



RIGHTS WATCH

# Accession to the Enforced Disappearance Convention

## ENDING IMPUNITY?

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DR. ABDULLAH AL FARUQUE

In recent years, enforced disappearance has emerged as a grave concern in Bangladesh because many such incidents have gone unpunished in the absence of any law to criminalise it. Needless to mention, enforced disappearance is prohibited under international human rights law. In case of enforced disappearance, typically, the victim is removed from the protection of the law and is often subjected to torture and even extrajudicial execution. In addition, the victim's family and friends are deliberately denied knowledge of the individual's arrest or detention. Enforced disappearances have been used to suppress political dissent and have assisted in maintaining oppressive political regimes in many countries. Enforced disappearance takes place through abducting people and then holding them in clandestine prisons, subjecting them to torture, and often executing them without trial. Enforced disappearance can be committed by state agents or non-state actors such as organised criminal gangs.

In Bangladesh, enforced disappearance came into the forefront as news of political opponents being kept in 'Ayna Ghar' came to light during the previous regime. On the other hand, enforced disappearances are further pursued to ensure the impunity of those who commit them. Criminalisation of enforced disappearance at the national level is crucially important for ensuring accountability of the perpetrators. Enforced disappearance can amount to a violation of several rights contained

in the international human rights instruments and the constitution of Bangladesh such as the right to liberty and security, the right to life, the freedom from torture, cruel, inhumane, or degrading treatment or punishment. Disappearances also entail the violation of other fundamental human rights such as the right to a fair trial, legal counsel, and to equal protection under the law.

In Bangladesh, enforced disappearance is not explicitly prohibited although kidnapping and abduction are categorically prohibited in the Penal Code. The difference between abduction and enforced disappearance lies in the fact that the participation of the State, whether directly through its agents or by its acquiescence is often the defining and characteristic element of the latter. The refusal by the authorities to provide information on the whereabouts and fate of the missing person is another element of enforced disappearance that affects not only the missing person but also their families. Moreover, the existing laws of Bangladesh require government sanction prior to suing a public servant, which remains a primary obstacle to holding law-enforcement agencies accountable for enforced disappearance. As a result, currently, state actors involved in enforced disappearance enjoy impunity for such crimes. Another barrier in ensuring legal accountability is the lack of witnesses in cases of enforced disappearance.

The International Convention for the Protection of All Persons from Enforced Disappearance 2006 is the first legally binding

instrument to address the issue of enforced disappearance. It requires each State Party to make enforced disappearance a criminal offence, to investigate acts of enforced disappearance, and to hold criminally responsible perpetrators of such crime. The Convention contains detailed provisions on prevention of enforced disappearance and it sets out an absolute prohibition on 'secret detention'. Crucially, it gives victims the right to seek reparations and to demand the truth about the circumstances of the disappearance. Bangladesh has acceded the Convention recently – a significant nascent step towards ending impunity for enforced disappearance. However, it is the first step for undertaking an international obligation to prohibit enforced disappearance and it must be followed by enactment of law or reform of existing penal law to implement such obligation.

Enforced disappearance is inherently wrong and goes against established norms of human rights. The State has the responsibility to protect the right to life and ensure security of all its citizens. Accession to the Convention by Bangladesh will facilitate the ensuring of accountability of individual perpetrators of acts of enforced disappearance by extending criminal jurisdiction to these acts. However, given the special nature of the crime and numbers of victims potentially involved in enforced disappearance, a separate law criminalising, it is of immense need.

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LAW AND POLITICS

# Rethinking the Bangladesh-India water politics

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To strike an equitable water-share mechanism between Bangladesh and India, the Joint Rivers Commission was formed in 1972, and the Ganges Water Sharing Treaty was approved in 1996, establishing a structure for collaboration between governments. Nevertheless, whenever India discharges upstream water without prior notification, Bangladesh encounters catastrophic floods (the recent flood being illustrative), exposing the constraints of the existing deal. The historical conflicts between the two countries highlight the crucial importance of ensuring fairness in the administration of water resources following international legal standards that forbid any state from unfairly exploiting shared resources.

To prevent future calamities, it is crucial for Bangladesh to promptly create legally enforceable agreements with India about water sharing and flood management, considering the existing limitations. The importance of political will, legislative reforms, and detailed processes in diplomatic terms cannot be overstated. The current bilateral agreements between India and Bangladesh must be updated to incorporate legally binding methods for resolving disputes. Diplomatic channels have to be used more effectively to deal



with unresolved matters, such as unexpected water spills or intentional or unintentional withholding of important information. In the light of the shifting political conditions, the need for greater cooperation and more robust framework to ensure the same are a must.

The primary objective of the 1997 United Nations Watercourses Convention is to provide fair and responsible management of shared water resources, with a focus on reducing negative effects on neighbouring countries. To prevent the evasion of punishment and guarantee responsibility, any forthcoming agreements between Bangladesh and India must incorporate obligatory dispute settlement processes.

In addition to adopting legally binding agreements, both countries must implement steps such as exchanging real-time data, establishing early warning systems, and utilising modern technology such as satellite monitoring and predictive modelling to reduce the impact of floods efficiently. By engaging in these cooperative endeavours, Bangladesh and India have the potential to significantly mitigate the destructive effects of floods on both human lives and economic operations, offering hope for a more secure future.

The recent floods clearly indicate that natural calamities can significantly influence geopolitical dynamics and contribute to regional instability. The necessity for more stringent legal frameworks, heightened cooperation, and augmented shared accountability mechanism between the two nations has reached a level of utmost importance.

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LAW VISION

# Biosecurity Laws and infectious diseases

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Infectious disease outbreaks have been a recurring theme in human history. The new variant of the bird flu (H5N1), facilitated by a minor change in its DNA, infecting bird species, and even humans leading to one death in Mexico. Concerns have heightened over this rapid spread of the H5N1 to domestic farm animals such as cows. A new study suggests, similar to pigs, several human-like flu receptors (proteins inside a cell or on its surface) exist in different parts of the cow body (cow udders in particular), which also contains bird receptors, multiplying the possibility of cows further spreading the virus. Global biosafety concerns are further exacerbated by the new variant of the monkeypox (mpox) Virus spreading in multiple countries across Africa, Europe, and Asia, prompting the WHO to declare it a public health emergency of international concern (PHEIC).

What implication do these newer, and possibly more infectious variants of the bird flu & mpox have for Bangladesh? For a country such as Bangladesh with a large poultry industry, low health security, and an economy still recovering from a global pandemic, the emergence of both these diseases is extremely concerning. Legislative measures are exceptionally useful in the standardisation of both proactive and reactive measures to infectious disease

outbreaks. The question that needs to be asked and answered, is whether the laws of Bangladesh addressing biosecurity are up to the task. This piece provides an overview of the laws of Bangladesh addressing biosafety and their efficacy.

For starters, Bangladesh has both international treaty obligation (article 12 of the International Covenant on Economic, Social, and Cultural Rights outlining state party duty to handle epidemics or endemics) and constitutional obligation (under article 18 of the Constitution concerning state duty to improve public health) to prevent, control, and eradicate infectious disease outbreaks. There are a number of laws in Bangladesh that could be useful to thwart these new strains of the bird flu and mpox, and to prevent the possibility of any kind of animal-to-human transmission or widescale outbreak.

The Animal Diseases Act 2005 (sections 3-12, 14, 15) provides a wide range of reactionary measures to be undertaken in the event of a suspected or ascertained disease outbreak including isolation of

infected animals, burying of animals dead or suspected to be so from an infectious disease, reporting obligation, lockdown of infected area, and prohibition of marketisation of infected animals or their products. The Quarantine of Animal and Animal Products Act 2005 empowers the Government of Bangladesh to restrict the entrance, import/export of animals infected or potentially exposed to an infectious disease, including their disinfection, isolation, quarantine, and the period of such separation (sections 3, 5-7). The Food Safety Act 2013, additionally prohibits the production, import, or marketing of diseased or decomposed food (section 34). The Animal Slaughter and Meat Standard Regulation Act 2011 enables a veterinary official or veterinarian to determine if the carcass of a slaughtered animal is inedible, either wholly or partially, to ensure its non-introduction into the food chain (sections 17-19). The 2018 Act establishing the Bangladesh Livestock Research Institute mandates it to conduct epidemiological research on livestock diseases, biosafety

for zoonotic and transboundary animal diseases, and to establish health protocols or guidelines for protection (section 10).

In addition, the Infectious Disease (Prevention, Control, and Eradication) Act 2018 recognises an expansive number of diseases within its ambit including the avian flu (section 4). This Act outlines isolation, quarantine measures for infected individuals, the burial of bodies dead from or suspected to be so from infection, reporting obligations, and the requirement of containment measures to conform with WHO and IHR 2005 guidelines (sections 5, 9-14, 16-20, & 24).

Thus, Bangladesh has an extensive legal framework addressing infectious disease outbreaks. The framework is, however, at present, inchoate. The majority of the laws addressing biosecurity are mostly reactionary. Very few of the provisions actually establish a proactive framework that builds up the capacity of ground-level personnel and institutions including the efficiency of the overall organisational framework. Moreover, the eight laws covered in this piece have no cohesion within them and are at best standalone pieces of legislation. Furthermore, the laws in and of themselves do not address the tremendous financial toll associated with the prevention, mitigation, and eradication of an infectious disease outbreak.

Laws are a crucial instrument in dealing

with a pathogen. They, however, are not an all-purpose solution. What is needed is infrastructural enhancement in tandem with the prevention and mitigation frameworks developed by the laws. Nita Madhav et al. (2017) suggests a framework for an ingrained understanding of the conditions that lead to the emergence and spread of a pathogen, its impact on population health, the costs associated with implementing protocols to prevent further spread, and the recovery of infected individuals.

The possibility of the H5N1 infecting livestock and jumping species barrier is a concerning matter for the livestock and agricultural industry in Bangladesh. A reassuring factor about the new mpox variant is that, unlike COVID-19, it is not airborne, and only spreads through direct contact or exchange of bodily fluids. Nonetheless, taking into consideration the population density, and resource-deprived state of healthcare infrastructure in Bangladesh, there is an urgent need to adopt a more coherent approach in the form of a comprehensive policy-legal framework to address its biosecurity concerns instead of the existing legislation-specific piecemeal approach.

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