challenge motivated them to announce lockdown in the name of general holiday for several times. However, with these restrictions, the people of Bangladesh are deprived of several fundamental rights according to the constitution of Bangladesh, as well as a number of human rights norms. It is pretty fascinating that, for the first time in history, the people of Bangladesh were deprived of their rights, including freedom of movement, assembly, etc, without the declaration of emergency in accordance with the constitution. Even the Supreme Court was on vacation for several days, which generated a vacuum condition in the justice system for the people who were deprived of their fundamental rights. This paper aims to analyse the conditions of human rights in Bangladesh during the Covid-19 pandemic and how the pandemic-related laws and law enforcement agencies of Bangladesh regulated citizens. On the other hand, in terms of participation, Bangladesh's Covid-19 vaccination drive has been quite successful in the South Asian region despite the government keeping it optional for everyone. This paper has aimed to scrutinise the social hesitancy regarding the ongoing vaccination drive. Furthermore, this paper will take a hypothetical view and further examine if the government made it compulsory, then how it will deal with the supreme law of Bangladesh.*

**Keywords:** human rights, Covid-19, vaccination, constitution of Bangladesh.

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## 1. INTRODUCTION

The entire world is engaged in a long-term battle against the violation of human rights, and numerous international and local organisations are in constant movement to promote human dignity. With this ongoing fight against human rights abuses, at the start of 2020, the world started a new battle against a deadly communicable disease caused by the SARS-CoV-2 virus. At first, individuals were unaware and hesitant about its ruthlessness, but when it began killing without distinction, everyone became terrified and worried. The root of the fear was the absence of a vaccine or treatment for this virus.

Since there was no medicine or vaccination available, most of the government in the world implemented emergency preventive measures, such as rigorous health restrictions and lockdowns, to mitigate the impact of the virus (Enam *et al.*, 2022). In this case, numerous states favoured the strict lockdown. Individual liberties, social and economic rights, and global harmony are ultimately hampered by strict health measures like lockdowns (Siddiqui, 2020a). With these kinds of measures, schools, businesses, and public transportation have all been shut down, public events have been called off, and citizens have been ordered to stay inside (Enam *et al.*, 2022). Despite the profound effect the measures have on human rights commitments, these matters are rarely addressed by the authority during the process (Siddiqui, 2020a).

In many countries, new emergency laws have been passed that make it mandatory for everyone to remain inside specified regions or stay inside their homes (Siddiqui, 2020a). Bangladesh, as a state, likewise imposed a lockdown on 26 March 2020 under the guise of a “general holiday with strict guidelines” (Senior Correspondent, 2020; Shammi *et al.*, 2021) but did not adopt any new emergency legislation requiring its citizens to remain inside their homes. However, the situation of human rights in Bangladesh has long been a source of concern, and this has not changed even during the lockdown. This paper aims to assess the status of human rights in Bangladesh during the lockdown. In addition, as there are so many facets of human rights to examine, this paper has decided to evaluate Bangladesh based on some specific facets.

Taking the preceding considerations into mind, this paper will first provide a summary of the effects of the Covid-19 virus on human rights. Then, this paper will talk about several different facets of the human rights situation in Bangladesh during the lockdown. Following that, the administration and law enforcement agencies respective roles will be evaluated in accordance with the laws of the country. The vaccination campaign is an essential component of the entire Covid-19 crisis in Bangladesh. This paper will conclude by discussing the ongoing vaccination campaign and how the local law scrutinises the mandatory vaccination approach.

## 2. IMPACT OF COVID-19 ON HUMAN RIGHTS

In 2020, the effects of Covid-19 were evident in many aspects of human life, and people throughout the world were in misery. At the beginning of the 2020 and Covid-19 pandemic, the United Nations (UN) anticipated the consequences, as seen by the Committee on Economic, Social, and Cultural Rights (CESCR) statement:

“The COVID-19 pandemic is threatening to overwhelm public healthcare systems, and is having devastating impacts throughout the world on all spheres of life – the economy, social security, education and food production” (Committee on Economic, Social and Cultural Rights, 2020).

In their statement, CESCR made it clear that the Covid-19 pandemic is a threat to the healthcare system and human dignity (Committee on Economic, Social and Cultural Rights, 2020). Usually, when a national crisis occurs, the government does its part to save the people. In order to save lives during the Covid-19 pandemic, governments around the world took drastic measures (such as lockdowns, emergency declarations, restrictions on freedom of movement, etc.). These government actions altered the pattern of human life and directly or indirectly violated human rights. The actions taken by governments worldwide at that time were necessary to save lives (Sajwani, 2020). The government was also expected to protect human rights and freedom so that people do not feel vulnerable.

More than six million people have died due to this pandemic (Hart, 2022), and in some cases, these deaths were the result of ineffective public health policies and leadership (Bennoune, 2020). This pandemic has unquestionably shed light on the structural shortcomings of health systems around the world. Due to these setbacks, many groups (such as senior citizens, indigenous communities, and minorities) were subjected to structural inequalities and died without receiving adequate care (Okonkwo *et al.*, 2021). The Covid-19 pandemic has thus significantly impacted the right to life and the right to health.

In addition to the right to life and health, this pandemic also impedes the enjoyment of freedom of movement and assembly (Bennoune, 2020). Both freedom of movement and freedom of assembly are significant rights in a democratic society where they are used to protest any authoritative or arbitrary decision. This pandemic has also revealed global gender inequality. As in Europe and Asia, domestic violence complaints have increased dramatically during the lockdown (Stone, 2020; Mijatović, 2020; Čović, 2020).

Before the Covid-19 pandemic, the global human rights condition was not ideal, and a crisis existed (Mijatović, 2020). However, the manner in which the

Covid-19 pandemic introduced new obstacles to the enjoyment of rights was too harsh and horrifying for people everywhere. It was more severe for residents of developing countries like Bangladesh. Because when a country lacks sufficient resources to fight, a small obstacle will appear enormous. Moreover, this is why Bangladesh faces more significant challenges than other countries in establishing human rights.

### 3. HUMAN RIGHTS CONDITIONS IN BANGLADESH DURING THE LOCKDOWN

In light of the growing number of Covid-19 infected individuals and deaths, one of the recommendations made by health experts was a lockdown (Ward, 2020), despite the World Health Organization's (WHO) stance that lockdowns should be a last resort (Ellyatt, 2020). In addition, in accordance with Article 12(2) (c) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), Bangladesh has the obligation (as a ratifying state) to prevent, treat, and control epidemics, endemics, occupational, and other diseases.

The government of Bangladesh attempted to respond and, as stated earlier, declared a lockdown under the guise of a general holiday beginning on 26 March 2020 in an effort to curb the spread of Covid-19 (Senior Correspondent, 2020; Shammi *et al.*, 2021). In addition, the government issued strict regulations for all citizens and foreigners (Mamun, 2020). Multiple times, the lockdown (general holiday) was extended through a gazette notification. These strict regulations include – a) the closure of all public-private offices and educational institutions, except emergency shops and services; b) the request to stay at home; c) limited public transportation; d) the prohibition of all types of gatherings; and e) quarantine for individuals returning from abroad (Mamun, 2020).

From a human rights standpoint, if declaring lockdown was considered an application of the state's obligation under Article 12(2)(c) of the ICESCR, then this step eventually frustrated other ICESCR rights, such as the right to work and the right to education. Even the lockdown has interfered with rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR), such as the right to a fair trial, freedom of movement, freedom of assembly, and freedom of association (as a ratifying state, Bangladesh has obligations under the ICCPR).

#### 3.1. *'Unofficial' state emergency and restriction on fundamental rights*

In general, the fundamental rights of Bangladeshi citizens cannot be suspended without first declaring an emergency as required by the constitution

(Rahman, 2018). Therefore, suspending or indirectly restricting fundamental rights (without a constitutionally mandated emergency declaration) could constitute a grave constitutional violation. Intriguingly, however, the declaration of lockdown with strict regulations ultimately resulted in the Bangladeshi citizens being unable to unreservedly exercise their fundamental rights according to the constitution.

### 3.1.1. Constitutional provisions for emergency

In accordance with Article 141A of the Constitution of Bangladesh, with the prior written consent of the Prime Minister, the President may declare a state of emergency due to “war, external aggression, or internal disturbance”. Article 141A of the Constitution allows for such a declaration of an emergency, which can have two of the most significant outcomes. Firstly, in accordance with Article 141B of the Constitution, during a situation of emergency, ‘the state’ may pass legislation or take actions that go against Articles 36, 37, 38, 39, 40 & 42 (six fundamental rights: freedom of movement, freedom of assembly, freedom of association, freedom of thought and conscience, freedom of occupation and profession, and the right to property). Secondly, Article 141C of the Constitution grants the President of Bangladesh the authority to ‘suspend’ the judicial enforcement of fundamental rights at his discretion.

### 3.1.2. ‘Unofficial’ emergency and restriction during Covid-19

Bangladesh did not declare a state of emergency for the Covid-19 pandemic. As previously discussed, the Constitution allows the state (Bangladesh) to declare an emergency for three reasons: war, external aggression, and internal disturbance. However, considering the literal meaning of the clause, it may be ineffective in this case. Because it was possible that Covid-19 might have an impact on the economy of Bangladesh, causing internal disturbances. Nevertheless, Bangladesh elected not to declare the constitutionally mandated emergency.

On the other hand, considering the lockdown regulations, Bangladesh was in an unofficial state of emergency. This argument is based on the fact that the regulations on lockdown created circumstances in which citizens were unable to unreservedly enjoy the fundamental rights guaranteed under Article 31 (right to protection of law), Article 32 (protection of the right to life and personal liberty), Article 33 (safeguards as to arrest and detention), Article 35 (protection in respect of trial and punishment), Article 36 (freedom of movement), Article 37 (freedom of assembly), Article 38 (freedom of association), Article 39 (freedom of thought

and conscience, and speech), Article 40 (freedom of profession or occupation) and Article 44 (enforcement of fundamental rights) of the constitution.

At the beginning of the lockdown, citizens were also unable to enforce their fundamental rights through the Supreme Court (Constitutional Court of Bangladesh) due to the court's long vacation due to Covid-19 (Qaium, 2020). Please keep in mind that the Supreme Court's lengthy vacation was called in accordance with the rules by the honourable Chief Justice. Nevertheless, arguably the door to remedy and justice was shut, and citizens felt uncomfortable and powerless (Qaium, 2020). Moreover, such a condition is one of the outcomes of a constitutionally mandated emergency.

### *3.2. Failure in public health management*

In terms of preventing and controlling the pandemic, lockdowns and strict guidelines for citizens were insufficient because the World Health Organization has issued a simple message to all nations: "Test, test, test" (Marsh, 2020). Furthermore, in accordance with Article 12(2)(c) of the ICESCR, the government of Bangladesh was expected to take additional proactive measures in addition to the lockdown. Due to a lack of Polymerase Chain Reaction (PCR) machines and laboratories, the Bangladesh government initially failed to perform enough PCR tests (Alif, 2020).

Even Personal Protective Equipment (PPE) was in short supply, significantly increasing the dangers for health workers in Bangladesh (Molla, 2020). As a result, the right to the highest physical and mental health standards under ICESCR has been severely compromised at the onset of the pandemic. However, the obligations imposed by Article 12(2)(c) of the ICESCR are limited by Article 2(1) of the same instrument, which states:

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Therefore, the obligation under the ICESCR is contingent on the state's available resources. As a developing state, Bangladesh can argue that it lacks the resources necessary to uphold the right to the highest physical and mental health standards per Article 12(2)(c) of ICESCR during a pandemic of such catastrophic proportions. However, Bangladesh cannot avoid Article 6 of the ICCPR's protection of the right to life because this obligation is not contingent on sufficient resources. In addition, regarding Article 6, the Human Rights Committee (HRC) has stated:

“The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include [...] the prevalence of life-threatening diseases [...]” (Human Rights Committee, 2019).

The PCR testing of citizens for Covid-19 was the most important preventive measure for public health, and the provision of PPE to health workers was also crucial for saving lives. Article 32 of the Bangladesh Constitution also requires the government to protect the right to life. The right to life includes the right to health protection and normal longevity (*Dr. Mohiuddin Farooque v Bangladesh*, 1996). Moreover, according to the High Court Division of Supreme Court, Bangladesh is obligated as a state to protect the health and longevity of its citizens from threats posed by man-made hazards, unless the threat is justified by law (*Sallemullah v Bangladesh*, 2003).

### 3.3. Violence against women

In the South Asian region, gender inequality is pervasive (Stone, 2020) and in Bangladesh, women struggle against violence and discrimination (Chowdhury, 2021). Since the Covid-19 pandemic altered and affected all aspects of human existence, these influences have also affected women’s safety (Chowdhury, 2021). During the lockdown, women across the nation faced various forms of domestic violence (Chowdhury, 2021). According to a telephone survey conducted by the Manusher Jonno Foundation (MJF), 11,025 women in Bangladesh experienced various forms of domestic violence during the lockdown (Antara, 2020).

As per the Ain-o-Salish Kendra (ASK), 100 more incidents were reported during the lockdown (April – July) than during the same period in 2019 (Antara, 2020). Another organisation, BRAC, reported that its Human Rights and Legal Aid Clinics across the country received a total of 25,607 complaints of gender-based violence during the first ten months of 2020 (TBS Report, 2020). In addition, BRAC has resolved 15,047 disputes through alternative dispute resolution. Besides that, BRAC provides legal counsel to 3,239 survivors and has filed cases in response to 1,724 complaints (TBS Report, 2020).

During the lockdown, the financial crisis and quarantine exacerbated the people’s frustrations and tempers (International Federation for Human Rights, 2020). Moreover, because of society’s patriarchal mindset, women are pressured to perform the more significant part or all household responsibilities (International Federation for Human Rights, 2020). Due to the economic downturn, dowry-related violence has also increased (International Federation for Human Rights,

2020). Even online harassment against women increased significantly during the lockdown (Lewis, Blokhuis and Singh, 2022).

Without a shadow of a doubt, the government of Bangladesh has taken decisive policy and action against the violence, as is abundantly clear from the legislative approach they have adopted (Lewis, Blokhuis and Singh, 2022). However, the government's failure to protect women during the lockdown can be traced back to systemic issues, such as the lack of enforcement of existing laws, widespread corruption in government agencies, and special legal or political protections for those who commit violent crimes (International Federation for Human Rights, 2020).

### *3.4. Access to education*

As previously mentioned, all educational institutions were closed on 26 March 2020 due to the lockdown. The lockdown was conditionally lifted more than two months after the announcement (Sami, 2020), but educational institutions remained closed until 12 September 2021 (nearly 18 months) due to the government's decision (Mahmud, 2021). During the closure, a large number of primarily private educational institutions (including schools and colleges) began to deliver lectures and assignments via online or digital systems (Majed, Jamal and Kabir, 2020). The government began broadcasting pre-recorded lectures on public television and uploading them to YouTube for primary and secondary school education (Abbas, 2020).

The primary goal of this type of online class system was the continuous acquisition of skills and knowledge (Siddique, 2021a). However, these efforts are insufficient for students who reside in highly remote areas. In Bangladesh, 49% of households lack a television, and according to a survey (multiple-indicator cluster survey) conducted by the Bangladesh Bureau of Statistics, 62% of homes lack internet access (Tribune Desk, 2020). This information demonstrates the inaccessibility of distance learning. During the lockdown, students who did not have access to the internet, television, or any other means of distance learning were discriminated.

The education of 37 million children in Bangladesh has been disrupted due to the closure of educational establishments since the beginning of the Covid-19 pandemic, according to a report by UNICEF (UNICEF, 2021). In addition, two out of every three pre-primary to upper-secondary students could not access the online education system due to a lack of technological support (UNICEF, 2021). Please be informed that, in accordance with Article 13(2) of the ICESCR, Bangladesh must provide education without discrimination and make it available to all citizens. Article 29(1) of the Convention on the Rights of the Child (CRC) makes it clear that no child shall be denied an equal opportunity to obtain education.

### *3.5. Violation of workers' rights*

As previously discussed, lockdowns are inevitably impacted people's rights to work and to adequate living standards. This lockdown has primarily affected those with lower incomes and those employed in informal sectors. According to the Bangladesh Bureau of Statistics, 60 million workers were employed in formal and informal sectors in Bangladesh (BBS, 2022). In addition, more than 53 million (or 85% of all workers) are employed in the informal sector (BBS, 2022). Significantly, the majority of informal workers were daily wage earners, and they were adversely impacted by the closure of regular businesses during the lockdown.

There is no doubt that the lockdown has resulted in a significant number of workers' unemployment, and a great number of workers leave the city for the countryside without receiving their regular wages (Haque, 2021). Workers in the formal sector, especially those in the ready-made garment industry, were concerned about job loss (Hussain, 2022). A study conducted by researchers at the University of Aberdeen and Traidcraft Exchange discovered that garment workers were being compelled and mistreated to work more hours by their supervisors (Hussain, 2022). Even the workers worked 12–14 hours daily to recover from the factory's loss after the lockdown (Haque, 2021).

Notably, the government of Bangladesh has announced a BDT 50 billion (approximately USD 588 million) stimulus package for the garment industry (Star Online Report, 2020). This package was intended to help the garment industries recover from the pandemic-related losses that prevented them from paying their employees (Star Online Report, 2020). However, the harsh reality was that pregnant women were fired from their jobs during the pandemic because they were expected to receive maternity benefits (Hussain, 2022). The Bangladesh Labour Act of 2006 contains some robust provisions, but legal protection for workers is currently limited because legal mechanisms are not easily accessible to marginal people or workers.

Article 9 of the International Covenant on Economic, Social, and Cultural Rights requires Bangladesh to facilitate the enjoyment of social security. In paragraph 2 of General Comment No. 19 of 2007, the Committee on Economic, Social, and Cultural Rights (CESCR) states:

“The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, *inter alia*, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.”

It is also worth noting that General Comment No. 19 of 2007 (Paragraph 34) states unequivocally that workers in the informal sector must be integrated into the social security system.

### *3.6. Vulnerable farmers' rights*

Agriculture is one of the largest sectors in Bangladesh's economy, and the contribution of agriculture in the Gross Domestic Product (GDP) is still noteworthy (Seraj, 2022). Nevertheless, the government has neglected the farmers' interests throughout the lockdown procedure (Babu and Haque, 2021). According to National Agricultural Extension Policy 2020, farmers expect protection for their crops and products from the government (Babu and Haque, 2021). In rural areas, farmers suffered significantly from the lockdown as they failed to get a reasonable price for their products (Babu and Haque, 2021).

When the lockdown started, it broke all the supply chain for the farmers. With this disrupted supply chain, farmers struggled to find a fair price for their products. Many of them sold their products at prices that were 50% lower than before the pandemic (Babu and Haque, 2021). According to a study conducted by the BRAC Institute of Governance and Development (BIGD), the anticipated profit for Boro (a type of rice) farmers in 2020 decreased by 40% (BIGD, 2020). The reasons stated by BIGD are as follows: 1) demand for the products decreased significantly; 2) workers wage increased by 17% as a consequence of the worker shortage; and 3) transportation disruptions led to an increase in the price of additional inputs (BIGD, 2020).

### *3.7. Some additional concerns*

Among the South Asian countries, Bangladesh holds the highest prison occupancy rate and the highest proportion of pre-trial detainees (Siddique, 2021b). With insufficient healthcare facilities (Siddique, 2021b), the occupancy rate was alarming for prisoners during the pandemic circumstances. However, the prison authorities subtly maintained the Covid-19 infected prisoners, because of that the infection rate was low in the prisons (Lohani, 2021). The same concern was there for the Rohingya refugee camps and urban slums because the density was evident there (Zakaria, 2020). Despite the concern, the rate of covid-19 positivity in slum areas was extremely low (Mollah and Islam, 2020). The government has taken precautionary measures in Rohingya refugee camps, and the outcome was positive (Bhuiyan, 2021).

#### 4. ENFORCEMENT BY THE ADMINISTRATION AND HUMAN RIGHTS

The police and other law enforcement agencies have the duty to ensure that general people obey the laws and other orders/guidelines circulated by the government. Even considering the situation of Covid-19, in the lockdown, the government of Bangladesh called for armed forces to help the civil administration to overcome the disaster (Mamun, 2020). Since the administration was dealing with a highly contagious virus (Covid-19), in consequence, strict regulation was required but within the ambit of law as well as human rights.

##### *4.1. Laws relating to contagious diseases in Bangladesh*

To prevent and diminish the spread of communicable diseases such as Covid-19, some legal provisions are articulated in the Penal Code, 1860 and the Communicable Diseases (Prevention, Control and Elimination) Act, 2018 (CDA). In accordance with the nature of the law, Penal Code, 1860 imposes criminal liability; on the other hand, CDA concentrates on the control, elimination and prevention of communicable diseases. Sections 269 and 270 of the Penal Code are provisions that deal with negligent and malignant acts likely to spread infection or disease dangerous to life. Furthermore, section 271 deals with disobedience to the quarantine rule. During the lockdown, section 269 was more relevant, and according to this section, any person who:

“unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

On the other hand, section 271 of the same code carries a penalty of a maximum of six months in prison and/or a fine for refusing to obey any rule regarding quarantining vessels or regulating the intercourse between places where an infectious disease prevails and other places.

In 2018, CDA was enacted to deal with any form of a public health crisis, ease the threat to public health, and build awareness among the general people. This Act holds a non-exhaustive list of diseases that fall within the ambit of CDA (Communicable Diseases Act 2018). As the list is not exhaustive, the government may announce any disease as communicable disease in the course of an official gazette (Communicable Diseases Act 2018). According to CDA, any empowered official can impose isolation (or quarantine) on any person suspected to be affected by any communicable disease to control the increase. Under section 11 of

CDA, the Director of Health (or any empowered officer) may announce any area as infected and forbid entry of any person if it is evident that the disease in that area cannot be controlled.

Though CDA mainly concentrates on the control, elimination and prevention of communicable diseases, some penal provisions are also available in this Act. In accordance with section 25, obstructing any empowered officer from performing the legally recognised duties or declining to pursue any instructions/orders is a punishable offence with up to three months of imprisonment and/or fine up to BDT 50,000. Furthermore, under Section 26, if any person despite having the correct or true information, gives false or incorrect information regarding any communicable disease, that person can get a sentence of a maximum of two months of imprisonment and/or a fine of BDT 25,000.

Under the Disaster Management Act, 2012, the government of Bangladesh could have declared a pandemic (such as Covid-19) a disaster. Because as an incident, 'disease causing pandemic' is specifically mentioned in the Act's definition of 'disaster'. Interestingly, the government did not declare this pandemic a disaster under the Disaster Management Act, 2012. The government attempted to control the crisis with the help of the CDA and the Penal Code.

#### *4.2. Role of the administration and law enforcement agencies*

During the lockdown, many non-resident Bangladeshi citizens returned from abroad, and the government mandated that they remain in quarantine for 14 days (BSS, 2020). Some of them violated the rules, which endangered public health (FE Country Desk, 2020). To immediately address violations of the lockdown guidelines, executive magistrates across the nation established mobile courts in accordance with the Mobile Courts Act, 2009 (FE Country Desk, 2020). In addition, the violators were punished with fines following the Penal Code and CDA.

However, in some cases, the executive magistrates or law enforcement agencies violated the fundamental rights and human dignity of the citizens. For instance, in the Jashore district, one executive magistrate ordered three senior citizens to hold their ears in public for not wearing the mask (UNB, 2020). Even that the magistrate took photos of those elderly citizens (UNB, 2020). This incident has gone viral on social media platforms, and the magistrate's actions have been criticised (UNB, 2020). Even in many locations, police have been observed beating citizens and administering physical punishments for violating lockdown regulations (Sajid, 2020).

Punishments like beating with sticks or ear-holding are inhumane and illegal. An executive magistrate or policeman cannot give such inhumane

punishment because it is not in the ambit of the punishments prescribed under the Penal Code or CDA. Therefore, executive magistrates or policemen have no authority to beat up citizens with sticks or order them to hold their ears. Such brutal acts were violations of human rights and violations of the fundamental rights of Bangladeshi citizens, which are guaranteed according to Article 31 and Article 35 of the Constitution.

## 5. COVID-19 VACCINATION DRIVE IN BANGLADESH

Bangladesh began its vaccination campaign with the Oxford University-AstraZeneca vaccine on 7 February 2021 (Paul, 2021). The government of Bangladesh did not make vaccinations mandatory for everyone. Minister of Health Zahid Maleque urged citizens to start taking the vaccine (Paul, 2021). Bangladesh initially followed the same vaccination policy as other nations, prioritising senior citizens and frontline medical personnel (Siddiqui, 2020b). Although there was some opposition and disagreement in the community regarding the priority, those who held those views believed that vaccination is a right of a human being rather than a privilege (Siddiqui, 2020b).

Even with a few criticisms of the vaccine distribution policy, the government successfully administers a nationwide vaccination campaign. Bangladesh was cited by the United Nations International Children's Emergency Fund (UNICEF) as a Covid-19 vaccine success story (UNICEF, 2022). In Bangladesh, 97% of the population has received the first dose of the Covid-19 vaccine, 90% have received the second dose, and only 41% have received the third or booster dose (Tribune Desk, 2022). Recently, Bangladesh started vaccinating a total of 22,638,737 children aged 5 to 11 years with Pfizer-BioNTech Covid-19 vaccines and these vaccines are specially manufactured for children (Health Desk, 2022). Despite the success of the vaccination program, experts are concerned that a lack of manpower/health workers in the fields could become an issue in the future crisis (Special Correspondent, 2022).

### 5.1. Hesitancy regarding Covid-19 vaccination

As a developing country, Bangladesh lacks the financial resources to provide a large number of Covid-19 patients with medical equipment and medication. Therefore, when the vaccine became available, Bangladesh intended to use it as its primary weapon to combat Covid-19 by establishing herd immunity. However, the entire plan was contingent on the general public's acceptance of the

vaccine. According to a February 2021 study, nearly half of the adult population in Bangladesh (46.2% of the adult population) exhibited hesitance to accept the vaccine (Hossain *et al.*, 2021).

Vaccine hesitancy is not a new problem but rather an old one. Late in the 19<sup>th</sup> century, protests were against the smallpox vaccine (Spier, 2001). Even in the 1990s, there were allegations regarding the Hepatitis B vaccine, but numerous studies disproved these claims (François *et al.*, 2005). Nonetheless, it should be remembered that a number of factors contribute to the hesitance of the general public, such as false information, religious beliefs, and fear of side effects contribute to covid-19 vaccine hesitance. During the lockdown, when the Covid-19 vaccine was developed, many false allegations and rumours about the vaccine surfaced in Bangladesh. Due to this misinformation or false information, vaccine hesitancy increased significantly.

In this modern era, technologies such as the internet and social media platforms contributed significantly to disseminating false information or allegations about vaccines in Bangladesh (Billah, 2021). Unfortunately, some doctors and religious scholars also participated in spreading false information, such as one doctor claimed on his social media account that the Covid-19 vaccine causes autism (Billah, 2021) and a prominent scholar posted a video on a social media platform claiming that vaccines “contain a microchip” that will let “western countries to spy on people” (Rafe, 2021).

In Bangladesh, most people tend to place greater trust in religious scholars than in any other individual; therefore, some people became confused when a few religious scholars made allegations about the vaccine (BBC, 2021). Fortunately, it did not affect the entire country, as other religious scholars and leaders did an excellent job of eradicating vaccination-related prejudice, ignorance, and misconceptions (Special Correspondent, 2022). Even these religious scholars and leaders encourage the general public to receive vaccinations without reservation (Special Correspondent, 2022).

### *5.2. How do the laws of Bangladesh scrutinise ‘compulsory’ vaccination?*

As previously discussed, Bangladesh has not made vaccination mandatory for its citizens. Nonetheless, there can be no doubt that, at this time, Covid-19 vaccination is essential to safeguarding society from the virus’s lethal impact. To date, more than 90% of the population in Bangladesh has received a double dose of vaccinations, making it an outstanding example of a successful vaccination drive (Tribune Desk, 2022). Bangladesh’s strategy was to encourage its citizens through various ways to take vaccines rather than making it mandatory.

In light of this, the following questions may arise: Could the government of Bangladesh make Covid-19 vaccination legally mandatory for all its citizens in order to increase the success of the vaccination campaign? As a state, is Bangladesh capable of compelling its citizens to take the vaccine? Is there a legal framework that protects citizens who choose not to get vaccinated? Unfortunately, there are no direct answers to these questions, but a discussion may help to clarify the local law's perspective on these issues.

The government of Bangladesh has multiple options for mandating Covid-19 vaccination. The government may adopt a purely legislative strategy and enact new, specific legislation incorporating this requirement. However, this strategy is not new; in 1892, the British government passed the Compulsory Vaccination Act, 1892, to combat with smallpox epidemic (Tripathy, 2020). If the government wishes to avoid such complications of enacting legislation, declaring this pandemic a disaster under the Disaster Management Act, 2012 could provide a remedy. The scope of the Disaster Management Act, 2012 is wide-ranging, making it possible for regulatory stakeholders to mandate vaccinations.

Nevertheless, making the vaccination mandatory would invite a conflict regarding the fundamental rights of the individual according to the constitution. The focal dichotomy in the debate over mandatory vaccinations concerns striking a fair balance between the state's obligation to maintain public health and an individual's right to life and personal liberty. As mentioned earlier, maintaining or protecting the health and longevity of the people free from threats of man-made hazards is an obligation for the state in accordance with the Constitution (*Salemullah v Bangladesh*, 2003).

However, Articles 31 and 32 of the Bangladesh Constitution protect individuals' right to liberty. Articles 31 and 32 of the Constitution identify the right to personal liberty as the freedom to enjoy all of one's faculties and to choose which activities to engage in or not (Islam, 2012). This right also allows an individual to have complete sovereignty over his or her body and mind (Islam, 2012). Therefore, the Constitution requires the state to protect the individual's right to make independent decisions. Mandatory vaccination or coercing an individual to receive vaccination violates their right to liberty.

Moreover, since global health experts have acknowledged vaccinations as a long-term remedy to Covid-19 (PTI, 2021), the government of Bangladesh may consider adopting a mandatory vaccination strategy to combat vaccine hesitancy and protect public health through advancing herd immunity. In this situation, it is essential to consider whether the consequences on public health will be sufficiently negative by voluntary vaccination to tilt the balance against the right to liberty guaranteed under the constitution.

On that note, the Supreme Court of India ruled out the ‘mandatory vaccination policy’ in the case of *Jacob Puliyel v Union of India and others* (2022), and the judgment states something remarkable:

“Persons, who are keen to not be vaccinated on account of personal beliefs or preferences, can avoid vaccination, without anyone physically compelling them to be vaccinated. However, if there is a likelihood of such individuals spreading the infection to other people or contributing to mutation of the virus or burdening of the public health infrastructure, thereby affecting communitarian health at large, protection of which is undoubtedly a legitimate State aim of paramount significance in this collective battle against the pandemic, the Government can regulate such public health concerns by imposing certain limitations on individual rights that are reasonable and proportionate to the object sought to be fulfilled.”

The court opined that the restrictions placed on anti-vaxxers (persons who are opposed to vaccination) or unvaccinated people through mandatory vaccination could not be deemed to be proportionate, but that in order to protect the public’s health, the government could place reasonable and proportionate restrictions on unvaccinated people’s access to public places or services. Despite the fact that this ruling is not directly applicable to Bangladesh, the Supreme Court of India’s observation may assist in determining the appropriate balance between the state’s obligation to maintain public health and an individual’s right to liberty.

## 6. CONCLUSION

During Covid-19, when everyone’s life was in jeopardy, it was evident that the government of Bangladesh was dealing with a novel situation. However, it is the responsibility of the government to uphold the human rights and dignity of every individual while combating this deadly virus with a particular weapon, ‘lockdown’. Observing the response from the authority makes it abundantly clear that the initial decisions for lockdown or strict guidelines were not consistent with the democratic principles of the country.

Since the government did not declare an emergency in accordance with the Constitution, there is no doubt that indirect restrictions on fundamental rights due to the lockdown undermine the supremacy of the constitution in this country. Even so, there were a number of instances in which the administration violated human rights norms. As a result, the administration of this country (which was primarily responsible for maintaining law and order) was ill-equipped to govern or deal with the crisis.

Nonetheless, it was also confirmed that the government gradually attempted to mitigate these problems with a progressive and positive attitude and played an exemplary role during the distribution of vaccines among the citizens. Even though the community was hesitant due to a variety of social and religious factors, the manner in which Bangladesh encouraged its citizens to be vaccinated is insightful for other nations facing the same problems.

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## ZAŠTITA LJUDSKIH PRAVA U BANGLADEŠU: TEŠKOĆE U PERIODU PANDEMIJE COVID-19

### Sažetak

*Kada je počela epidemija kovida 19, Bangladeš, kao zemlja u razvoju, nije imao odgovarajuće resurse za borbu protiv nje u poređenju s drugim razvijenim zemljama. Za vladu Bangladeša primarni izazov bio je zaštititi zdravlje građana i osigurati njihovu sigurnost od izbijanja pandemije, s ograničenim resursima. Ovaj izazov vezan za javno zdravlje motivisao je vladu da nekoliko puta najavi potpuno zatvaranje. Međutim, s ovim ograničenjima, narod Bangladeša lišen je nekoliko osnovnih prava prema ustavu Bangladeša, kao i niza normi o ljudskim pravima. Prilično je fascinantno da su po prvi put u istoriji narodu Bangladeša uskraćena prava, uključujući slobodu kretanja, okupljanja itd., bez proglašenja vanrednog stanja u skladu s ustavom. Čak je i Vrhovni sud bio na višednevnom odmoru, što je stvorilo stanje vakuuma u pravosudnom sistemu za ljude kojima su uskraćena osnovna prava. Ovaj rad ima za cilj da analizira uslove ljudskih prava u Bangladešu tokom pandemije kovida 19 i kako su zakoni u vezi s pandemijom i agencije za sprovođenje zakona u Bangladešu regulisale ponašanje građana. S druge strane, što se tiče sveobuhvatnosti, akcija vakcinisanja protiv kovida 19 u Bangladešu bila je prilično uspešna u regionu Južne Azije, uprkos pravu izbora i tome što je vlada zadržala vakcinaciju neobaveznom za sve. Ovaj rad ima za cilj da pomno ispita društvenu neodlučnost u vezi s trenutnom akcijom vakcinisanja. Nadalje, ovaj će rad zauzeti hipotetički pogled i dalje ispitati ukoliko bi vlada učinila vakcinaciju obaveznom, da li bi takva odluka bila u skladu sa vrhovnim zakonom Bangladeša.*

**Ključne reči:** *ljudska prava, kovid 19, vakcinacija, ustav Bangladeša.*

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