

A Strategy for Making Future Bangladeshi Domestic Courts Follow International Human Rights Law Adherence

Md. Humaun Kabir¹, A.K.M Sohel Habib Nowroz², Md. Rakib Chowdhury^{3*}, Mirza Md. Abu Raihan⁴, Md. Mahbub Islam⁵

¹Associate Professor, Department of Law, Sylhet International University, Bangladesh

²Assistant Professor, Department of Law, Sylhet International Bangladesh

³Apprentice Lawyer, Joypurhat District Bar Association, Bangladesh

⁴Apprentice Lawyer, Dhaka Judge Court, Bangladesh

⁵Mymensingh District Bar Association, Bangladesh.

***Corresponding Author**
Md. Rakib Chowdhury

Apprentice Lawyer,
Joypurhat District Bar
Association, Bangladesh.

Article History

Received: 08.09.2024
Accepted: 16.10.2024
Published: 21.11.2024

Abstract: Adoption of customary international law has been increasing in recent years, paralleling the incorporation of human rights concepts into the legal systems of various states. These changes have happened at the same time. Because of this, the legal systems all around the world have undergone substantial modifications. The right to exist, the right to freedom, and the prohibition of torture are fundamental elements of international human rights law that have been recognized by legal systems in Bangladesh and other countries, even though the "universality" of these rights is still debatable. International human rights treaties may be seen by national courts as more "inspiring" or "persuasive" than strictly compulsory in nations with dualist legal systems, like Bangladesh. Case by case, international law is becoming an increasingly important factor in judicial decisions. Examining this trend in the context of Bangladesh, this study assesses the current state of judicial reception of international human rights legislation (IHRL) in case law. It delves into the views that have impacted the domestic application of international law, the role of international law under Bangladesh's constitution, and the conservative and progressive judicial viewpoints on the matter. The goal of this project is to look at how international human rights standards have evolved and how they affect Bangladeshi law.

Keywords: Customary International Law, Human Rights, Legal System, Bangladesh, International Human Rights Law (IHRL), Judicial Reception, International Treaties, Dualist Legal Systems, Constitutional Law.

Cite this article:

Kabir, H., Nowroz, A.K.M S. H., Chowdhury, R, Raihan, M. M. A, Islam, M., (2024). A Strategy for Making Future Bangladeshi Domestic Courts Follow International Human Rights Law Adherence. *ISAR Journal of Arts, Humanities and Social Sciences*, 2(11), 88-97.

Introduction:

For quite some time, people have debated whether or not International Human Rights Law (IHRL) has any domestic relevance because of the inherent limits of international law, especially in relation to enforcement techniques. The matter of enforcement procedures is one in which this is particularly relevant. Among the most pressing concerns that must be addressed in this discussion is the discrepancy between the human rights standards enshrined in national legal systems and the principles advocated by IHRL (Kohl & Walenta, 2023). This discrepancy ranks high among the critical issues that require attention. Human

rights treaties and declarations aim to protect human rights; however, many states do not adhere to their standards, which is the main reason why human rights legislation is applied differently. Protecting human rights around the globe is the goal of these declarations and accords. One of the most important factors that adds to this challenge, according to Wheatley (2019), is the dominance of traditional ideas that consider national legal systems to be better than international law. There are several factors that contribute to this difficulty, but this is a major one. There have been discussions over the proper function of national courts in relation to the interpretation and application of international law provisions pertaining to human rights (Klabbers, 2016).

Disagreements like this have emerged because international law and domestic legal systems are so different.

There has always been a huge chasm between international law and national law when it comes to international law. The main reason for this is because domestic legislation is mostly shaped by national constitutions. This is the specific circumstance that has led to this point. Ziegler & Zhao (2021) asserts that the distinction between human rights legislation and other forms of legislation has become more and more hazy over time. Meanwhile, human rights law diverts attention away from state-centric concerns and toward individual rights and duties. This is a huge deal because, unlike traditional international law, international human rights legislation establishes rights and responsibilities for individuals; as a result, states will have to adopt these ideas into their own legal frameworks. This is due to the fact that human rights legislation on a global scale grants certain responsibilities and privileges to individuals. An important juncture in this process happened in the decades after WWII. During this time, other legally enforceable accords, such as the Universal Declaration of Human Rights (UDHR), were founded with the aim of promoting and protecting human dignity on a global basis. The promotion and preservation of human dignity was the primary motivation for the establishment of these conventions.

Literature Review:

Incorporating international human rights legislation (IHRL) into Bangladesh's legislative framework is the goal of this research review. This action is done due to the fact that dualist legal systems are problematic. The purpose of this study is to examine the impact of academic research and judicial interpretations of the law on the implementation of international human rights law (IHRL) principles in Bangladesh, as well as to draw similarities to other countries' IHRL systems. This investigation is taking place in Bangladesh.

1. Dualist Legal Systems and International Law

When it comes to domestic law and international law, dualists believe that there is a clear distinction between the two (Klabbers, 2016). From the perspective of this theory, it is impossible for domestic applications of international standards to exist in the absence of their formal integration. When it comes to dualist nations like Bangladesh, where human rights treaties and conventions are often not enforceable without the permission of the official government, it can be more challenging to accept international human rights principles (Blondin, 2021). Due to the dualist approach, the Bangladeshi judiciary frequently views international human rights standards as persuasive rather than obligatory, despite the fact that the Constitution places a primary emphasis on the sovereignty of the nation. As Wheatley (2019) points out, it is challenging for dualist regimes to comply with both domestic legislation and international human rights standards at the same time. In line with this style of thinking, that method of thinking is consistent.

2. International Human Rights Law in National Judicial Interpretation

Local courts' enforcement of international human rights law (IHRL) has been debated, especially in dualist Bangladesh. Cintra Guimarães (2019) found that judges worldwide are increasingly citing international human rights legislation, despite no explicit

support. Thus, the judiciary's view has become more liberal. Bangladeshi courts commonly interpret constitutional fundamental rights provisions using international treaties like CEDAW and ICCPR. When judges view International Human Rights Law as a concept rather than a law, limits arise. Thus, the nation's human rights protections are inadequate.

3. Challenges in Incorporating Human Rights Standards

The failure of Bangladesh to achieve international human rights standards is largely attributable, according to numerous studies, to the country's sociopolitical climate. There have been several cases of human rights violations in Bangladesh throughout its history, committed by different governments. The difficulties that have been detailed above are likely to blame for the slow adoption of this technology in Bangladesh. A member of the United Nations or prioritizing international human rights are not legal requirements for Bangladesh to meet its duties, according to Tanbir (2022) conclusions. This agrees with what Tanbir found in his studies. Consideration of the level of political power held by the Bangladeshi court should be given due consideration. Due to inbuilt bias, domestic courts struggle to implement human rights standards in comparison to their foreign counterparts. Foreign courts are so held responsible for this. Research from every corner of the globe has proven that human rights are better protected by dualist regimes that center on the independence of the judiciary. (Riaz, 2023) claims that one barrier to the expansion of international human rights legislation (IHRL) in Bangladesh is the bias and incompetence of judges appointed by political parties. It is because political parties choose the judges that this result is reached. Something which is exceedingly challenging to complete well. This has led to IHRL being in a terrible spot right now. The very existence of this potential makes me nervous.

4. Judicial Reception of Human Rights in Bangladesh: Conservative and Progressive Perspectives

The fact that the Bangladeshi court includes both liberal and conservative perspectives on international law raises concerns about the country's stability. Conservative judges, says Klabbers (2016), are more apt to be wary about applying home rules and traditional interpretations abroad. There is a general trend among conservative judges to uphold long-standing national legislation and human rights standards. Liberal judges frequently consult international human rights accords when deciding how to interpret fundamental rights. As a result of hearing this, more individuals will consider fundamental rights in this light. According to them, the accords lay out a moral and constitutional foundation for handling domestic matters. Researchers found that conservative judicial decisions often restrict the implementation of international human rights law, leading to human rights safeguard inconsistencies (Blondin, 2021). But the situation is what it is. The ideological differences within the court, reminiscent of dualist systems, underscore the necessity for systemic reforms to establish a consistent, rights-oriented methodology in the adjudication judgments reached by the court.

5. Comparative Analysis of IHRL Integration in Other Dualist Systems

It is possible for us to draw the observation that IHRL is used in a variety of different ways by comparing the approaches adopted by other dualist legal systems, such as the legal systems of India and

the United Kingdom. According to Cintra Guimarães (2019), the Human Rights Act of 1998 was enacted with the purpose of formally incorporating the Human Rights treaty into British legislation by the time the European Union gave its approval to the treaty. This was the intention of the act. The recent historic judgments of an Indian court that, within a dualist framework, uphold international human rights principles have captured the attention of the media. These conclusions were made in December of this year. These decisions lend legitimacy to the international human rights norms that have been established. The verdicts that were handed down in this particular case have contributed to an improvement in the court's reputation on a global scale. Additionally, the accomplishments of India's legal system are held in exceptionally high regard. This is in addition to the fact that this happens. It is possible that Bangladesh would decide to establish a human rights court that has greater political and administrative autonomy. This decision could be made due to the fact that Bangladesh and the United States share a history.

6. Pathways to Strengthening Human Rights Law in Bangladesh

With approval, development might bring Bangladesh one step closer to human rights legislation on a global scale. It is critical to determine if the outcomes meet the expectations. Judgment independence advocates have proposed public forums, the education of future jurists in international law, and the passage of significant treaties by legislatures. It will be challenging but essential to reform Bangladesh's legal system so it complies with international human rights norms. With the changes, it will be feasible to do this. By learning from the errors of other nations and adopting a holistic perspective of international human rights law, the courts in Bangladesh could safeguard fundamental rights. Let this happen if you please. Building a legal culture that upholds personal freedoms can begin with this provision. With approval, development might bring Bangladesh one step closer to human rights legislation on a global scale. It is critical to determine if the outcomes meet the expectations. Judgment independence advocates have proposed public forums, the education of future jurists in international law, and the passage of significant treaties by legislatures. It will be challenging but essential to reform Bangladesh's legal system so it complies with international human rights norms. With the changes, it will be feasible to do this. By learning from the errors of other nations and adopting a holistic perspective of international human rights law, the courts in Bangladesh could safeguard fundamental rights. Let this happen if you please. Building a legal culture that upholds personal freedoms can begin with this provision.

Methodology:

In order to learn more about how international human rights legislation (IHRL) has been integrated into Bangladesh's legal framework, this study employed a qualitative doctrinal research strategy. An examination of the connection between Bangladesh's internal legal system and international human rights standards can be facilitated by adopting a doctrinal stance, which permits an exhaustive examination of modern legal texts, case law, and judicial decisions. This study expands upon that by comparing the laws of Bangladesh to those of other countries to determine how they measure up internationally. It continues by highlighting the areas where Bangladeshi laws differ, where they are similar, or

where they could be amended to conform to human rights standards set by international organizations.

This research draws on data collected from both official and informal sources. Human rights treaties cited in decisions made by Bangladeshi courts are considered authoritative sources. The decisions of the highest court in Bangladesh (the Supreme Court), lower courts (the High Court and the Appellate Division), the parts of the constitution that deal with international law and basic rights, and ratified international treaties (such as the ICCPR and the CEDAW) will all be helpful references. The topic of Bangladesh's constitutional law and its relevance to international law is better explored in secondary sources. Among these resources are books, comments, and scholarly articles. We will research IHRL's work in Bangladesh by reading reports on human rights and judicial independence in the nation from NGOs and governmental agencies, as well as scholarly articles and examinations of relevant case law.

Document analysis, the methodical review of legal documents, including treaties and case decisions, is the backbone of the data collection and analysis process. Here, we shall examine the reasoning behind the court's decisions and its grasp of human rights principles set out by treaties and customary international law. In one part, we compare and contrast the two approaches to enforcing IHRL so that other dualist regimes, like Bangladesh's, might learn from our mistakes and move forward. Other ways to learn about the judges' views and recurring topics on IHRL include through content analysis of secondary sources and court decisions. This qualitative study will demonstrate the ways in which the Bangladeshi court is incorporating international law into its practice, as well as the ways in which conservative and progressive human rights perspectives are expressed.

Divided Opinion on How Domestic Law Can Help Put International Law Principles into Practice:

Everyone knows that every country has to follow a set of rules called international law. These conventions have their roots in long-standing practices, laws, and treaties. Concerning the connection between national and international law, many people are still not in accord. This connection can be better understood by looking at two major theoretical traditions: dualism and monism. The significance of both of these customs is equal. When it comes to how domestic legal systems should embrace international law, the two schools of thought can't agree.

Monism Theory

According to monists, the origin of both domestic law and international law may be traced back to the same legal system. In the opinion of monists, the rule of law that governs relations between states has developed into international law, which is more complicated than the law that came before it. Those who adhere to the monist philosophy believe that domestic courts should have the authority to enforce international law; hence, there should be no need for further domestic legislation to do so. In situations where domestic law and international law are in conflict with one another, proponents of this school of thought believe that international law should be applied first. The idea that domestic laws need to be reformed so that they are in accordance with international law is the premise upon which this viewpoint is founded. It is not required to take legislative action because it is anticipated that local courts will rapidly enforce international law. The majority of monists believe that international law will be enforced first in situations

when national laws are in conflict with one another (Sheeran et al., 2013).

Dualism Theory

On the other hand, dualists argue that international law and national law are two distinct systems that use different methods of enforcement. In order for international law to be applied more quickly, the dualist position maintains that domestic law must acknowledge foreign legal systems. International law cannot have an immediate impact on domestic law; something must first be accomplished. Even though two systems occupy the same physical location, dualists argue that it does not imply they are conceptually equivalent. International law regulates interactions between nations (Nollkaemper et al., 2018). Conversely, people's rights and legal standing within a state are defined by its internal laws. Since there has been no constitutional amendment or codification dealing with international law, local courts do not have the power to lawfully apply international law. One reason is that this is simply not within the jurisdiction of domestic courts. It is not possible to claim that domestic legal systems incorporate international law, according to the dualism theory, unless the government acknowledges and accepts it. This is valid regardless of whether or not international law influences both domestic and international legal frameworks.

Incorporation and Transformation Theories

The potential influence of foreign law on domestic legal systems can be better understood through the lenses of the theories of incorporation and transformation. You can also apply both of these theories to the legal systems in your own country. There is no need for further legislative action to incorporate international law into domestic law because international law is already being addressed in domestic law. (Kadelbach et al., 2019) state that domestic courts can swiftly implement the principles of customary international law or ratified international treaties. It is the domestic courts' purview to exercise this power. If a country ratifies a human rights pact, for instance, its domestic courts can use that treaty's provisions as precedent. Because of this, further legislation on this subject is no longer necessary.

As an alternative, the transformation method argues that domestic legal systems should adopt international law as part of their own body of law. The dualist paradigm (Aust & Nolte, 2016) states that a country's domestic laws must be changed before principles drawn from an international agreement or convention can be applied within the country. If domestic consequences of international duties are to materialize, it is imperative that the relevant authorities knowingly incorporate these demands into domestic law. There can be no deviation from this fundamental premise.

Legal Implications of International Obligations

International law, which encompasses both treaties and customary norms, imposes distinct duties on states. What we know as international law has its roots in this idea. No domestic law can alter or incorporate international law in any way that would impair the obligations that governments have to execute in compliance with international law. Alabama Claims Arbitration, which occurred in 1872 (Shively, 1933), is a prime example of this approach being applied. Because of this arbitration, Britain could not utilize its internal laws to assert that the American Civil War violated its neutrality. No nation may claim that its own laws are incompatible with its obligations under international law, according to the reasoning of Conforti & Francioni (1997).

Earlier methods, based on monist or dualist ideas, may not be enough to address the increasing challenges that globalization brings to international law enforcement, according to experts. To ensure compliance with international standards in areas such as trade regulation, environmental protection, and human rights, it is vital to employ processes that are both complex and flexible. The implementation of international law, according to (Ben-Naftali, 2011), may depend on the creation of new methods that combine monist and dualist concepts while considering the unique constitutional and legal aspects of each state.

An understanding of the monism vs. dualism argument is necessary for making an effort to understand how domestic legal systems adhere to international law. Local law should be applied without delay and given priority over international law, according to the monist viewpoint, in contrast to the dualist approach, which argues that different legal systems should be preserved. This goes against the grain of the dualist approach. Both explicit and implicit adoption of international law are possible within local law, according to the concepts of incorporation and transformation. In both overt and covert contexts, this holds true. Experts in the field will closely study how national and international legal systems interact as states face the challenges posed by globalization. Because globalization is dynamic, this is the case.

Constitutional Reform in Bangladesh with an Eye on International Law:

According to Chowdhury & Bhuiyan (2010), the right to self-determination was an essential component of the Bangladeshi independence struggle in 1971, which is widely acknowledged as the first year of human rights activity in the country. Following the declaration of independence, the nation waited for a little more than a year before submitting an application to join the United Nations. Bangladesh signed the Universal Declaration of Human Rights in 1948, not long after it joined the United Nations on September 17, 1974. According to Rahman (2024), national governments can demonstrate their dedication to preserving international accords by ratifying or signing those agreements. After achieving its independence, Bangladesh has either participated in or ratified virtually all of the main human rights treaties that have been established.

Since its beginning in 1972, the Constitution of Bangladesh has undergone a number of amendments, and it is now in a position to protect the political and civil liberties of the people who live there. The constitution of Bangladesh, which was ratified in 1972, establishes that all individuals are entitled to equal protection under the law and forbids discrimination and forced labor. This constitution also guarantees that all citizens be granted equal rights. An individual's rights as a citizen are unaffected by the circumstances surrounding their arrest, charges, trial, or sentence to prison, regardless of what occurs during these events. In addition to protecting other essential liberties, such as the right to freedom of speech, press, assembly, trade, and religion, the Constitution also safeguards the right of every individual to his or her own privacy (M. S. Islam, 2013).

According to Article 26 of the Constitution of Bangladesh, any laws that were in effect prior to its implementation and that were in conflict with the requirements of fundamental rights are deemed to be unlawful and cannot be enforced. In accordance with Article 26(2), which specifies that the legislature does not have the jurisdiction to adopt laws that are incompatible with basic rights,

legislation that is incompatible with fundamental rights is also invalid (Rayhan & Khan, 2020). As a consequence of this, the application of the Constitution renders such statutes null and void, as opposed to immediately in accordance with Article 26. According to Chowdhury & Bhuiyan (2010), the principles of severability and eclipse serve as the foundation with which Article 26 of the Constitution of Bangladesh is constructed. The "eclipsed" statute is an example of a constitutional controversy. This type of statute happens when a law that was previously lawful is declared unconstitutional as a result of the authority of another provision. A statute of this kind does not actually disappear; rather, it continues to be dormant until the phrase that is in conflict with it is eliminated. When it is determined that a piece of a multi-part statute is in conflict with the Constitution, that portion of the statute is repealed, while the remaining sections of the law are preserved. This is precisely what the severability principle needs, according to Islam (2013), who makes this determination.

In Article 26, it is stated that laws that violate fundamental rights would be deemed null and void, yet at the same time it is acknowledged that other laws will continue to be legal. As stated by the Government of Bangladesh (1972) in reference to the Constitution, women in Bangladesh are granted equal rights and obligations in the following areas: public health, education, employment, rural development, progress of local government organs, and equal opportunity. These are the areas in which women are guaranteed equal rights and responsibilities. According to the law, education is also essential. Rahman (2024) note out that the Supreme Court has continuously defended these fundamental principles as a means of defending people's economic and social rights. This is true regardless of how contentious the subject may be.

Constitutional guarantees for personal liberty are illusory since neither the purpose of international law nor the explicit application of IHRL principles to domestic case judgments are specified or encouraged (Chowdhury & Bhuiyan, 2010). This is because neither of these topics is addressed in the Constitution. The ambiguity of Article 25's statement of conformity with international law has resulted in the emergence of a rift on the applicability of concepts from international law to domestic matters. The Fundamental Principles of State Policy are essential for the administration, legislation, and interpretation of laws (Weiner, 2022) of Bangladesh (Article 25, 2022). This is despite the fact that they are not susceptible to direct judicial examination. Consequently, the courts have broad authority to interpret and enforce domestic legislation by looking to international law, which falls under their jurisdiction. This is because international law is within their mandate.

Treaties are yet another domain that requires consideration. According to Article 145A of the Constitution, the President of Bangladesh is required to present any and all treaties with foreign nations to Parliament for the purpose of review. According to a statement made by the government of Bangladesh in 1972, every agreement that is related to the country's national security must be presented in a session of Parliament that is confidential. But if we are being completely honest, there are a few places where the meaning is not entirely clear. There are also questions that have not been answered, such as whether or not treaties are eligible for the authority granted by Article 145A and what the prerequisites are for ratification. An further reading of Article 145A is that it just refers to the President presenting treaties to Parliament and has

nothing to do with ratification in and of itself without any more explanation. During the case of Kazi Mukhlesur Rahman v. Bangladesh (1974), the court made the decision that the obligation for the creation of treaties and their ratification, if any, resides with the executive branch. This was done in order to prevent any confusion from occurring. Despite the fact that proposals for treaties are officially the responsibility of the executive branch, the prime minister and cabinet are the ones who are accountable for making those proposals. The Prime Minister or a designated representative is the one who is authorized to execute any executive power in accordance with Article 55(2) and (4) of the Constitution. Nevertheless, all activities are carried out in the name of the President (Haque, 2016). In accordance with the Government Rules of Business (Weiner, 2022), any treaties, accords, or protocols that are being proposed are required to be reviewed and authorized by the Cabinet of the Prime Minister.

In the Constitution of Bangladesh, which displays the country's commitment to both international law and human rights, there is room for dispute regarding the appropriate local application of both of these concepts. Attempting to strike a balance between domestic and international legal obligations, the judicial system and legislative bodies are confronted with a number of challenges and opportunities in this precarious situation.

A Restrictive View of International Human Rights Law in Bangladeshi Domestic Courts:

The courts in Bangladesh have taken a methodical and thorough approach to implementing the principles of international human rights law. When exposed to advanced interpretations, people feel anxious. According to the dualist view, which is widely held by judges in this country, treaties and other foreign laws do not automatically become part of domestic law unless explicitly stated otherwise in legislation (Shahabuddin, 2021). This nation is no exception. This view persists nationwide even though the Constitution does not expressly forbid the incorporation of foreign law into domestic law (Shahabuddin, 2021). Many believe that Bangladeshi courts will be reluctant to publicly use foreign treaties until Parliament ratifies the International Human Rights Convention (IHRL). The fact that many people hold this view lends credence to it. This traditionalist stance is in line with the court's history of prioritizing domestic regulations over global accords (Shahabuddin, 2021). This persists even though human rights may be sufficiently safeguarded by international law.

An instance that exemplifies this approach is the *Bangladesh v. Sombon Asavhan* case. There was an incident involving the detention of Thai fishing trawlers by the Bangladesh Navy, who claimed the vessels were breaking the law while in Bangladeshi territorial seas. Instead of following customary international law on territorial waters, the Appellate Division of the Supreme Court decided the case by looking at local legislation, specifically the Territorial Waters and Maritime Zones Act of 1974 (Tanbir, 2022). The purpose of doing this was to put an end to the problem. This step was made in order to fix the problem. The resolution of the disagreement was achieved by a measure passed by Parliament in accordance with Article 143(1)(B) of the Constitution, as highlighted by the Court in its decision (Tanbir, 2022). This meant that domestic laws took priority over their international counterparts. All of this occurred despite the fact that the situation may have been better addressed by international law.

The Bangladeshi High Court Division considered customary international law in the *Saiful Islam Dildar v. Bangladesh* case. The purpose of this was to find out if someone has the right to decide for himself. At the heart of the controversy was the desire to extradite Anup Chetia, leader of the Assam Liberation Front (ULFA), to India. Some have argued that the right to self-determination is a jus cogens-based international law finding and that extraditing Chetia would be a breach of this principle (Khair, 2018). According to the petitioner, this is what will happen. Instead of adhering to the appropriate principles of international law, the court took a conservative approach and denied the petition based on Bangladesh's constitution (Khair, 2018). The goal in doing this was to stay in line with international law. This ruling shows how courts often favor state law over international human rights standards, even though the latter are acknowledged worldwide.

Judgement in cases like *Hussain Muhammad Ershad v. Bangladesh* demonstrates how judges pay great regard to human rights accords. The court made it very clear that international human rights documents like the UN Declaration of Human Rights and the International Covenant on Civil and Political Rights are legitimate, but that without explicit national law, these principles could not be directly enforced in Bangladesh (Siddiqua, 1994). Even if the court recognized the validity of these documents, this remained the case. As seen in previous cases like *Bangladesh v. Sheikh Hasina*, the Bangladeshi courts still show no signs of wanting to interpret its laws more progressively in light of international human rights obligations (M. Islam, 1995). The courts' failure to enforce international human rights obligations is evidence of this disinterest. The courts' reluctance to apply international human rights concepts in their decision-making process on matters pertaining to domestic law has long been a roadblock to the advancement of domestic human rights practices.

The domestic courts in Bangladesh show a distinct leaning toward conservatism when it comes to interpreting and applying human rights accords. This is the inference that one can make from the previous assertion. Their refusal to adopt a more progressive or revolutionary approach to human rights adjudication is demonstrated by their persistence in following a dualist system, which mandates the explicit incorporation of international law into national laws before it can be applied (Shahabuddin, 2021). The reason behind this is that according to the dualist system, domestic laws must take into account international law. Because of this conservative outlook, fundamental rights in Bangladeshi court processes would be undefended by international human rights standards. Bangladesh is a very orthodox nation, and here is the reason behind it.

Cases Relating to the Early Use of International Human Rights Law Principles in Bangladeshi Domestic Courts:

Concepts from international human rights law (IHRL) have been increasingly referenced in decisions handed down by Bangladesh's highest court (M. Islam, 1995). This is a response to the growing influence of human rights conventions on the domestic laws of various countries (Assembly, 1966). This has a direct bearing on the growing influence of these policies on the domestic legal systems of the nations that adopt them. It is apparent that the High Court Division of Bangladeshi courts is making an effort to enhance its human rights verdicts by delving into international law (Hoque, 2013). The goal is to improve their knowledge of national

laws, constitutional concepts, and human rights decisions. Every single one of these things has its roots in the views expressed here. In instances involving children, juveniles, or marginalized groups, the courts have a stronger worldwide duty to preserve basic rights, even while domestic acceptance of international human rights legislation (IHRL) is still lacking (Unicef, 1989). This duty now rests with the courts. The fact that domestic absorption of IHRL is still inadequate does not change the reality that this is the case.

Application of IHRL in Juvenile Justice

Following the events in *State v. Roushan Mondal Hashem* (2007), the High Court Division highlighted the importance of tailoring protections for juvenile offenders to their unique developmental needs. The High Court Division made a major ruling that made people pay attention to this. The ruling revealed the previously unknown importance of establishing these measures. Juvenile offenders have had their designations rejected by the court (M. Islam, 1995). This is because the court recognized the importance of the state's function as substitute guardians. This occurrence has taken place because the court recognizes the seriousness of the state's involvement. According to Uddin (2024), this shows that the judges are eager to look into human rights opinions from a comparative standpoint. The fact that the decision cites American research and laws is quite indicative of this. Evidence of this can be found in the opinion's citations to American studies and legislation. Adhering to the rules laid down by the International Human Rights Law (IHRL), young people should participate in treatment and rehabilitation programs designed specifically for them. It would be wise to put these programs into action.

Protecting Rights of Under-Trial Juveniles and Detainees

In relation to the issue of children's fundamental rights to liberty and a fair trial in relation to their extended incarceration, the case of *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh* (2005) brought attention to the question for the first time. All juvenile criminals are to be tried in juvenile courts at a juvenile pace, bail hearings in these courts are to be given precedence, and adult defendants are to be transferred from juvenile facilities, according to an order issued by the High Court. Within the framework of the International Covenant on Civil and Political Rights (ICCPR, 1966), this action was carried out in accordance with the promises that were made. According to Abdullah & Ferdousi (2024), this ruling was of utmost significance in the process of filing a request for structural improvements that would speed up the operations that are carried out in juvenile courts. The court also highlighted that juvenile detention institutions must have adequate funding in order to prevent the infringement of the human rights of the children and adolescents who are held there. This was done in order to ensure that the children and adolescents are safeguarded.

IHRL and the Rights of Child Laborers

By citing ILO Convention No. 182, the High Court in *BNWLA v. Cabinet Division* (Babu & Ali, 2018) brought attention to the dangers of child labor. Our goal in doing this was to draw attention to the situation. Children who aren't even twelve years old are endangering themselves when they help out around the house, according to the High Court. After reading about the mistreatment of adolescent domestic workers in the press, the court decided to take action to ensure that legislation preventing their exploitation

are strictly enforced. To ensure that everyone follows the rules, we have made this decision. The judge reached this conclusion after reviewing the evidence on the abuse. Protective measures for children in Bangladesh were built upon the fact that the country complied with the International Labor Organization's (ILO) standards, as stated by Khalid Yahya (2019) (op den Kamp, 2023). The targeted victims of this atrocity were the children of Bangladesh.

Addressing Violence and Harassment Against Women

International and constitutional legal frameworks have been utilized by Bangladeshi courts to combat gender-based violence. The situation has markedly improved because of this (Tanbir, 2022). The accomplishment of this goal is directly attributable to the application of these frameworks. For instance, the court's judgment in Bangladesh National Women Lawyers Association (BNWLA) v. Bangladesh (2008) (S. M. Naznin, 2020) required the creation of policies to address sexual harassment in the workplace and schools nationwide. To ensure that no sexual harassment could take place in these settings, several regulations were put in place. When domestic laws fail to adequately protect women's rights, the court has determined that international accords, like CEDAW, offer tremendous aid (Begum & Saha, 2017).

Upholding Health Rights and Public Welfare

When it comes to matters pertaining to public health, choices have been made in accordance with international norms, particularly when those decisions entail marketing activities that could potentially be harmful. According to the verdict that was handed down by the court in the case of Professor Nurul Islam v. Bangladesh (M. Islam, 1995), the promotion of tobacco products is a violation of people's right to self-determination. The lawsuit was essential in safeguarding and defending the rights of individuals to receive health care and social benefits. As a result of this ruling, the duties of Bangladesh were brought to light in order for the country to comply with the World Health Organization Framework Convention on Tobacco Control. This decision also assisted in clarifying the relationship between health rights and international legal norms (M. Islam, 1995).

Challenging Inhuman Punishment

It is the duty of the highest court of the country to acknowledge and defend human rights in accordance with the UN Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR, 1966). These two documents spell out this requirement. The International Human Rights Law (IHRL) ruled that the use of corporal punishment, such as caning or flogging, in response to extrajudicial fatwas violated the state's legal obligations (Huda, 2020). The decision in the case of BLAST v. Bangladesh (Huda, 2020) brought this to a head. The court's interpretation of Article 35(5) of the Constitution was based on the principles contained in the International Covenant on Civil and Political Rights. Moreover, according to M. S. Islam (2013), this situation came to pass even though the application of such sanctions is not explicitly forbidden by law in Bangladesh.

Citizenship and Statelessness

In the case of Bangladesh v. Prof. Golam Azam (Azam, 2012), the highest court in the country took into consideration the Convention on the Reduction of Statelessness that was signed in 1961. Bangladesh proceeded in carrying out its plans, despite the fact that

it was neither a party nor a participant at the meeting. In a research report published in 2017, Hee Eun Lee stated that the court's approval of this method demonstrates its commitment to the human rights norms that are established by international organizations (Benton, n.d.). Even though it does not have official accreditation, the court has demonstrated that it is committed to embracing the principles of IHRL, which is a very outstanding accomplishment.

It is becoming increasingly possible that local verdicts in Bangladesh may contain parts of international human rights legislation (IHRL), notwithstanding the fact that the primary job of the judiciary in Bangladesh is to provide support (Rahman, 2024). In situations when domestic legislation is either absent or vague, international human rights standards have the potential to fill in the gaps and improve legal interpretation. This is illustrated by the cases that are listed below. As a result of modifications made to Bangladesh's legal system, the country's courts are now paying more attention to human rights conversations that are taking place in other parts of the world. After some time had passed, a commitment was made to guarantee that fundamental human rights would be protected and that local legal systems would be improved (M. Islam, 1995).

International Human Rights Law Must Prevail Over Domestic Law, and It Must Be Enforced Uniformly:

If we want to make sure that human rights are always protected effectively, we need to put international human rights law (IHRL) ahead of national legal systems (Langford & King, 2008). In their efforts to swiftly administer IHRL, domestic courts frequently face obstacles. This is due to the fact that any promise to carry it out is legally unenforceable in the absence of an official adoption by a state. Despite repeated calls from international groups, Bangladesh has been painfully sluggish to adopt IHRL (Guinn, 2016). The reason behind this is that there is now no all-encompassing framework in Bangladeshi law that incorporates IHRL. Some have argued that lawmakers' political will and judicial independence are prerequisites for change to take place (S. M. A. Naznin, 2021). According to McNeilly (2015), some have proposed altering the process of lawmaking at the federal level in order to incorporate international human rights agreements. It is common for domestic courts to be entrusted with the task of facilitating states' implementation of human rights treaty requirements. International human rights legislation (IHRL) is highly esteemed by the Committee on Economic, Social, and Cultural Rights (CESCR) due to its ability to influence national laws and offer persons the resources to seek the fulfillment of their rights (Nickel, 2016).

Furthermore, unlike other international laws, there is a plethora of variation in how different governments execute international human rights legislation (IHRL) (Salmón, 2014). Given the universal character of human rights, Canada has always acknowledged the significance of IHRL. Bangladesh would benefit from a similar approach if its judges were to openly incorporate IHR principles into their decisions (Stiles, 2014). The 1998 Bangalore Declaration solidified the commitment of common law judges to give domestic decisions precedence over IHRL (Hill, 1999). At many points throughout the proclamation, the duty of ensuring that domestic laws are consistent with international human rights agreements was pressed onto the judiciary. International human rights law (IHRL) principles can be interpreted and applied by Bangladeshi courts within the framework of Bangladeshi law, as stated by Salmón (2014). Many

Bangladeshi judges have the conservative view that rights recognized globally cannot be unilaterally enforced (Siddiqua, 1994). This reflects the country's stance on international human rights legislation (IHRL). It doesn't matter if the court has taken a different stance in recent years; this remains true.

It is crucial to prioritize the incorporation of IHRL into national legal systems, particularly when constitutional legislation incorporates IHRL principles. This dedication includes the requirement to recognize international human rights law norms as obligatory on domestic legal systems and to interpret domestic legislation in conformity with these principles (McNeilly, 2015). Human rights treaties must be considered when interpreting national statutes, which is an essential part of this commitment (HENDRY, 2024).

Findings:

1. Influence of Dualist System on IHRL:

Bangladesh faces a dilemma when trying to implement international human rights accords because of its dualist legal system, which puts national law apart from international law. Rather than seeing these treaties as binding, courts often view them as persuasive, highlighting national sovereignty before international standards.

2. Judicial Interpretation Trends:

Bangladeshi courts are increasingly turning to international human rights norms while making decisions regarding constitutional rights. These references, however, are meaningless until they are formally included.

3. Sociopolitical Barriers:

As a result of its sociopolitical milieu and political biases, Bangladesh has a difficult time accepting international human rights standards, which in turn undermines judicial impartiality and human rights protections.

4. Conservative vs. Progressive Judicial Perspectives:

Because of their ideological differences, conservative judges tend to uphold traditional understandings of domestic law, while progressive judges are more open to embracing international human rights standards, leading to inconsistencies in defending human rights.

5. Comparative Insights from Other Dualist Systems:

By comparing Bangladesh to other dualist nations like India and the UK, the study highlights ways that Bangladesh might embrace human rights standards. So, laws like the UK's Human Rights Act might inspire reforms in Bangladesh.

6. Challenges in Meeting International Standards:

Substantial obstacles to Bangladesh's pursuit of human rights conformity with international norms include limited judicial independence, political biases in judge nominations, and inadequate enforcement mechanisms for IHRL compliance.

7. Need for Judicial Reforms:

The report concludes that in order for Bangladesh to adhere to international human rights standards, the country must establish an impartial judicial system free from political interference. The

cornerstones of any reform efforts ought to be a culture of law that prioritizes human rights and the independence of the judiciary.

8. Comparative Law Approach:

Finding similarities and differences between international human rights principles and Bangladeshi legislation is the goal of this comparative law study. After that, it proposes alterations that could be implemented to bring Bangladeshi legislation more to par with global standards.

9. Educational and Institutional Reform:

To integrate international human rights standards into the legal system, the paper highlights the significance of public forums, incorporating human rights principles into legal education, and incorporating international law into judicial education.

10. Document Analysis of IHRL in Court Decisions:

In this qualitative study, we examine human rights concepts and any examples of conservative or progressive perspectives that arise in court rulings from Bangladesh that reference international treaties, using a case-by-case approach. It identifies achievements and setbacks in this domain.

Recommendations:

1. Establish Legal Reforms to Enhance Judicial Independence:

Legislative measures limiting political influence on the court must be put in place if human rights decisions are to be fair. In order for the judiciary to maintain its independence, the proposed legislative reforms call for open, merit-based appointment and promotion processes that are free from political intervention. This will allow judges to read IHRL more uniformly and impartially.

2. Formulate a National Human Rights Act

Bangladesh might learn a lot about how to integrate international human rights norms into its own legal system by studying the UK's Human Rights Act. Establishing a framework for courts to interpret constitutional rights in light of these norms would thereby simplify the local implementation of international treaties and conventions.

3. Strengthen Legal Education on IHRL:

International human rights law education for judges, lawyers, and law school faculty is urgently needed. Law schools and other educational organizations that train judges should incorporate IHRL principles into their curricula to better equip students to handle global responsibilities. Legal education must be ongoing if we are to create a legal culture that respects human rights on a global scale.

4. Encourage Judicial Activism and Progressive Interpretation of IHRL:

Judges must interpret constitutional rights more liberally and reflectively of international human rights duties in order to actively apply international human rights law (IHRL). Recognizing IHRL as persuasive authority can enhance human rights protections, even in a dualist society, by setting progressive legal precedents.

5. Implement Comparative Studies and Cross-Jurisdictional Learning:

Comparisons with other dualist states, such as India and the United Kingdom, should direct the transformation process in Bangladesh. Bangladesh could get valuable insight on how to successfully integrate IHRL by studying how other countries have dealt with the challenge of balancing domestic laws with their international obligations.

6. Develop Mechanisms for Public Engagement and Advocacy:

Public education and the active engagement of civil society are essential for the advancement of human rights safeguards. International human rights law (IHRL) discussions, public forums, and awareness initiatives can sway the position of the judiciary on human rights issues.

7. Establish a Dedicated Human Rights Court or Tribunal:

Bangladesh could enhance its capacity to defend IHRL by establishing a human rights tribunal or specialist court. Now that this institution recognizes the importance of human rights issues, it may increase its responsibility and promote compliance with international norms.

8. Promote Collaboration with International Human Rights Organizations:

In its pursuit of ensuring compliance with IHRL, Bangladesh should receive assistance from international human rights groups, non-governmental organizations (NGOs), and the United Nations. External support, in the form of resources, training, and insights, can greatly improve the implementation of human rights law.

9. Introduce Constitutional Amendments to Support IHRL:

The courts would have a firm foundation upon which to apply these principles if international human rights treaties and conventions were acknowledged as part of the Constitution. Judges would have more precise guidelines on matters concerning basic rights, and the Constitution would be in line with international human rights agreements.

10. Monitor and Evaluate Judicial Performance on IHRL Compliance:

Consistent improvements might result from regular assessments of the court's handling of human rights issues, particularly in relation to conformity with international law. The judiciary's dedication to safeguarding human rights can be ensured by the establishment of a mechanism to track human rights verdicts and assess IHRL compliance. You can find problem areas that need constant maintenance by using this framework.

Conclusion:

For Bangladesh to comprehend, put into practice, and set global standards, it is vital for the country to have a court that is unbiased and able to render verdicts in accordance with international treaties. This is because Bangladesh is a member of the United Nations Commission on Human Rights. The judges have a lot of obstacles, which makes it challenging for them to be creative when it comes

to the notions of IHRL (Tanbir, 2022). This becomes even more apparent in circumstances in which the goals of the organization are in direct conflict to those of certain political organizations or government entities. Free expression, equality before the law, and the right to life are all examples of fundamental rights that may be put in jeopardy if a greater number of judges decided to support political candidates. The ability of the judges to maintain their objectivity and independence would be called into question as a result of this, and it would also constitute a threat to the protections afforded to these rights. In this particular setting, it is more important to publicly agitate for local rights or fight against economic and political exploitation than it is to demonstrate solidarity with political aspirations. Justices in Bangladesh have repeatedly demonstrated a focus with appeasing political interests rather than providing impartial decisions on issues pertaining to the law (Riaz, 2023). There have been several instances in which this fixation has been noticed. There is a correlation between the discourse of the judiciary and the dependability and fairness of judicial rulings, which in turn has an effect on the intelligence, originality, and progressive disposition which judges possess. The fact that judges who are appointed by politicians who do not possess the required credentials are typically unable or unwilling to apply their understanding of international law is a factor that weakens the characteristics that are being examined in this context. A decrease in judicial activism, a loss of accountability for judges, and a weakening of protections that defend the public interest have all been brought about as a consequence of the politicization of the legal system. In order to ensure that all people, regardless of where they are located in the world, are free to exercise their fundamental rights, the courts in Bangladesh are obligated to comply with international standards of law, particularly those that pertain to international human rights law (IHRL).

References

1. Abdullah, R., & Ferdousi, N. (2024). Child Protection and Juvenile Justice: Legal Issues in Bangladesh and Malaysia. *UUM Journal of Legal Studies*, 15(2), 529–557.
2. Assembly, U. N. G. (1966). International covenant on civil and political rights. *United Nations, Treaty Series*, 999, 171.
3. Aust, H. P., & Nolte, G. (2016). *The interpretation of international law by domestic courts: Uniformity, diversity, convergence*. Oxford University Press.
4. Azam, M. (2012). *TRIPS compliant patent law and pharmaceutical patent protection: Options for patent law reform in Bangladesh*. CQUniversity.
5. Babu, M. A., & Ali, A. (2018). Status of International Treaty in Bangladesh: Approach of the Supreme Court. *Journal of Law and Global Policy*, 3(1).
6. Begum, A., & Saha, N. K. (2017). Women's Access to Justice in Bangladesh: Constraints and Way Forward. *JMCL*, 44, 39.
7. Ben-Naftali, O. (2011). *International humanitarian law and international human rights law*. OUP Oxford.
8. Benton, J. (n.d.). *AMERICAN JOURNAL OF INTERNATIONAL LAW*.

9. Blondin, M. J. (2021). *Controller Tuning Optimization Methods for Multi-Constraints and Nonlinear Systems: A Metaheuristic Approach*. Springer.
10. Chowdhury, A. R., & Bhuiyan, J. H. (2010). *An introduction to international human rights law*. Brill.
11. Cintra Guimarães, G. (2019). Global technology and legal theory transnational constitutionalism. In *Routledge research in international commercial law*.
12. Conforti, B., & Francioni, F. (1997). *Enforcing international human rights in domestic courts* (Vol. 49). Martinus Nijhoff Publishers.
13. Guinn, D. E. (2016). Human rights as peacemaker: an integrative theory of international human rights. *Human Rights Quarterly*, 38(3), 754–786.
14. Haque, M. E. (2016). Formation of the Constitution and the legal system in Bangladesh: From 1971 to 1972: A critical legal analysis. *Dhaka Univ. Stud. Part F*, 27, 41.
15. HENDRY, J. (2024). *The Journal of Law and Society in context: a bibliometric analysis*.
16. Hill, L. L. of H. (1999). The challenge of Bangalore: Making human rights a practical reality. *Commonwealth Law Bulletin*, 25(1), 47–64.