

LAW OPINION

The Book about Bangladesh

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When everything surrounding is so grey and gloomy due to the pandemic, publication of the book, 'Bangladesh and International Law' (Routledge 2021) edited by Professor Mohammad Shahabuddin, brought some colors of joy, pride, and excitement among the Bangladeshi law scholars who take some sort of interest in international law. The book also came at the time when Bangladesh is celebrating its 50th anniversary of its independence, the very birth of which in 1971 had challenged, disrupted, and reshaped many conventional doctrines of international law in a Cold War era, making the publication of this book

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with what we call 'a perfect timing'! The editor passionately tweeted about the book as, "A collection of international law stories of suffering, solidarity, resilience, resistance, and success from the Global South"—fascinating enough for a reader to grab the book to know more about those stories!

The book is a comprehensive analysis of international law from Global South perspectives, wherein 29 Bangladeshi legal scholars representing four generations have contributed to this grand project making it as the editor claims, the 'first ever of such kind'. Professor Shahabuddin in the introduction to the book, titled captivantly as "Introduction or a prelude to the stories of an ambivalent relationship," describes how the dominance of "eurocentrism" in mainstream international law narrative is problematic and in reaction to such Westphalian legal scholarship the

rise of Third World Approaches to International Law (TWAIL) tracing the heterogeneity of the development of international law. He highlights the fact that, the international law scholars from the Global South despite their colonial past and ongoing imperialism have come up with some innovative ways to interpret international law from the lenses of the Global South. In tune with that intellectual tradition, the book project aimed to offer 'stories of an ambivalent relationship between international law and post-colonial states, seen through the optic of Bangladesh'. With that pledge this intellectual tapestry is divided into seven parts comprising of nicely weaved 27 chapters encompassing from classical international law concepts to contemporary concerns.

Part I of the book starts with general issues involving Bangladesh's unique relationship with international law. Part II is allocated for sources of international law focusing on two main sources namely customary international law and the law of treaties and reservations. As the book advances, it goes on to address more complicated issue of international law, namely statehood in international law in Part III. Part V touches upon another very important issue, international economic law and their implications for Bangladesh. Part VI focuses on a very important aspect of international law where Bangladesh has significantly contributed in recent times — the international criminal law. Part VII, the final segment of the book, focuses on 'the State and Its Others', addressing the 'others' in post-colonial states. Collectively these well-crafted 27 chapters of the book offer the readers the reminder of the duality of international law's relationship with post-colonial states like that of Bangladesh, as Professor Shahabuddin as put, "as a problem-solving tool and also as a part of the problem".

However, here I did not intend to write an 'academic review' of the book because it is beyond the scope of this short piece; and I am pretty sure there will be many competent enthusiastic international law scholars who can take up the charge of proper 'intellectual grilling' of the book. Rather as a Bangladeshi academician who takes an interest in teaching and researching international law, I would like to point out some significance of the book for the legal academia of this country.

Firstly, as the editor has claimed the book is 'first ever of such kind'—

well certainly it is not meant to say that no Bangladeshi legal scholar published any scholarly manuscript on international law before. There are good number of Bangladeshi law scholars who have pursued their higher studies on international law and have published books on different issues of international law (some focusing on Bangladesh and developing countries perspectives), majority of which came as an outcome of their doctoral research. Some Bangladeshi scholars also have engaged in researching on different topics of international law and have published scholastic journal articles in internationally reputed law journals or have contributed chapters to edited books. Very few have gone beyond the doctoral research and conducted comprehensive study on Bangladesh's perspective with a focus on international law, of course with a notable exception of Professor M Rafiqul Islam's authoritative book 'National Trials of International Crimes in Bangladesh' (UPL 2019). But all these ventures were done on individual account. Therefore, when a book project has brought together 29 Bangladeshi law scholars representing four generations of scholars teaching and researching international law at home and abroad under one umbrella and produced such a colossal compendium — that is truly 'the first ever of such kind'!

Secondly, I see that, six female scholars have contributed to the book. Certainly, the number is not good enough to claim 'equal representation' of half of the population. But what I find significant here is that they are now making intellectual contribution to different fields of international law, going beyond the stereotyped 'research fields' (women's rights, violence against women, family law) supposedly reserved for the female legal scholars in this country. However, to avoid any misunderstandings, I do strongly recognise the need for female legal scholars in this country

to take the lead when it comes to the foregoing issues. But at the same time, I also feel the need that, they must also take a different route, venture other avenues of law, and claim their authority with their male counterparts, particularly in different segments of international law given the importance of the discourse for Bangladesh and the world. The female scholars in this country still need to go a long way to claim an authority in international law discourse, but surely the book is a good step in the right direction.

Thirdly, I see that the majority of the contributors represent the fourth generation of Bangladeshi law scholars, whom we fondly call the 'millennials'. For many this might be their very first international publication. In Bangladesh, we all know the pain and challenges of teaching and researching in a resource constrained academic environment and the lack of state-of-the-art databases. Getting a proper guidance and a platform to conduct a quality research and sharing it with an international audience is crucial for a researcher's intellectual growth. Again, a note of appreciation must go to Professor Shahabuddin for his mentorship, for giving this platform and the opportunity to this dynamic young cohort, integrating them as a group into the global intellectual system and presenting their work before an international audience.

Surely the experience that this bunch of young scholars have gathered from this book project at their early stage of career, will encourage and inspire them and give them the much-needed confidence to conduct quality research on international law in future. The previous three generations of Bangladeshi legal scholars did not get such opportunities in their early days of career and I think it is fair if they envy the 'millennial scholars' for that!

Fourthly, the significance of publication of this book, which in my opinion the most important one is — I see it as 'branding of Bangladesh' in international law discourse at global intellectual system. The book has added a new voice (the Bangladeshi voice) to

the TWAIL and Global South discourse, an area of international law which in this part of the region for a long time is dominated by scholars from our next-door neighbor. By doing so, it also pushes that idea of 'soft power' in international law discourse of the Bangladeshi legal scholarship at global intellectual system. An enthusiast might even call it a 'defining moment' for Bangladeshi legal academia. I hope and believe this book might be the 'first ever of such kind' but it will certainly not be the last one.

The foreword of the book is written by another eminent Bangladeshi international law scholar Professor A.F.M Maniruzzaman. Therefore, I think I do not wrongly profess when I call it "The Book about Bangladesh".

Before I conclude something must be said for the protagonist of this project — Professor Shahabuddin, an internationally acclaimed international law scholar from Bangladesh and a foremost TWAIL-er in his own right. It must also be acknowledged that he is not the only one, there are few other Bangladeshi scholars who have attained such accomplishments in different disciplines at international level. But I would like to point out something else here. Those of us who have lived abroad at some point of our life either for our higher studies or as part of our profession, we have interacted with the Bangladeshi community living there and have witnessed their multiple belongings and their profound love and care for the motherland. It is quite visible how the Bangladeshi émigré somehow always carries 'Bangladesh' — either in their accents, food habits, social conventions, cultural norms; or their tensions over a political crisis in the country; their excitement when our cricket team wins or their frustration when they lose; or their desperation to inject the 'deshi' values into their next generations — 'Bangladesh' always matters for them. Professor Shahabuddin is one of those rare Bangladeshi émigré scholars who went the extra mile to make sure that 'he' matters for Bangladesh.

In this short piece, I have not gone into intellectual investigation of the stories that the book promises in its pamphlet nor did I mention any names of the contributors. To know more about those stories about the storytellers — my dear readers, please read the book.

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RIGHTS ADVOCACY

Mainstreaming human rights in business to protect workers' rights

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A study led by the Centre for Policy Dialogue (CPD) revealed that more than 3,50,000 workers in the RMG sector have lost their jobs during Covid-19 pandemic while most of the workers have been laid off without proper compensation. A staggering official record is of 56372 workers being laid off. The report also finds that the high rate of retrenchment was occurred in small factories amounting to over 10% of total work force. However, the actual number of laid off and terminated workers is much bigger than officially reported. The discrepancy in data indicates the vulnerability and exploitation of workers while leaving the voices of a large number of workers lost and unheard.

Right of laid-off workers to compensation

The Labour Act 2006 guarantees compensation for the laid off workers. Section 16 of the Labour Act states that the amount of compensation shall be equal to half of the total amount of the basic wages and dearness allowance and ad-hoc or interim wages, if any, and equal to the full amount of housing allowance. However, in order to avail compensation, the worker has to work continuously for one year under the employer and such compensation shall be paid for 45 days unless there is an agreement to the contrary between the worker and the employer.

The labour Act allows the employer to terminate a worker under the ground of retrenchment by giving one month's notice in writing indicating the reason of retrenchment. However, the requirement of giving notice can be waived by paying wages in lieu of such notice. It is noted that though the Act requires to indicate the reason of retrenchment, such requirement is mostly dependent on the subjective satisfaction of the employer which entertains no say of the workers against unjust as well as discriminatory termination. In addition, the optional nature of the requirement of giving notice leaves room for instant and unjustified termination.

It is mentionable that as per the aforementioned CPD study, majority of factories did not follow the lay-off and termination rules while terminating the workers during the pandemic. The study reveals that only 3.6% complied with the compensation principle in case of laid off workers while non-compliance as the norm, was rampant among the employers. In addition, the research report of the



Transparency International Bangladesh (TIB) reveals that due to the rigid requirement of working continuously for one year for getting compensation for lay off under the Labour Act, 20% of the laid off workers are being left without any kind of compensation.

Legal responses to workers' rights

It is worthy to note that ILO Declaration on Fundamental Principles and Rights at Work 1998 identifies four core labour rights that include freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. The Constitution of Bangladesh envisages an array of welfare measures for and rights of the workers including just wages, reasonable rest, recreation and leisure (Article 15), rights of forming union (Article 38), protection from all forms of forced labour as of right (Article 34) and protection from all forms of

exploitation (Article 14). It is mentionable that Bangladesh has ratified seven of the eight core conventions and several other conventions of the ILO. Despite such constitutional and international commitment and obligations, human rights of the workers are being constantly violated.

The Labour Act 2006, being the core enabling law, attempts to provide a detailed framework to guarantee the entitlements of workers. However, the Act has failed to integrate human rights perspectives comprehensively within its approach. The Act provides, in many cases, unfettered power to the employers while making the workers immensely vulnerable and dependent. The monitoring mechanism under the Act is not clearly delineated which makes the responsible stakeholders unaccountable. Trade unions fail to function effectively and to make things worse, workers face challenges to freely form or join independent unions. The Labour Act also fails to address the

concerns and needs of informal workers who suffers most during the pandemic. The most important fact is that implementation of the law undergoes little to no enforcement. Though the Act in its latest amendments prohibits child labour, however, the number of child workers are alarmingly increasing due to the Covid-19 induced economic crisis and nationwide closure of educational institutions including schools.

Human Rights based action plan
Considering the aforesaid discussion, a human rights-based assessment regarding the impact of the ongoing pandemic on worker's rights needs to be undertaken. In this regard, the UN Guiding Principles for Business and Human Rights (UNGPs), while advocating 'Protect, Respect and Remedy' framework for transnational corporations and other business enterprises in terms of adopting a human rights-based approach, provides comprehensive guidelines to integrate human rights perspectives into business policies

and practices. In addition to recognising the responsibilities of the States under international human rights law, the UNGPs imposes specific responsibilities on the business enterprises. The UNGPs recognises the fundamental right of individuals to access effective remedy when their rights get adversely impacted by business activities. The UNGPs also requires States to establish effective grievance mechanisms including administrative and judicial means to guarantee remedies for business-related human rights abuses. It will not be out of place to note that the overburdened judicial system of Bangladesh fails to ensure access to remedy of the workers. Awareness and proper understanding of these mechanisms is important to ensure access to remedy.

While preventing and mitigating adverse human rights impact, business enterprises should adopt the parameters for human rights due diligence defined in UNGPs. In order to assess whether the human rights policies are being implemented optimally, business enterprises are required to track, and review their performance and modify their practices accordingly. It is noted that such monitoring mechanism should be incorporated into our labour laws and other business laws, in order to review the activities of the industries and corporations and to prevent the adverse impacts of business practices as well.

The most significant feature of UNGPs is that they not only identify the needs of the rights holders but also categorise the responsibilities of the duty bearers. In the present case, workers are the rights holders while suppliers, brands and the government are the duty bearers to guarantee rights and welfare measures for the workers. While making this human rights framework a reality, workers should be informed, made aware and empowered about their entitlements in order to hold the employers, brands and the government accountable in the context of Bangladesh.

As we have observed International Workers' Day 2021 recently during the pandemic, it is the demand of the hour to mainstream and implement UNGPs in order to formulate laws, policies, and action plans to tackle the impact of the pandemic while guaranteeing the human rights, justice, and dignity for the workers.

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