

Bangladesh: Civic Space and Minority Rights

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Introduction

Context

‘Civic space is the politico-legal and socio-cultural environment which enables citizens to come closer, share their interests and concerns, and act individually and collectively to influence and shape policy-making.’¹ It encourages people to be aware of and pursue multiple points of view. Civic space works mainly on the basis of certain human rights principles—freedom of assembly, right to peaceful protest, freedom of expression, and access to information. ‘A dynamic and plural civic space ensures that governing bodies take into account interests, needs, and concerns of society at large. On the contrary, when civic space shrinks, governments and institutions are less likely to be responsive to citizens’ requests’.² In this context, civic space in Bangladesh has been shrinking increasingly, with minority rights activists, in particular, facing scrutiny and backlash from the government.

When Bangladesh emerged as an independent country in 1971, civil society had played a pivotal role in the country’s liberation. Among the reasons that triggered the movement for the country’s

1 ‘What is Civic Space’, Civic Space Watch, accessed September 2020, <https://civicspacewatch.eu/what-is-civic-space>.

2 ‘Space to Be Heard: Mobilizing the Power of People to Reshape Civic Space’, Oxfam Briefing Note, accessed July 2020, <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620523/bn-space-to-be-heard-civic-space-250718-en.pdf>.

liberation was the closing civic space for Bengalis; their voice was throttled by the then Central Government of Pakistan. The 24 years under the Pakistani regime (1947-1971) was marked by a history of oppression of the Bengalis, and it was expected that after liberation, the Bengali people would be able to exercise their democratic rights freely. However, a perusal of the post-independence period, from 1971 to the present, reveals that the culture of rejection of dissenting views is still prevalent and has been constantly affecting the lives of Bengalis. Political turmoil, military coups and enactment of unpopular laws have all aimed at suppressing dissent in the country since independence.

In the first few post-independence years, the insertion of provisions in the Constitution that suspended fundamental rights during emergencies,³ the introduction of preventive detention laws,⁴ and the formation of a single political party, coupled with limiting the number of newspapers circulated in the country,⁵ are some ways in which attempts were made to restrict civic space. However, it has also been posited that the early years of independence necessitated such steps in order to restore stability in the country.⁶ After the 1975 assassination of President Bangabandhu Sheikh Mujibur Rahman, widely hailed as the Father of the Nation, the country went into the hands of military rulers. For the 15 years that followed, the country was governed by a military-bureaucratic alliance that foiled democratic institutions. The founding principles of the State outlined in the Constitution—democracy, nationalism, secularism, and socialism—were compromised. In particular, the principles of absolute faith and trust to the Almighty were inserted in the place of secularism and the Islamic customary expression ‘Bismillah Ar Rahman Ar Rahim’ inserted at the outset of the Constitution.⁷

3 The Constitution (Second Amendment) Act 1973.

4 Special Powers Act 1974 made in pursuance of art 33 of the Constitution of Bangladesh that empower the government to detain a person on the ground of prejudicial act jeopardising state’s security, public order and harmony.

5 The Constitution (Fourth Amendment) Act 1974.

6 Nurul Islam, *The Making of a Nation, Bangladesh: An Economists Tale* (University Press Limited, 2003).

7 Habibul Hoque Khandoker, ‘State and Secularism in Bangladesh’ in *State and Secularism: Perspectives from Asia*, edited by Michael Heng Siam-Heng and Ten Chiew Lieu (Singapore: World Scientific, 2010).

After the fall of General Hussain Ershad from power in 1990, parliamentary democracy was restored through a general election in 1991. However, even the post-1991 period has seen an ebb and flow of attempts made to continue to restrict civic space. The country saw the rise of Islam-based politics with the Bangladesh Nationalist Party (BNP)-Jamaat-e-Islami alliance coming to power in 2001, with the religious minority communities, mainly Hindus, facing violence.⁸

Since 2004, there has been a rise of religious militancy, and recurrent attacks on secular thinkers, as well as enactment of suppressive laws that go against the spirit of the Constitution and human rights norms. The current ruling party, the Awami League, that also led the country's independence movement, has been in power since 2009, having won the elections three times—in 2009, 2014 and 2018—although the credibility of the elections held in 2014 and 2018 has been questioned.⁹ During the 2009-2014 period, the government enacted some progressive legislation, including those aimed at protecting the right to information, the formation of a National Human Rights Commission (NHRC), restoration of original constitutional principles and so on. The enactment of these laws had been widely celebrated. However, the post-2014 environment has been marked by political vandalism and destruction, including enforced disappearances and apprehension of opposition political figures.¹⁰ The misuse of social network platforms by the vested groups and terrorists led to the formulation of national broadcasting policies, regulation of the activities of non-state actors, and the enactment of Digital Security Act 2018. While the need for such steps can hardly be overemphasised, the

8 Anbarasan Ethirajan, 'Bangladesh "persecution" panel reports on 2001 violence', *BBC News*, December 2, 2011, <https://www.bbc.com/news/world-asia-15987644>; 'Bangladesh: Situation of Hindus following the 1 October 2001 election, particularly in the Moulvibazar district; government response to violence against Hindus (1 October 2001–March 2002)' Refworld, accessed October 2020, <https://www.refworld.org/docid/3df4be12c.html>.

9 Jaynal Abedin, 'Legitimacy Crisis in Bangladesh: A Case Study of the 10th General Election' *European Journal of Political Science Studies* 3, no. 2 (2020).

10 Mirza Hassan and Sohela Nazneen, 'Violence and the Breakdown of the Political Settlement: An Uncertain Future for Bangladesh' *Conflict, Security and Development* 17, no. 3 (2017): 205.

legislative and administrative steps have taken an overall toll on the fundamental human rights situation in the country. On many occasions, the new legislative measures have been useful in addressing the rumours, militancy, online harassment, etc. But they have substantially curbed the liberty of citizens and groups, in particular, those working for the protection and promotion of minority rights have been affected severely, including those focused on religious minorities, indigenous peoples, refugees, LGBTIQ+ communities, and labour rights.¹¹

Media reports in the last few years suggest that dissenting political opinions expressed on the internet have been met with censure in the name of suppressing extremism, rumours, terrorism and subversive state activities. Political views and journalistic reports even hinting toward criticism of the government, and human rights activism have all been under scrutiny.¹² Judicial independence in the country is hindered by the executive organ of the state, owing to questionable appointment procedures among other matters, as seen by the controversial exit of the former Chief Justice of Bangladesh, S.K. Sinha.¹³ There is an adverse environment for civil society organisations and human rights defenders in Bangladesh. According to media reports, a total of 1,417 cases on cybercrime charges were filed with the police between 2012 and mid-2017. A total of 1492 people were arrested in Dhaka alone in these years, with 490 cases still under investigation.¹⁴

While the major opposition political parties have been struggling to exercise freedom of expression and assembly and protest, the other political parties joining the alliance led by the ruling party have been complicit in the government's actions. Civil

11 Human Rights Watch, 'Bangladesh: Repeal Abusive Law Used in Crackdown on Critics', July 01, 2020, <https://www.hrw.org/news/2020/07/01/bangladesh-repeal-abusive-law-used-crackdown-critics>.

12 Ibid.

13 SM Masum Billah 'Oil and Water Cannot Mix: The Separation of Powers in Bangladesh and the *Masdar Hossain* Legacy' Paper presented at the symposium on Twelve Years of Judicial Separation: Achievements and Challenges, Bangladesh Institute of Law and International Affairs, 28 December 2019.

14 A. R. Rabbi, 'Number of ICT Cases on the Rise Again', *Dhaka Tribune*, August 10, 2018, 2020, <https://www.dhakatribune.com/bangladesh/law-rights/2018/08/10/number-of-ict-cases-on-the-rise-again>.

society organisations (CSO), human rights defenders and activists have been facing backlash.¹⁵ Freedom of peaceful assembly and association are often denied and met with suppression. In the face of severe government control over civic space, most CSOs and media have adopted a ‘see-no-evil’ strategy to survive,¹⁶ while the few remaining independent entities who have tried to report on the widespread human rights violations and abuse of democratic values in the country have experienced undue pressure from the authorities.¹⁷

This is the context in which the state of the civic space in Bangladesh at the moment needs to be understood, in particular, the space for minority groups. This report examines the situation of civic space in the country for seven minority groups in particular, Hindus, Ahmadiya Muslims, indigenous communities, Dalits, linguistic minorities, i.e., Biharis, the LGBTIQ+ community, and Rohingya refugees.

Objectives

The overall objective of the study is to explore the shrinking of civic space in Bangladesh and analyse the trends and factors affecting civic space in the country, with particular focus on minority groups.

More specifically, the study aims to:

- Explore the challenges faced by minority groups;
- Analyse the situation of civic space in Bangladesh, with particular focus on minority groups, and explore the factors affecting civic space in the country;
- Examine the legislative framework relating to civic space vis-à-vis minorities; and
- Provide recommendations to widen the civic space for safe-

¹⁵ ‘Bangladesh Events of 2019’, Human Rights Watch, accessed August 2020, <https://www.hrw.org/world-report/2020/country-chapters/bangladesh>.

¹⁶ ‘The Compromised State of Civil Society in Bangladesh, 2018’, Reimagining Democracy, CIVICUS, accessed March 10, 2020, <https://www.civicus.org/index.php/re-imagining-democracy/stories-from-the-frontlines/3342-the-compromised-state-of-civil-society-in-bangladesh>.

¹⁷ Human Rights Watch, ‘Bangladesh: Events of 2019’, accessed March 10, 2020, <https://www.hrw.org/world-report/2020/country-chapters/bangladesh>.

guarding minority rights and the protection and promotion of human rights in general.

Methodology

This report relies on both primary and secondary data. Reports from government and private sources, published and unpublished research documents, seminar/conference papers and proceedings, articles, presentations, digital documents available in social media and daily newspapers have been consulted to gather data and information. Primary information was collected through direct interviews with representatives of the minority groups mentioned earlier. Given the ongoing Covid-19 pandemic and the restrictions on physical movement, data was also collected through online interactions, virtual meetings, and phone interviews.

Legal Regime and Civic Space

Constitutional Dispensation

Secularism and State Religion Run in Parallel

Bangladesh adopted its Constitution in 1972, nine months after its emergence as an independent country. The 1956 Constitution of Pakistan had declared the country to be an ‘Islamic Republic’,¹⁸ ignoring the distinctive Bengali linguistic and cultural orientation of the people of East Pakistan (now Bangladesh). This enabled the Pakistani rulers to suppress the Bengalis on the pretext of preserving Muslim unity. Learning from this, the Bangladesh constitution incorporated ‘secularism’ as one of the guiding principles, in line with what the founding President, Bangabandhu Sheikh Mujibur Rahman, had envisioned—an independent country free from religious bigotry.¹⁹ As a reflection of his political vision,

¹⁸ Under this ‘Islamic Republic’ concept, people were asked to order their life according to Quran and Sunnah, the post of the head of the state was reserved for Muslims, the legislature was obliged not to make any law inconsistent with Islamic law, *riba* (interest) in the economic system was abolished, the state was obliged to develop a healthy relationship with Muslim countries and so on.

¹⁹ To learn more about Bangabandhu’s secular political philosophy see: S.M. Rahman, *The Unfinished Memoirs* (London: Penguin Books, 2012).

principles of nationalism, secularism, democracy and socialism were adopted as the four basic pillars of the Constitution.²⁰ Article 8 of the constitution defines them as ‘the fundamental principles of state policy’.²¹

Article 12 of the 1972 Constitution defined secularism as the freedom to practise one’s own religion and non-use of religion towards political ends. Similarly, Article 38 allowed citizens to form associations or unions, with the exception of those that could: i) destroy the religious, social and communal harmony among citizens; ii) create discrimination among citizens on the ground of religion, race, caste, sex, place of birth or language; iii) organise terrorist acts or militant activities against the country or the citizens of any other country; and iv) thwart the objectives of the constitution. Article 41 guaranteed freedom of religion subject to law, public order and morality.²² Articles 12, 38 and 41 read together conveyed the meaning of secularism as maintaining neutrality amongst religions and eliminating discrimination based on religion.

Until 1975, the Constitution did not contain any religious words, nor did it have the provision of ‘Islam as state religion’. However, religious utterings and citations from religious books in state activities and rituals were visible. For example, the parliament convened with recitations of verses from the *Quran* and the state-owned television started its broadcast with recitations from the religious books of Muslims, Hindus, and Buddhists.²³

After 1975, once the military regime was in place, constitutional theocracy became triumphant and religious expressions started

20 The Constitution (Fifteenth Amendment) Act 2011 (Act XIV of 2011), s 3.

21 The Constitution of the People’s Republic of Bangladesh, art 8.

22 Further, the proviso to Article 41 guaranteed an individual the right to refuse to practise a religion or to be compelled to be educated in a religion other than their own. The provision does not say whether a person has the right ‘not to believe’ in any religion. This brings the important question about the extent to which an alleged ‘non-believer’ could be condemned on the ground of offending ‘religious feelings’, ‘public order’ or the like. There is constitutional obscurity in this particular aspect of religious freedom.

23 Amena Mohsin, ‘Religion, Politics and Security: The Case of Bangladesh’ in Satu Limaye, Robert Wirsing and Mohan Malik (eds), *Religious Radicalism and Security in South Asia* (Hawaii: Asia-Pacific Center for Security Studies, 2004) at 468.

to get a place in the constitutional framework. Much like during the Pakistani regime, the successive military rulers in Bangladesh began the Islamisation process in the Constitution. In 1976, Islamic religious expressions ‘Allah is almighty’ were inserted in the Constitution by General Ziaur Rahman through martial law proclamation.²⁴ The four principles of the Constitution, including secularism, were annulled, and Article 12 defining secularism and the proviso to Article 38, prohibiting religion-based politics, repealed.²⁵

Through the fifth Amendment of the Constitution, General Zia also allowed the re-emergence of religion-based political parties earlier prohibited for their controversial role in the Bangladesh Liberation War.²⁶ The Constitution, thus, lost its secular character as religious extremism started to rise at the behest of the so-called multi-party military democracy with its sympathy to ‘political Islam’. General Zia professed a brand of ‘Bangladeshi’ nationalism defined by his newly formed political party, the BNP, as a corollary of Islamism. As a result, the secularism-oriented ‘Bengali’ nationalism, that triggered the movement to attain separate nationhood, ended in disillusionment.

The Ershad government, which came to power through a military coup in 1982, declared Islam as the ‘state religion’ with the 8th amendment of the constitution in 1988.²⁷ In 1991, democracy was restored after the fall of General Ershad. Six amendments have

24 Political analysts in their commentaries term this Islam as ‘Political Islam’. Thus, Professor Ali Riaz of Illinois State University writes, ‘Their (Zia and Ershad) goal was to construct a ‘statist Islam’ through the production of an emergent Islamic discourse that, it was hoped, marginalised all other discourses, including that of democracy.’ See, A. Riaz, Ali *God Willing: The Politics of Islamism in Bangladesh* (New York: Rowman and Littlefield Publishers, 2004), 139.

25 Proclamation Order No 1 of 1977; Second Proclamation Order No IV of 1978.

26 The Constitution (Fifth Amendment Act 1979) (Act 1 of 1979). The fifth Amendment added one new provision to Article 25 which ran as follows: ‘The state shall endeavour to consolidate, preserve and strengthened the fraternal relations among Muslim countries based on Islamic solidarity.’

27 The Constitution of the People’s Republic of Bangladesh, article 2A. The provision read as follows: ‘The State Religion—The state religion of the Republic is Islam, but other religions may be practised in peace and harmony in the Republic.’



been made to the Constitution since, dealing with various aspects of governance, election, justice and representation, but no amendment has been made to restore secularism in the country. Politics over the last two decades has been largely conditioned by the role of pro-religious parties like the Bangladesh Nationalist Party (BNP) and their ally, the Jamaat-e-Islami.²⁸ The 2001-2006 term led by the alliance of two parties saw the rise of Islamic militancy throughout the country. Their main opponent, the Awami League, was able to return to power in 2008, but not without certain concessions made to the role of religion in politics.

In 2009, the fifth amendment was declared unconstitutional.²⁹ One of the implications of the decision was that it revived the principles of secularism. To make the findings of the Supreme Court more concrete and meaningful and to adjust it to the present-day political reality, the fifteenth amendment to the Constitution was enacted in 2011, which reformulated certain religious expressions to give coherent meaning to secularism under the new political reality. For instance, Islam was retained as the state religion, but

²⁸ The BNP-led coalition was in power in two terms: 1991-1996 and 2001-2006.

²⁹ *Bangladesh Italian Marble Works Ltd v. Government of Bangladesh & Others* [2006] 14 BLT (Special) (HCD) 1. On appeal, ABM Khairul Haque's illuminating judgment was affirmed by the Appellate Division with certain modifications.

there was the guarantee of equal status and equal rights to followers of other religions as well.³⁰ Thus, the present Constitution pledges to establish a secular society without impairing the presence of religion in the national life of Bangladesh. Critics point out that with Islam as the state-backed religion, a truly secular society cannot be established.

Principle of Non-Discrimination

Non-discrimination is one of the fundamental tenets of the Bangladesh Constitution. Article 27 of provides that all citizens are equal before the law and are entitled to equal protection of the law. The Constitution has incorporated both general and particular non-discriminatory clauses. Article 28 of the Constitution in general sets out the principle of non-discrimination by providing that no citizen shall be discriminated on the grounds of religion, race, caste, sex or place of birth. The Constitution, in particular, also states that that no citizen will 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 on grounds of religion, race, caste, sex or place of birth.

Freedom of Expression and Press

Article 39 of the Constitution of the People's Republic of Bangladesh ensures freedom of expression and press in a qualified manner. Article 39 subjects this freedom to certain restrictions such as security of the state; friendly relations with foreign states, public order, decency or morality, among others. These grounds are vague and subject to interpretation. Moreover, under Articles 141A-141C, the fundamental rights of citizens can be abrogated. The Constitution also gives power to the state to make laws limiting freedom of expression on the grounds mentioned in Article 39.

³⁰ Replacing the old provision (article 2A) under the eighth Amendment, it now reads: 'The State Religion—the state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religion.'

Statutory Regime

Many of the existing statutory laws of Bangladesh are an antithetical to freedom of expression and civic space. For instance, the Penal Code of 1860 prohibits ‘deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs’ and ‘uttering words, etc, with deliberate intent to wound religious feelings’. These are punishable with fines, or up to two years in prison, or both.³¹ Another example is the widely debated Digital Security Act (DSA) of 2018, which criminalises acts in the digital space. Civil rights organisations, however, were quick to point out that many of the DSA’s provisions limit civil rights, including freedom of expression and freedom of religion or belief. While Bangladesh’s Penal Code punishes blasphemy with up to two years in prison and a fine, the DSA also criminalises blasphemy as a non-bailable offence and imposes harsher penalties. Section 28 of the DSA prohibits ‘publication, broadcast of anything in any website or in any electronic layout that hampers the sentiment or values’. It further stipulates that any person or group will be considered to have committed a criminal offence under this extremely vague provision if they ‘intentionally or knowingly, with the aim of hurting religious sentiments or values or with the goal to provoke, post or broadcast anything by means of any internet site or any electronic layout which hurts religious sentiment’. The DSA imposes a punishment of up to seven years in prison for the offence committed for the first time and up to 10 years for repeated offences of hurting religious sentiments.

International Human Rights Law and Bangladesh’s Obligation

Bangladesh has ratified several international treaties that protect civil and political rights, right to freedom of speech, expression and opinions, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). In several reports, various

³¹ Penal Code 1860 (Act No. XLV of 1860), Government of the People’s Republic of Bangladesh, <http://bdlaws.minlaw.gov.bd/act-11.html>.

international human rights bodies have drawn Bangladesh's attention to pertinent issues with relevance to civic rights and freedom of expression. For instance, an Anti-Discrimination Bill in the process of enactment needs to address caste-based discrimination, decriminalisation of homosexuality, and harassment and stigmatisation of the LGBTIQ+ community. There is also international concern about the high rate of extrajudicial killings and enforced disappearances in Bangladesh. The accountability measures in responding to the issue are inadequate and need to be addressed. The Special Powers Act 1974 enables the continuation of the practice of preventive detention, which has been used by the state to suppress political opponents. Administrative authorities enjoy unfettered power granted under the Act to arrest and detain a person involved in alleged prejudicial activities. The practice of custodial death continues despite the enactment of the Torture and Custodial Death (Prevention) Act 2013.

Civic Space: The State of the Minorities

Hindus

Bangladesh has a population of 163 million people.³² Around 98 per cent of the population identifies themselves as Bengali,³³ and Muslims constitute the majority in terms of religion, with Hinduism, Christianity and Buddhism being the other major religions.³⁴ Although its Constitution asserts that Bangladesh is a

³² 'Bangladesh Population 2020', *World Population Review*, accessed March 25, 2020, <http://worldpopulationreview.com/countries/bangladesh-population>.

³³ Although the remaining two per cent makes up a fraction of the population, there are at least 27 other distinct ethnic groups in Bangladesh formally recognised by the government. Independent researchers, however, claim that the number is closer to 75. See 'Bangladesh Ethnic Groups', Study.com, accessed August 15, 2020, <https://study.com/academy/lesson/bangladesh-ethnic-groups.html>. The groups prefer to identify themselves as *adivasis* (indigenous communities), the Constitution of Bangladesh, however, uses the phrase 'tribes, minor races, ethnic sects and communities' to refer them. See, The Constitution of the People's Republic of Bangladesh, Article 23A.

³⁴ The religious composition is: Muslims: 89.1%, Hindus: 10% and Others (Buddhist, Christians): 0.9%. Also see: A. Riaz, 'The Politics of Islamisation in Bangladesh' in *Religion and Politics in South Asia*, edited by A. Riaz (Abingdon: Routledge, 2010), 47.

secular nation, Islam remains the 'state religion'. Partly because of that, despite having equal rights and status constitutionally, religious minorities in Bangladesh face discrimination, harassment and atrocity. The declining Hindu population in the country can be linked to harassment and physical attacks on them; while Hindus accounted for 23 per cent of the total population in 1971, the proportion is near 8 per cent now.³⁵ Moreover, successive governments have failed to adequately respond to the violence against the Hindu minority.³⁶ A report of the UK Home Office states that 'political parties do use religiously divisive language and, on occasion, act in ways that exacerbate rather than diminish religious and communal tensions. Violent assaults on religious minority communities are often not investigated or prosecuted.'³⁷

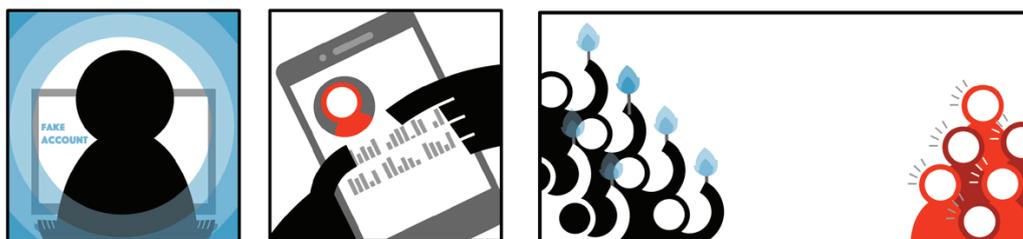
While the aforementioned circumstances render religious minorities voiceless, the recent trend of violence against them on social media has made them all the more vulnerable. The October 2019 incident where an attack on Hindu minorities took place in Bhola district following the alleged use of hate speech in social media is a telling illustration.³⁸ The violence erupted when some anti-religious messages, allegedly posted by a Hindu youth, spread online even though the youth had already reported that his social media account had been hacked. This incident follows a pattern of young individuals from religious minorities reporting that their social media accounts have been hacked, followed by incriminating religious messages being posted from their account, leading to widespread violence against the minority community.

35 Press Statement, 'Preliminary findings of visit to Bangladesh by Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief', United Nations Human Rights Office of the High Commissioner, September 9, 2015, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16399&LangID=E>.

36 'Freedom in the World 2015: Bangladesh', Freedom House, accessed March 10, 2020, <https://freedomhouse.org/report/freedomworld/2015/bangladesh>, archived at <https://perma.cc/QC37-SA5V>.

37 A risk assessment of country-of-origin information (COI) by the UK Home Office, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/514400/CIG.Bangladesh.

38 Star Report, '4 Killed, 100 Injured', *The Daily Star*, October 21, 2019, <https://www.thedailystar.net/frontpage/clash-in-bhola-4-killed-100-injured-1816540>.



Ahmadiya Muslims

Bangladesh's Ahmadiya Muslim community is particularly vulnerable and faces increased harassment as Islamist groups claim that their practice of the religion is not endorsed by Islam. Islamist groups have also been lobbying the government to declare Ahmadiyas to be non-Muslim.³⁹ There is evidence that the police is keeping Ahmadiyas under surveillance, including by approaching members of the community outside of their mosques to collect personal details.⁴⁰

Ahmadiyas in Panchagar district came under attack in February 2019 when they were arranging an annual conference.⁴¹ Three Islamist organisations had jointly urged the government to ban the meeting and implement their demand to declare Ahmadiyas non-Muslim. When the conference proceeded, around 500 people from Islamist groups attacked the Ahmednagar village, vandalised houses, and looted the Ahmadiyas while the police failed to intervene. Ahmadiyas faced a similar attack in September 2019 when an Ahmadiya mosque under construction in Netrakona town was vandalised by Islamist groups.⁴² Around 400 people, mainly students from nearby madrassas, allegedly destroyed the mosque with homemade weapons despite the presence of the

39 S. Uttom and R.R. Rozario, 'Cleric demands Bangladesh Ahmadiis be declared non-Muslim', *UCA News*, April 18, 2019, <https://www.ucanews.com/news/cleric-demands-bangladesh-ahmadiis-be-declared-non-muslim/85004>.

40 'General Briefing Bangladesh', CSW: Everyone Free to Believe, accessed August 22, 2020, <https://www.csw.org.uk/2020/05/01/report/4636/article.htm>.

41 S.R. Sazzad, '50 Ahmadiyas Injured in Co-ordinated Attack on the Community in Panchagarh', *Dhaka Tribune*, February 13, 2019, <https://www.dhakatribune.com/bangladesh/nation/2019/02/13/sunnis-attack-Ahmadiyas-in-panchagarh>.

42 New Age, 'Under-construction Ahmadiya Mosque Vandalised in Netrakona', *New Age*, September 15, 2019, <https://www.newagebd.net/article/84607/under-construction-Ahmadiya-mosque-vandalised-in-netrakona>.

police. In January 2020, a mosque of the Ahmadiyas was attacked in Brahminbaria district when a group of madrassa students were barred from entering a religious programme in the Ahmadiya mosque. The following day, several locals and the madrassa students held a procession to demand passing a law declaring Ahmadiyas to be non-Muslim.⁴³

In recent years, the trend of spreading hatred through YouTube videos has been on the rise. Religious extremist groups use the social media and the 'waz-mahfil', the religious gatherings where Islamic scholars discuss various aspect of Islam, to spread communalism, religious fanaticism, hatred against women, and to encourage militancy and anti-state, anti-democracy and anti-cultural sentiment. They have openly denounced non-Muslim faiths, accused religious minorities of destroying Islamic values, and accused Christians of forcing Muslims to convert.⁴⁴ They are also attempting to influence the government to enact policies to exclude texts written by non-Muslims writers from the national curriculum.⁴⁵

Dalits

Caste and descent-based discrimination in Bangladesh is a complex, multifaceted issue as 'it results from a variety of often overlapping factors, including caste, religion, place of birth or families/descendants' place of birth and occupation'.⁴⁶ Though the reality of caste discrimination in Bangladesh is concealed by silence, even outright denial, the Dalit community experiences multiple forms of social, political and economic discrimination. Their predicament, enabled by tacit acceptance from the government, is in violation

43 New Age, 'Ahmadiya Mosque, Houses Attacked in Brahmanbaria: Islamists Demand Declaring them Non-Muslims', *New Age*, January 16, 2020, <https://www.newagebd.net/article/96747/Ahmadiya-mosque-houses-attacked-in-brahmanbaria>.

44 Staff correspondent, '15 named for fanning communal tension, militancy thru Waz', *The Daily Observer*, April 7, 2019, <https://www.observerbdt.com/news.php?id=192164>.

45 DW, 'Bangladesh's secular activists concerned about textbook changes', undated, <https://www.dw.com/en/bangladeshs-secular-activists-concerned-about-textbook-changes/a-37398705>.

46 M. Islam, and A. Parvez, *Dalit Initiatives in Bangladesh* (Nagorik Uddyog and Bangladesh Dalit and Excluded Rights Movement: Dhaka, 2013), 12.

of Bangladesh's fundamental human rights obligations. Though recognised as citizens of the country, being stigmatised on account of their caste and professional identity can leave Dalits in a situation of de facto statelessness.

While relatively little research has been conducted on the community, available information suggests that there are between 5.5 and 6.5 million Dalits and members of similarly excluded groups in Bangladesh, comprising between 3 to 4 per cent of the population. Dalits in Bangladesh are usually engaged in the most low paid and dirty work such as cleaning toilets, sweeping streets, and emptying septic tanks.⁴⁷ The absence of reliable and disaggregated data is a major factor in the continued barriers Dalits face in gaining political representation, accessing public services, and securing employment. In many cases, their discrimination is underpinned by the fact that they are religious minorities as well since Dalits are estimated to comprise as much as 70 per cent of the Hindu population in Bangladesh.⁴⁸

Pursuant to the recommendation of the Bangladesh Law Commission, in 2014, the government formulated a draft law against discrimination, the Anti-Discrimination Act. Different national rights bodies, and representatives of the underprivileged communities have expressed their views and comments on the draft on different occasions. The draft was first submitted to the Law Ministry in 2014, but despite assurances by the Law Minister about its imminent passage, it was sent back to the NHRC for further revision after three years. The NHRC had sent it back to the government in April 2018, and it has remained under review for the last couple of years.

Indigenous Communities

The state seemingly encourages intolerance towards the organisations working for and with Indigenous Peoples (IPs) by denying

⁴⁷ Bangladesh Dalit and Excluded Rights Movement, and Nagorik Uddyog, *Joint NGO submission related to the review of Bangladesh at the 30th Universal Periodic Review session in 2018 Situation of Dalits in Bangladesh* (International Dalit Solidarity Network: Dhaka 2017), <https://idsn.org/wp-content/uploads/2018/03/NGO-report-UPR-Dalit-rights-in-Bangladesh-2017.pdf>.

⁴⁸ Ibid.

their freedom of association and through forced disappearance of IPs defenders. In 2019, the government issued a notice to organisations with the word ‘indigenous’ in their name and asked them to replace it with ‘ethnic’ or ‘tribal’ or the like.⁴⁹ It was said that failure to do so would result in cancellation of the organisation’s approval. Following that, the government has also stopped approving any development project of NGOs that focuses on indigenous communities.

The IPs of Bangladesh are not constitutionally recognised. Through the 15th Amendment to the Constitution in 2011, the government chose to term indigenous peoples as ‘tribes, minor races, ethnic sects and communities’,⁵⁰ while also calling all the people of Bangladesh, irrespective of their ethnic, linguistic and cultural backgrounds, as ‘Bangalee’.⁵¹ This is interpreted by rights groups as an example of non-recognition of non-Bengali peoples, including IPs, even though a number of legal government documents interchangeably use the terms ‘tribal’,⁵² ‘indigenous’,⁵³ ‘aboriginal’,⁵⁴ and ‘adivasi’.⁵⁵

The Small Ethnic Groups Cultural Institutes Act 2010 recognises 27 small ethnic groups, although IPs organisations claim that there are at least 54 indigenous communities speaking more than 35 languages in the country.⁵⁶ The definitions section uses the term ‘adivasi’, the Bengali equivalent of indigenous, in explaining the

49 Directive [Ref. No. 03.07.2666.660.66.49219.888] issued by the NGO Affairs Bureau, regulatory body of Bangladeshi NGOs, on 18 December 2019

50 The Constitution of the People’s Republic of Bangladesh, article 23A.

51 The Constitution of the People’s Republic of Bangladesh, article 6.2.

52 The CHT Accord of 1997; CHT Regional Council Act 1998 (Act 12 of 1998); Rangamati, Khagrachari and Bandarban Hill District Council Acts 1989.

53 CHT Regulation 1900; Finance Act 2010; Poverty Reduction Strategy (PRSP-2008, 2019-10); 6th Five Year Plan; Perspective Plan for Bangladesh 2010–2021 (2010); *Sampriti Chakma v Commissioner of Customs and Others* (5 BLC, AD, 29); *Wagachara Tea Estate Ltd v Md. Abu Taher and Others*, 36 BLD (2016).

54 State Acquisition and Tenancy Act 1950.

55 Statements of Prime Minister Sheikh Hasina, International Day of World’s Indigenous Peoples 2009, <https://earchive.prothomalo.com/view/dhaka/2009-08-09/11>; Small Ethnic Groups Cultural Institutions Act 2010.

56 ‘Stakeholder Report Universal Periodic Review—2nd Cycle’, National Human Rights Commission, Bangladesh, accessed Oct 2020, https://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/NHRC_UPR_BGD_S16_2013_NationalHumanRightsCommission_E.pdf.

meaning of the term ‘small ethnic groups’. Despite the number of IP groups in Bangladesh, the country abstained from voting for the UN Declaration on the Rights of Indigenous Peoples in 2007.⁵⁷

There is another long-drawn existential challenge for the IPs of Bangladesh. Historically, the Chittagong Hill Tracts (CHT) in the country’s south-eastern corner was an area inhabited exclusively by indigenous groups. Since the late 1970s, the Government of Bangladesh has facilitated the settlement of Bengalis in the CHT from various other parts of the country which means that the region has experienced demographic changes, reducing IPs into a near-minority.⁵⁸ This change has adversely affected the right to internal self-determination of the IPs as well as their socio-cultural and economic life. The CHT Accord of 1997, which recognises the special demographic and administrative status of CHT compared to other parts of the country, remains far from fully recognised in the Constitution.

IPs in Bangladesh who are engaged in defending civic rights and promoting democratic norms have faced enforced disappearance, extrajudicial killings, arbitrary arrests, harassment, among others, on a regular basis. The leader of the United People’s Democratic Front (UPDF), Michael Chakma, went missing in April 2019, on his way to Dhaka from Narayanganj district. The police refused to register a case of missing person, leading to Chakma’s sister filing a writ requesting he be presented before a judge or in court. Following that, the High Court ordered the Home Ministry to submit a report within five weeks. However, the police repeatedly stated that they could not find anybody named Michael Chakma in the prisons of Bangladesh.⁵⁹ Similarly, a case of rape of two women of indigenous background in Chittagong Hill Tracts in

57 ‘Bangladesh’, International Work Group for Indigenous Affairs, accessed March 10, 2020, <https://www.iwgia.org/en/bangladesh>.

58 Amena Mohsin, *The Politics of Nationalism: The Case of the Chittagong Hill Tracts, Bangladesh* (Dhaka: University Press Limited, 1997), 70.

59 B. Adams, ‘Still No Answers on Activist’s Disappearance in Bangladesh: Indigenous Rights Defender Michael Chakma Went Missing One Year Ago Today’, *Human Rights Watch*, April 8, 2020, <https://www.hrw.org/news/2020/04/08/still-no-answers-activists-disappearance-bangladesh#:~:text=One%20year%20ago%2C%20on%20the,p.m.%20He%20has%20never%20returned>.

January 2018, allegedly by men in uniform, was also buried as law-enforcement agencies prohibited the victims' families from talking to reporters and fabricated testimonials.⁶⁰

Barriers to the exercise of the rights to freedom of speech, expression, and association in the country has been on the rise in recent years.⁶¹ Intimidation by the local administration, law enforcement agencies, and security forces include restrictions on organising or holding rallies, social festivals, observation of the founding anniversary of any organisation, and processions and mass gatherings on the occasion of the anniversary of the CHT Accord. For instance, in May 2018, the Rangamati district administration did not allow Hill Students Council to organise an outdoor public gathering to mark its founding anniversary. In July 2018, security forces did not allow local inhabitants of Guiimara in Khagrachar Hill district and Bandarban Sadar in Bandarban Hill district to stage demonstration against the rape and killing of a 10-year-old indigenous girl.⁶² In August 2018, the police obstructed a rally organised by IPs out to mark the International Day for the World's Indigenous Peoples in Gobindaganj of Gaibandha district. Furthermore, in August 2019, the local administration did not allow a Dhaka-based human rights team to visit Lama Bandarban to investigate the rape of two IP girls, allegedly committed by security personnel, in Bandarban Hill District.⁶³

Sexual Minorities

Discrimination against individuals based on their sexual orientation is common in Bangladesh. Along with societal discrimination, Islamic extremist groups have exhibited zero tolerance towards

60 Star Weekend, 'Rape of Marma Sisters', *The Daily Star*, February 2, 2018, <https://www.thedailystar.net/star-weekend/human-rights/rape-marma-sisters-1528471>.

61 'Kapeeng Watch', Kapeeng Foundation, accessed March 2020, <https://www.kapeengnet.org/category/kapeeng-watch>.

62 The Daily Star, 'Two Indigenous Girls "Raped" in Bandarban: Case Filed against 3 "BGB Men"; BGB denies Allegation', (August 2018), online: <https://www.thedailystar.net/news/country/two-indigenous-girls-raped-security-forces-bgb-bandarban-bangladesh-1624075>.

63 Ibid.

the LGBTIQ+ community,⁶⁴ with the Hijra community⁶⁵ being an exception. The government, too, is quite set against LGBTIQ+ activism, in order not to antagonise Islamist groups. And, although the government has recognized the Hijra population as the ‘third gender’, there has not been adequate changes at the policy level or practices to recognise, ensure, and protect their rights.

Sexual and gender minorities in Bangladesh face numerous difficulties in accessing citizen services. They are discriminated against, stigmatised, and harassed on the basis of their sexual orientation, gender identity, behaviour, and sexual practices. Discrimination based on physical or cultural characteristic and sexual violence against the minorities are common due to a lack of legal protection and social marginalisation. Homosexuality in Bangladesh is prohibited and considered a disorder in society, with Section 377 of the Penal Code criminalising ‘carnal intercourse against the order of nature’. The government has opposed the idea of providing rights to the minorities, stating that it is not an accepted norm of the country. However, the proposed Anti-Discrimination Law mentions that there shall be no discrimination on the basis of one’s sexual orientation. The passage of the law remains uncertain so far.

Urdu-Speakers

The Urdu-speaking people of Bangladesh are largely known as ‘Biharis’—a term that covers approximately 300,000 non-Bengali, Urdu-speaking Bangladeshis who have mostly remain stranded in camp settlements since 1971.⁶⁶ This community was also known as ‘stranded Pakistani’⁶⁷ after the independence of Bangladesh and until a decade ago were stateless.

The Bihari community has struggled to get citizenship rights.

64 Inge Amundsen, ‘The Ruins of Bangladesh’s LGBT Community’ *East Asia Forum*, March 23, 2018, <https://www.cmi.no/publications/6489-the-ruins-of-bangladeshs-lgbt-community>.

65 Intersex and transgender individuals who are part of the socio-cultural landscape in South Asia.

66 Mazharul Islam and Md. Tajul Islam, *Human Rights Situation of Urdu-speaking Community in Dhaka City* (Dhaka: Islamic Relief Bangladesh 2016).

67 During the liberation war of Bangladesh in 1971 Bihari people opposed independence of Bangladesh and assisted Pakistani Military in genocide.

In 2008, a High Court decision,⁶⁸ recognised them as citizens of Bangladesh entitled to National Identity Cards and able to exercise their voting rights for the first time. This was in response to a writ petition⁶⁹ filed by 10 Urdu-speakers in 2003, when the High Court issued an order to the government to provide them with citizenship through enrolment in the voters' list. Ultimately, other Biharis were also granted citizenship through another directive of the Supreme Court in 2008.⁷⁰ The Court reiterated that according to the law, all members of the Urdu-speaking community were nationals of Bangladesh and directed the government to ensure their inclusion in the voters' list and provide them with National Identity Cards.

There was no expectation that the civil and political rights of Biharis would drastically change despite the issuance of National Identity Cards and their becoming voters. Biharis continue to struggle to enjoy their fundamental rights as citizens. They are often denied access to basic services or face harassment from government agencies for their identity as camp settlers. Biharis have faced difficulties in securing passports, birth registration, trade license or other important documents.⁷¹ They are also hesitant to organise themselves to claim their rights as citizens because they have been stigmatised for their ancestors' role during the independence war. Even political parties have not expressed support towards this vulnerable community for the same reason. Since 2008, three parliamentary elections have been held but no party has taken up the issue of this community.

Rohingyas

Three years since the violence and persecution in Myanmar forced hundreds of thousands of Rohingya to flee across the border to

68 Writ Petition No. 10129 of 2007, Md. Sadaqat Khan (Fakku) v Chief Election Commissioner, 60 DLR (AD) (2008) 407.

69 Writ Petition No. 3831 of 2001, Abid Khan and others v. Govt. of Bangladesh and others, 55 DLR (2013).

70 Writ Petition No. 10129 of 2007, Md. Sadaqat Khan (Fakku) v Chief Election Commissioner, 60 DLR (AD) (2008).

71 'Realising Citizenship Rights: Paralegals in the Urdu-Speaking Community in Bangladesh', Council of Minorities and Namati, accessed August 15, 2020, <https://namati.org/resources/realizing-citizenship-rights-paralegals-in-the-urdu-speaking-community-in-bangladesh>.

Bangladesh, 860,000 refugees continue to be hosted in Cox's Bazaar District. UN agencies and over 130 national and international NGOs have supported the government in providing crucial assistance and protection to both refugees and vulnerable local people, who continue to bear the socio-economic and environmental impact of the influx.

The government of Bangladesh, however, is sceptical of I/NGO assistance of the Rohingya. It banned 41 NGOs from working at Rohingya camps due to their efforts to increase awareness among the refugees on human rights.⁷² The government has also declared an unofficial prohibition on surveys, research, or any project with the Rohingya. The Foreign Donations (Voluntary Activities) Regulation Act 2016 introduced tighter controls on financing and enhanced processes for NGO registration, delaying project approvals, slowing down implementation, and severely restricting international engagement with local civil society organisations.⁷³ There has been a barrier on mobile internet in Rohingya camps for the last two years in order to prevent militant activities even though the government is considering lifting the ban in order to be able to disseminate information on the Covid-19 outbreak to Rohingya refugees effectively.

Conclusion

Civil and political rights in Bangladesh are being increasingly curtailed due to the presence of laws and practices inconsistent with the protection of fundamental human rights. The situation can be attributed to the absence of strong opposition political parties, concentrated governmental power, and lack of accountability.⁷⁴ The government's actions towards opposition political activists,

⁷² Refweb, 'Bangladesh: UN Experts Concerned by Crackdown at Rohingya Refugee Camps', (Sept 2019), accessed Sept 2020, <https://reliefweb.int/report/bangladesh/bangladesh-un-experts-concerned-crackdown-rohingya-refugee-camps>.

⁷³ Mark Bowden, 'The Current Context to the Rohingya Crisis in Bangladesh', (Oct 2020) accessed Oct 2020, <https://odihpn.org/magazine/current-context-rohingya-crisis-bangladesh/>.

⁷⁴ 'Catastrophic human rights situation in Bangladesh', CIVICUS, July 5, 2016, <https://www.civicus.org/index.php/media-resources/news/726-catastrophic-human-rights-situation-in-bangladesh>.

civil society, and the media has been increasingly hostile since the 2014 national election. It has also failed to protect free-thinkers, bloggers and minorities from attacks by militant groups. Although there are more than 30 private TV channels operating in the country, people seem to be fearful and anxious when it comes to expressing themselves on social media, owing mainly to the fear of being prosecuted under the 2018 Digital Security Act. As foreign assistance has dwindled in the country, CSOs have maintained engagement with the government on 'safe and soft' issues instead of advocacy of minority rights. The voice of the religious minority, never strong in Bangladesh, is at its lowest level at present.

Based on these existing realities, the following recommendations are made in order to create an open civic space in the country.

- i. Educate people on the need for tolerance, freedom of religion and belief, and strength of a pluralistic society, through an educational policy aimed at attaining a truly secular state as enshrined in the constitution. The constitutional position of Islam as a 'state religion' should not be allowed to impinge on the secular feature of the Constitution.
- ii. Implement effective and holistic action to eliminate the underlying motives for threats to religious minorities and to combat growing fundamentalist voices threatening the foundation of a free democratic society.
- iii. Allow opposition political parties to express their concerns. Ensure transparency and accountability and due process of law in taking actions against political vandalism.
- iv. Take swift action to tackle rising terrorism and violence, ensuring impartial investigations and prosecution of those responsible for attacks against religious minorities in order to end the culture of impunity with regard to these crimes.
- v. Take concrete legal and administrative measures to ensure constitutional recognition of the distinct identity of the indigenous peoples while reflecting the same in laws and policies, including their separate and independent enumeration in the census.
- vi. Take specific actions to finalise and enact the Anti-

Discrimination Law, adopt a time-bound implementation plan, and arrange appropriate capacity development measures of government officials and other stakeholders to implement the law. Ensure that no discriminatory provisions and languages exist in the draft of the Anti-Discrimination law.

- vii. Identify and amend provisions in laws and policies to eliminate discrimination based on gender and sex. Take steps to incorporate comprehensive sexuality education in the national curriculum. Adopt specific laws or policies to ensure recognition of gender identities.
- viii. Acknowledge the existence of sexual and gender minorities and amend relevant policies accordingly. Reform Section 377 of the Penal Code, thus decriminalising homosexuality and ensuring their rights to association.
- ix. Recognise Dalits as a 'special' community, produce disaggregated data along with the poverty status of this community, and undertake special employment and livelihood development programmes for them.
- x. Ensure basic rights of Biharis, including their access to basic services and amenities.
- xi. Maintain diplomatic options for the safe return of the Rohingyas to Myanmar, and ensure that NGOs working to protect and assist Rohingyas are able to function without restrictions. Lift the ban on access to mobile internet in the refugee camps.
- xii. Review the vague Digital Security Act and amend the law to make it compatible with international standards while preventing misuse of the law.