

Uniforms do not outrank the constitution



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Recently, the army detained 15 officers following formal charges in three cases filed with the International Crimes Tribunal (ICT) over enforced disappearances committed under the Awami League government as well as killings during the July 2024 uprising. The arrest warrants issued by the tribunal have since seen the revival of a familiar claim that soldiers answer only to court martial, and that a civilian-style tribunal cannot touch them. This claim fails both on the text of the constitution and the text of relevant statutes. It also misreads the limited purpose of military discipline and the special status of laws on crimes against humanity and other crimes under international law, including enforced disappearance.

Let's start with the constitution. Article 47(3) gives laws on genocide, crimes against humanity, war crimes, and other crimes under international law a remarkable shield: such laws cannot be struck down for inconsistency with other provisions of the constitution. The clause expressly mentions members of the armed, defence, or auxiliary forces as possible subjects of those laws. Article 47A then restricts access to certain fundamental rights and to remedial jurisdiction for persons to whom those laws apply. These are not cosmetic flourishes. They are a constitutional declaration that international crimes law enjoys primacy, and that the uniform of an accused does not move them outside that legal architecture.

Next comes Article 45, which modifies the operation of the Fundamental Rights chapter for any disciplinary law relating to members of a disciplined force. But its purpose is limited to ensuring the proper discharge of duties and the maintenance of discipline. Article 45 is not a grant of exclusive military jurisdiction over every wrong that a soldier may commit. It is a shield for internal discipline, not a sword that carves international crimes out of the reach of parliament or the courts.

Let's turn to the International Crimes (Tribunals) Act (ICTA) now. As updated in November 2024, the Act made two decisive moves. First, it empowered the tribunal to try any individual or group—as well as any member of a disciplined force—for crimes

except through the appeal route set in the statute. Section 26 states that the Act prevails over any inconsistent law in force. These two provisions close the backdoor for arguments that military law should displace the tribunal in this field. Bangladeshi jurisprudence has long described the tribunal as a domestic court of law under the Act, a characterisation that matters because it frames the tribunal as part of the national judicial order.

triable both by a criminal court and by court martial. That concurrency does not reach crimes against humanity as defined by the ICTA, because such crimes are not triable by an ordinary criminal court. They are triable by the special tribunal created for that purpose.

Some points regarding section 549 of the Code of Criminal Procedure, dealing with the delivery to military authorities of persons liable to be tried by court martial, also need

the service of the republic until discharge or acquittal (section 20C). Second, there has been public debate about enacting a separate statute for enforced disappearance outside the context of crimes against humanity. That is a welcome track for the many cases that do not meet the threshold of a widespread or systematic attack. But when that threshold is met, the ICTA remains the correct vehicle.

So, if investigators frame charges invoking section 3 of the ICTA, then the proceeding belongs in the tribunal, even when the accused is a member of a disciplined force. Military authorities must cooperate on arrest and custody but cannot claim exclusive forum. Declaring a part of a cantonment as a sub-jail under the Prisons Act changes the place of lawful custody; it does not change the judicial forum or the duty to produce the accused before the tribunal when ordered. The tribunal issues production and remand orders, and the designated superintendent must obey. Legal geography cannot be used to avoid legal accountability. Moreover, the declaration of Dhaka Cantonment's MES building as a temporary jail was made by the Ministry of Home Affairs, which expressly sought its empowerment under section 541(I) of the Code of Criminal Procedure. This is a mistake as CrPC is inapplicable to ICTA proceedings thanks to section 23, and as such needs to be corrected.

Having said that the proceedings against the army personnel under the ICTA have been initiated following due course as the law currently stands, any solutions must protect fairness without draining accountability. The amended ICTA already provides for defence counsel and public observation of proceedings, among other fair trial guarantees. These safeguards should be applied rigorously to avoid the easy slur of political theatre. At the same time, the tribunal must insist on punctual production of detainees and full documentary transparency about arrest and custody.

Let's end by answering two blunt questions directly. First, can crimes of enforced disappearance or crimes against humanity be tried under the Army Act? No, not as the international crimes defined under the ICTA. The Army Act can punish service offences and some ordinary crimes as civil offences, but it cannot transform international crimes into disciplinary breaches. Second, is the ICTA the proper forum even when the accused belongs to a disciplined force? Yes. The constitution gives that law primacy. The ICTA gives the tribunal jurisdiction over members of disciplined forces. And the ICTA overrides inconsistent laws. That is the end of the jurisdictional story.



VISUAL: ANWAR SOHEL

under the Act, whether committed before or after the Act and within or beyond Bangladesh. Second, it modernised the list of crimes against humanity and expressly included enforced disappearance, with definitions cross-referenced to the Rome Statute of the International Criminal Court. The statutory text is plain on both points. The UN rights chief has already noted that the law now recognises enforced disappearance as a crime in domestic law, underscoring that the drafters intended contemporary reach, not only historical cases.

The Act also speaks to hierarchy and forum. Section 24 bars other courts or authorities from questioning tribunal orders

What, then, of the Army Act? The Army Act is a disciplinary statute. It determines service offences and permits court martial to try certain civil offences. But its own definitions show the limits. A civil offence under the Army Act means an offence triable by a criminal court (section 8(2)), and a criminal court means a court of ordinary criminal justice (section 8(7)). That is the key phrase. The tribunal is a special court created by a special statute with its own procedures; it is not a court of ordinary criminal justice within the meaning of the Army Act. The concurrency clause in section 94 of the Act allows a prescribed military authority to choose a forum only where a civil offence is

clarification. That section is a routing rule for cases actually triable by court martial. It does not convert crimes against humanity into service offences, nor does it trump the special forum chosen by parliament for international crimes. When the alleged wrong is an enforced disappearance, charged as part of a widespread or systematic attack on civilians, the proper legal vehicle is the ICTA, and the proper forum is the tribunal.

Two policy developments sharpen this analysis. First, the ICTA now contains a disqualification rule: a person against whom formal charges are pressed in the tribunal is disqualified from running for or holding public office, and from holding any post in

Apnar Orna Koi: How identity politics targets women



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KANAK KANTISAHA

Let me start this piece by recalling a few separate incidents that went "viral" on social media in the recent past. In one, an agitated young man was seen shouting angrily at a woman somewhere in Dhaka, "Apnar orna koi?" (Where is your scarf?), implying that in this country her clothes are deemed inappropriate. I also recall a recent post from the Facebook page of UNICEF Bangladesh promoting female education as a means to stop child marriage. Within hours, the comment section was flooded with hate speech and online attacks against UNICEF, opposing female education and defending child marriage. In May, two young girls were brutally beaten by a youth at Munshiganj launch terminal for what he called "indecent dress." Similar incidents of harassment of women in Lalmatia, Dhaka University, and Banarsee had also spread like wildfire online.

What followed was even more telling. In most cases, the harassers were celebrated and supported both in person and virtually. Some were greeted with flowers and cheered as if they had done something noble.

These are just a few examples, but many in Bangladesh have likely heard of, seen, or even experienced such incidents in recent months. It's easy to dismiss them as separate acts of harassment. But I'm afraid they are signs of a deeper and more concerning shift—one where women's physical appearance has once again become a battleground for cultural and political power.

Since the 2024 July uprising, when Sheikh Hasina's authoritarian government fell, Bangladesh has been in political transition. Power is more fragmented now. In that vacuum, conservative groups have gained new confidence. They are no longer talking only about elections or state structure—they are talking about cultural "reform" and the "true" identity of Bangladesh as a nation.



VISUAL: ALIZA RAHMAN

Cultural events are increasingly under pressure. Syncretic or secular traditions are being labelled "outside-influence" or dismissed as "cultural fascism." Performances and festivals are quietly cancelled or altered. Artistic expressions face growing scrutiny. Numerous mazzars have been attacked with allegations of "un-Islamic activities." Meanwhile, street-level harassment of women is rising—not just in number but in audacity. Men feel entitled to dictate what women should wear, how they should walk, and what is "decent" or "not."

Reports by international human rights organisations, including Human Rights Watch and Amnesty International, as well as domestic rights groups, have pointed to rising violence and moral policing in cities. These are not isolated incidents.

What's striking is how these cultural campaigns are being framed. Some groups demand a new cultural narrative in post-uprising Bangladesh—one that moves away from its diverse, syncretic past and focuses on "pure" values. In their language, previous traditions are "foreign," "impure," or even "fascist

cultural projects." But this is not a neutral rethinking of identity. It is an attempt to build a new majoritarian cultural order—one where the loudest voices decide who belongs.

Although female harassment has always been a common issue in Bangladesh, the recent incidents show a known pattern. Partha Chatterjee, political theorist, writing on nationalism

in South Asia, argued that when nations try to "purify" their cultural identity, the burden of that purity falls squarely on women. Women become symbols of the nation's inner moral domain. Their clothing, their bodies, their behaviour—all become markers of cultural authenticity.

That is exactly what we're seeing today. When a woman walks through Dhaka without wearing an orna "properly," it isn't just about her scarf. It's about a politico-theological project that sees her body as a site of control.

Street harassment is part of a broader process—the slow, deliberate normalisation of cultural hegemony. Antonio Gramsci used that term to describe how power doesn't just come through the state; it's built through culture and what society accepts as "normal." When mobs rally to defend harassers, when cultural events are censored with little protest, when women are told to submit to a moral order they didn't choose—that's how cultural hegemony is formed.

There's also an element of fear driving

this. Arjun Appadurai, in his book, *Fear of Small Numbers: An Essay on The Geography of Anger*, wrote about the anxiety majorities often feel toward minorities, pluralism, or any difference. Even when dominant, majoritarian movements act from insecurity. In Bangladesh today, a handful of religious groups frame everything they dislike—concerts, festivals, cultural hybridity, feminism, queer visibility—as a threat to the nation's moral fabric.

In their eyes, women are both the symbol and the target of this imagined threat. They must be disciplined for the nation to remain "pure."

These incidents are not merely individual acts of harassment; they are performances, public spectacles meant to claim ownership of space. When a man harasses a woman on the street and a crowd rallies behind him, the message is clear: this space belongs to us and to our version of culture. If you don't follow our rules, you're an outsider.

And that is precisely why these campaigns for "cultural reform" are so concerning. They aren't only trying to erase specific traditions—they're trying to erase the idea that Bangladesh can be plural at all. They aim to define a single way of being a citizen of Bangladesh and make everyone else shrink or disappear. The interim government's passivity, or inappropriate responses, only deepen the crisis.

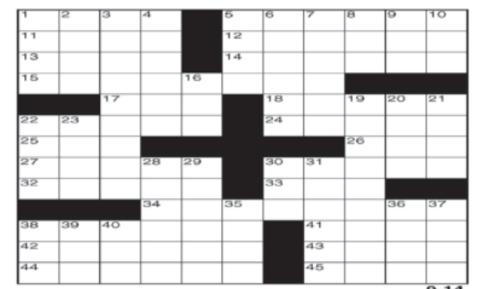
The revolution last year promised change. But a year later, a new form of control is taking shape—not just political, but cultural. And cultural authoritarianism can be as dangerous as political authoritarianism. It is often more subtle, more intimate, and harder to resist.

Women stand at the frontline of this battle—not by choice, but because their beings have once again been turned into symbolic terrain where nations imagine their purity. Defending their right to walk, to wear, to live without fear is not just their struggle. It is central to the fight for a plural, democratic Bangladesh and must be joined by everyone who dreams of equality and an end to authoritarianism during July 2024.

If we lose that fight, we lose far more than cultural festivals or personal freedoms. We lose the real identity of the country.

CROSSWORD BY THOMAS JOSEPH

- ACROSS**
1 Plucked instrument
5 Words from JFK's inaugural address
11 Lotion additive
12 1965 TV western
13 Fly catchers
14 Small crown
15 Didn't panic
17 "Evil Woman" band
18 Thompson of "Creed"
22 Played a role
24 Spoken tests
25 "Cheers" setting
26 Atlas page
27 Spots for tots
30 Scout settlements
32 Get some shuteye
33 Thurman of film
34 Emmy-winning police drama
38 Infant outfit
41 "Damn Yankees" role
42 "Bye!"
43 Taverns
44 Playground fixtures
45 Tidy
- DOWN**
1 War backer
2 Out of the wind
3 Emmy-winning role for Dick Van Dyke
4 Mortar's mate
5 Alan with Emmys
6 Reach by boat
7 Emmy-winning role for Michael Richards
8 Homer's neighbor
9 Lyric poem
10 Selleck of "Blue Bloods"
16 Atlantic catch
19 TV role for Ted Danson
20 Open handed hit
21 Nile snakes
22 Basics
23 Lenny's pal on "The Simpsons"
28 Emmy-winning role for Robert Guillaume
29 Bond activity
30 Cow's chew
31 Spielberg's production company
35 Violin parts
36 Arm bone
37 Sunrise site
38 CIA forerunner
39 Right away
40 Yale student



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