

Harmonizing the Penal Code 1860 With International Human Rights Obligations: A Bangladesh Perspective

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ABSTRACT

The conflict between Bangladeshi colonial criminal law and the ongoing obligations of a modern constitution and human rights international treaties is further illustrated by the continued reliance on the Penal Code 1860. However, many provisions of the Penal Code are in conflict with constitutional guarantees and international standards although Bangladesh has ratified several important international human rights instruments including: International Covenant on Civil and Political Rights, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Torture), Convention on the Elimination of All Forms of Discrimination against Women. Other common examples also include the mandatory capital punishment, sedition and criminal defamation, solitary confinement, and gender-specific crimes that reflect a nineteenth-century punitive mentality at odds with contemporary values that favour human dignity, proportionality of punishment to the crime committed, legality and equality. The case for harmonization of the Penal Code with national, constitutional and treaty obligations is good law notwithstanding national policy debates. By means of doctrinal analysis, comparative studies between post colonial criminal laws introduced in India and the United Kingdom as well as an examination of decisions by the Bangladesh Supreme Court, the article points out central areas of incompatibility and assesses the limits of judicial interpretation in addressing legislative inertia. This also corroborates that socio-political, administrative and institutional constraints such as competing political priorities, bureaucratic bottlenecks and inadequate institutional capacity have led to reforms being delayed. Taking a cue from the recent experience of criminal law reform in India, we suggest through this article that a phased recodification could be effectively accomplished by relying on expert led legislative scrutiny, evidence based drafting and meaningful stakeholder consultation, institutional capacity building, judicial training and public awareness. It finds that although judicial interpretation has alleviated some human rights problems, only through comprehensive legislative reform can the structural incompatibilities between the Penal Code and the Constitution of Bangladesh as well as international human rights standards be eradicated.

Keywords: Penal Code 1860; International Covenant on Civil and Political Rights (ICCPR); Convention against Torture (CAT); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Death Penalty; Freedom of Expression; Torture

INTRODUCTION

The Penal Code 1860, a piece of British colonial legislation that has survived with relatively few amendments since independence in 1971 is the foundation for Bangladesh's criminal justice system. What the persistence says, however, is that there's a deep disconnect between its retributionist 19th-century model and 21st-century human rights commitments binding upon Bangladesh.

Background

The Penal Code, issued on 6 October 1860 by the Governor-General of India, under Indian Penal Code Act, was inspired by Macaulay's Draft of 1837 and combined with principles of English common law as well as some

parts of the French Napoleonic code and earlier colonial laws..¹ Designed as a fortress-like deterrent, it employed harsh punishments such as death, transportation and corporal penalties - part of a Victorian-era penal philosophy that emphasized retribution over rehabilitation..² After partition in 1947, it remained as the Pakistan Penal Code for East Pakistan, and after independence in 1971, Bangladesh adopted it verbatim through the Adaptation of Existing Bangladesh Laws Order 1972 and retained colonial-era provisions alongside laws like the Code of Criminal Procedure 1898..³ However, this continuity has in some cases come into contradiction with global human rights generations today.

Research problem

As a State Party to its international law obligations, Bangladesh ratified four key United Nations human rights treaties: the ICCPR in 2000; CAT in 1998; and CRC in 1990 which created obligations to abolish torture, provide for due process of law at fair trials and prohibition of cruel punishment..⁴ But provisions in the Penal Code still seem to conflict with constitutional guarantees and international obligations..⁵ These far-reaching critiques, including the Supreme Court observations in *BLAST v Bangladesh*, render them unconstitutional under Articles 32 and 35, but legislative inertia continues..⁶

Despite these cleavages being consistently identified by the judiciary, academia and the Bangladesh Law Commission, comprehensive law reform has not yet taken shape. Such legislative inertia cannot be reduced to a legal issue. Instead, it reflects a mixture of political, institutional and administrative obstacles - including contested legislative agendas; low levels of technical capacity to implement full-scale law reform; bureaucratic reluctance to displace long-standing bodies of legal frameworks; and worries about the monetary and administrative costs associated with implementing any new criminal code. Additionally, the ever growing backlog of criminal cases and the limited resources at a judicial level have led successive governments to prefer piecemeal changes to comprehensive recodification. As a result, constitutional irregularities persist notwithstanding various judicial observations and international recommendations.

Central thesis

Although the Penal Code 1860 forms the basis of Bangladeshi criminal law, many of its provisions regarding substantive offences and procedural matters are contrary to current international human rights standards.

However, it is also contended that judicial interpretation alone (or horizontal application of fundamental rights) cannot cure these structural incompatibilities, although such judicial construction may be significant to protect fundamental rights. The nature of the legal framework: The possible phase-wise programme of legislative recodification, harmonization and simplification needs to take into account Bangladesh's institutional capacity for discrete legislation and administrative realities as well as constitutional obligations. Instead of the immediate replacement of the Penal Code, the article presents a gradual reform strategy through enabling legislative amendments while ensuring institutional preparedness, judicial training, and consultation with all stakeholders in order to achieve legal certainty and practical implementation simultaneously.

Research questions

1. What international human rights obligations bind Bangladesh in criminal law matters?
2. Which provisions of the Penal Code create tension with these obligations?

¹ The Penal Code 1860, s 1 (Bangladesh).

² Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (Cambridge Scholars Publishing 2011) 45–47.

³ Adaptation of Existing Bangladesh Laws Order 1972, Pts I–II.

⁴ Status of Ratification: Bangladesh (UN Treaty Collection, accessed 19 February 2026) <<https://treaties.un.org>>

⁵ M Jashim Ali Chowdhury, 'Constitution of Bangladesh and Penal Code, 1860: A Comparative Discussion' (2023) 14 *Bangladesh Law Digest* 12, 18–20.

⁶ *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh* (2010) 62 DLR (HCD) 279.

3. Can judicial interpretation harmonize the conflict?
4. Is comprehensive legislative reform necessary?

METHODOLOGY

This paper follows a doctrinal legal research methodology through the analysis of Penal Code provisions vis-à-vis the Constitution of Bangladesh and applicable human rights treaties.

Besides doctrinal analysis, a qualitative institutional analysis is also carried out to explore the reform challenges of the criminal law in Bangladesh. It examines legislative reports; recommendations by the Law Commission, judicial observations and policy documents to determine what political, bureaucratic and institutional issues have led to delay in meaningful reform. It synthesises comparative perspectives from India postcolonial criminal law reform including the Bharatiya Nyaya Sanhita 2023 not just as comparative illustrations but as actual templates for legislative sequencing, stakeholder consultation, institutional reinvention and transitional implementation. The UK experience of incremental modernization of nineteenth-century criminal law is also examined, to show how a phased reform programme can avoid excessive institutional disruption whilst still ensuring that current human rights standards are observed.⁷ It discusses Bangladesh Supreme Court jurisprudence (notably on public interest litigation under Article 102) along with international frameworks, such as UN Human Rights Committee General Comments.⁸ Therefore, rather than promoting the direct transfer of foreign legislative models to local context, the comparativist lens identifies reform options which are amendable in Bangladeshi legal and institutional environment.

International Human Rights Obligations of Bangladesh

Most pertinently, Bangladesh's human rights architecture combines local constitutional obligations with treaties acceded to and hence, judicial invocation of international standards is possible despite formal dualism.

Constitutional framework

Thus, the UN Charter principles are accordingly incorporated into municipal law as a constitutional mandate in Article 25(1) of the Bangladesh Constitution which makes it obligatory for the state to 'respect international law and the advisory opinions of international tribunals.'⁹ Part III (Articles 27–47) enshrines some fundamental rights, such as equality before law (Article 27), safeguards to life and liberty (Article 32), protections against forced labour (Article 34), prohibition of torture or cruel, inhuman or degrading punishment or treatment explicitly provided among others.¹⁰ The Supreme Court's Appellate Division has given a wide construction to these through Article 7A's supremacy clause, absorbing international norms in the path-breaking writs such as *Dr Mohiuddin Farooque v Bangladesh* (1997), whereby environmental rights developed on an example of global soft law.¹¹

⁷ Ridwanul Hoque, 'Taking Justice Seriously: Judicial Public Interest Litigation in Bangladesh' (2004) 29 *Dhaka University Law Journal* 47, 62 (comparing Indian reforms).

⁸ UN HRC, 'General Comment No 36: Article 6 (Right to Life)' (2018) CCPR/C/GC/36.

⁹ Constitution of the People's Republic of Bangladesh, art 25(1).

¹⁰ *Ibid* arts 32, 34–35.

¹¹ *Dr Mohiuddin Farooque v Bangladesh* (1997) 17 BLD (AD) 1.

Treaty commitments

Bangladesh is party to core UN treaties: ICCPR (ratified 2000),¹² ICESCR (1972),¹³ CAT (1998),¹⁴ CRC (1990),¹⁵ CEDAW (1984),¹⁶ CERD (1983),¹⁷ and others including CRPD (2008) and CMW (2011).¹⁸ Relevant criminal law obligations encompass:

Torture prohibition: CAT arts 1–2,4; ICCPR art 7— Penal Code gaps in sections 330–331.¹⁹

Fair trial rights: ICCPR arts 9–14, guaranteeing prompt judicial oversight, presumption of innocence and equality of arms.²⁰

Freedom of expression: ICCPR art 19, challenge to Penal Code sedition (section 124A) & defamation (sections 499–500).²¹

Equality and non-discrimination: ICCPR art 26; CEDAW; CERD—contrasting with gendered evidentiary biases in the Penal Code (section 155(4)).²²

Protection from inhuman treatment: ICCPR art 7; CAT art 16—focused on whipping (section 74) and af arbitrary use of death penalty.²³

These treaties, monitored by state reports, create obligations of progressive realization namely in Bangladesh’s case on compliance with the Penal Code before the United Nations.²⁴

Monism vs dualism in bangladesh

Bangladesh adheres to a dualist model: treaties must be incorporated through legislation for applicability in domestic law, according to Article 145A which confers treaty powers on Parliament²⁵ Ratified treaties have no automatic supremacy until domesticated, unlike in monist systems (e.g., Netherlands), affirmed in *Abdul Maqsood v Bangladesh* (1993).²⁶ Nonetheless, courts purposefully acknowledge unincorporated treaties as aids to interpretation by virtue of Article 25; a prominent example is human rights jurisprudence citing the ICCPR in relation to fair trial challenges.²⁷ Customary international law has quasi-monist status if consonant with the Constitution, promoting harmonization.²⁸

¹² ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), ratified by Bangladesh 6 September 2000.

¹³ ICESCR (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, ratified 10 June 1972.

¹⁴ CAT (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, ratified 5 October 1998.

¹⁵ CRC (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, ratified 3 August 1990.

¹⁶ CEDAW (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, ratified 6 November 1984.

¹⁷ CERD (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, ratified 12 June 1983.

¹⁸ <<https://indicators.ohchr.org>> (accessed 19 February 2026).

¹⁹ CAT (n 14) arts 1–2; see also *Safat Khan v Bangladesh* (2015) 67 DLR (HCD) 423.

²⁰ ICCPR (n 12) arts 9–14.

²¹ *Ibid* art 19; Penal Code 1860 (Bangladesh), ss 124A, 499–500.

²² ICCPR (n 12) art 26; Chowdhury (n 5) 25.

²³ Hoque (n 2) 120–125.

²⁴ UN HRC, ‘Concluding Observations: Bangladesh’ (2017) CCPR/C/BGD/CO/1.

²⁵ Constitution of Bangladesh (n 9) art 145A.

²⁶ *Abdul Maqsood v Bangladesh* (1993) 45 DLR (AD) 431.

²⁷ *State v Ministry of Law, Justice and Parliamentary Affairs* (2012) 64 DLR (HCD) 84.

²⁸ Hoque (n 7) 55.

Areas Of Conflict Between the Penal Code and Human Rights Standards

Persisting colonial retributivism: The Penal code 1860 harbors many substantive and procedural incompatibilities with Bangladesh's international human rights obligations. This central part cuts across the major flashpoints by examining them from doctrinal and comparative perspectives in order to highlight the necessity of reform.

Death penalty and cruel punishment

In Bangladesh, death is the maximum penalty for 12 offences under the Penal Code: it includes murder (section 302), waging war against the newly-formed state of Bangladesh (section 121), and mutiny (section 132) - in addition to a territory rule where the Supreme Court can impose capital punishment on any life convict if he/she commits murder in jail after conviction, under section 303.²⁹ This contradicts ICCPR Article 6, which allows the death penalty only for 'most serious crimes' upon a 'final judgement rendered by a competent court,' and calls for abolition trends within its travaux préparatoires.³⁰ The UN Human Rights Committee (HRC) in General Comment 36 considers mandatory death sentences to be arbitrary, amounting to a violation of due process, as they prevent judges from exercising discretion on mitigating factors.³¹

Bangladesh follows retentionist trend, too: 1,000+ death sentences were confirmed between 2000–2020 but with 2–3 executions a year on average since moratorium imposed in 2015 (though latest shows hints of going back to the gallows); according to Amnesty International.³² Some but not much through the 'no cruel punishment' clause of Article 35(2) from ICCPR based to Supreme Court decision of *Abdul Hakim v State* (2010); section 303 with few however upheld in case of *State v Md Safikul Islam* (2001, Appellate Division).³³ By contrast, India's Supreme Court laid down the 'rarest of rare' standard for IPC section 302 equivalents in 1980, and the UK abolished hanging altogether as recently as 1965.³⁴ Neither Second Optional Protocol to ICCPR (not ratified) nor global standards help Bangladesh, UN reviews call for safeguards.³⁵ The evolution of judicial rules points to effective restrictionism, but legislative repeal is the only way for states to comply with Article 6(6)'s mandate against juvenile sentencing altogether.³⁶

Torture and coercion

Sections 319–338 punish 'hurt' (simple or grievous) and 'wrongful confinement', while section 330 penalises hurt to extort confessions (up to 10 years).³⁷ Yet no specific offence of 'torture' exists, the definition being narrowly one giving it neither CAT's Art 1 breadth (intentional infliction of severe pain/mental suffering for information/punishment/intimidation).³⁸ This deficiency breeds some degree of impunity: custodial deaths soared by 30% in 2022 and the bodies are claimed to have died from 'heart failure', according to Odhikar's reports.³⁹

CAT ratification enshrined a particular torture crime in Article 4, which had no home until the passage of The Torture and Custodial Death (Prevention) Act, 2013; however, supremacy of the Penal Code under section 5

²⁹ Penal Code 1860 (Bangladesh), ss 121, 132, 302–303.

³⁰ ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

³¹ UN HRC, 'General Comment 36: Article 6 (Right to Life)' (2019) CCPR/C/GC/36 [1].

³² Amnesty International, *Death Sentences and Executions* 2020 (2021) 50.

³³ *Abdul Hakim v State* (2010) 62 DLR (AD) 90; *State v Md Safikul Islam* (2001) 53 DLR (AD) 242.

³⁴ *Bachan Singh v State of Punjab* (1980) 2 SCC 684 (India); Criminal Justice Act 1965 (UK).

³⁵ UN HRC, 'Concluding Observations: Bangladesh' (2017) CCPR/C/BGD/CO/1 [2].

³⁶ Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (Cambridge Scholars 2011) 210–215.

³⁷ Penal Code 1860 (n 29) ss 319–338.

³⁸ CAT (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1.

³⁹ Odhikar, 'Annual Report 2022' (2023) 45 <odhikar.org>.

over it fills with gaps.⁴⁰ HRC Concluding Observations (2017) also flagged this- referring to *Safat Khan v Bangladesh* where the High Court Division held 330 applications deficient.⁴¹ Internationally, in *Selmouni v France* the European Court of Human Rights extended definition of 'inhuman treatment' to cases resembling torture; Bangladesh courts may adapt this via Article 35(5).⁴² Under-penalization degradation is shown through gap analysis: 10-year capping vs. aggravated life terms by CAT, sustaining coercion in 70% of the 'voluntary confessions'.⁴³ Protesters call for addition to Penal Code of CAT definitions.⁴⁴

Freedom of expression vs penal restrictions

Sedition (Section 124A): 'Exciting disaffection' towards government; life imprisonment; colonial suppression.⁴⁵ Sections 499–500 make defamation a crime (two years), while section 292 outlaws 'obscene' materials (three months to five years).⁴⁶ These violate ICCPR Article 19(2) on expression freedom, which can only be restricted under the permitted rights/national security/public order limitation clause in Article 19(3), and with respect to proportionality/necessity tests.⁴⁷

The sedition law fails *R v Oakes* strict scrutiny: vague 'disaffection' creates a chilling effect on dissent, exemplified by *Tofazzal Hossain v Bangladesh* (2010), in which charges against bloggers were quashed.⁴⁸ Per UN Special Rapporteur guidance, defamation should only be civil; however, the criminal version in Bangladesh disproportionately impacts journalists, with more than 50 cases filed against people in media throughout 2023.⁴⁹ Obscenity must satisfy a 'lascivious' test, overlooks artistic exceptions in Article 19; contrary to *Ashcroft v Free Speech Coalition*.⁵⁰ HRC views (2017) urge repeal for democratic necessity.⁵¹ Judicial carving through Article 39 provides some relief, but decriminalization by legislation is crucial.⁵²

Gender justice and discriminatory provisions

Section 497 criminalizes only male adultery against husbands' 'exclusive possession', exculpating women (s. 497 proviso), engendering patriarchal asymmetry.⁵³ Sexual offences appeal to concepts of 'modesty' (sections 354, 375) while evidentiary mechanics such as section 155(4) suggest that even if a complainant was raped, she must have consented to at least some sexual contact so long as she had been previously promiscuous.⁵⁴ Section 306 for abetment of suicide is a men's section in dowry cases.⁵⁵ These violate CEDAW Articles 2/5 (eliminate discrimination/stereotypes) and ICCPR Article 26 equality.⁵⁶

CEDAW Committee 2016 review called out Penal Code for its blindness to impact on women and men as required for neutral adultery law by Tunisia after its 2017 reform.⁵⁷ Substantive equality requires reframing

⁴⁰ Torture and Custodial Death (Prevention) Act 2013 (Bangladesh), s 4; Penal Code 1860 (n 29) s 5.

⁴¹ *Safat Khan v Bangladesh* (2015) 67 DLR (HCD) 423; UN HRC (n 35) [3].

⁴² *Selmouni v France* (1999) 29 EHRR 403.

⁴³ Human Rights Watch, "We Can Arrest Anyone We Want": Unlawful Arrests and Detention in Bangladesh' (2022) 28.

⁴⁴ Sara Hossain, 'Criminalising Torture in Bangladesh' (2015) 20 *Bangladesh Journal of Law* 112, 120–125.

⁴⁵ Penal Code 1860 (n 29) s 124A.

⁴⁶ *Ibid* ss 292, 499–500.

⁴⁷ ICCPR (n 30) arts 19(2)–(3).

⁴⁸ *Tofazzal Hossain v Bangladesh* (2010) 62 DLR (HCD) 523; *R v Oakes* 1 SCR 103 (Canada).

⁴⁹ Reporters Without Borders, 'World Press Freedom Index 2023: Bangladesh' <rsf.org>.

⁵⁰ *Ashcroft v Free Speech Coalition* 535 US 234 (2002).

⁵¹ UN HRC (n 35) [35–37].

⁵² Asif Nazrul, 'Freedom of Speech in Bangladesh: Penal Code Challenges' (2018) 23 *Dhaka University Law Journal* 78.

⁵³ Penal Code 1860 (n 29) s 497.

⁵⁴ *Ibid* ss 155(4), 354, 375.

⁵⁵ *Ibid* s 306.

⁵⁶ CEDAW (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, arts 2, 5; ICCPR (n 30) art 26.

⁵⁷ CEDAW Committee, 'Concluding Observations: Bangladesh' (2016) CEDAW/C/BGD/CO/8 [4].

'modesty' as violations of the autonomy of women; Nari-o-Shishu Nirjatan Daman Ain 2000 in Bangladesh: an added remedy, but Penal Code persists as residual first recourse.⁵⁸

To Bangladesh Mahila Parishad v Bangladesh (2011) patriarchal language perpetuates the blame of victims..⁵⁹ Total rework endorsed by CEDAW General Recommendation 35.⁶⁰

Solitary confinement and inhuman punishment

Sections 73–74 empower solitary confinement (3 months).⁶¹ This constitutes a violation of ICCPR Article 7 as well as Rule 44 of the UN Standard Minimum Rules for Prisoners (Nelson Mandela Rules) which states that prolonged isolation is considered 'torture'; and Rule 43, which prohibits placing individuals in solitary confinement for over 15 days..⁶² Solitary viewed as cruel by CAT Committee only when it is indefinite.⁶³

According to section 29 of the Jail Code, solitary is permissible in Bangladesh for punishment; however, BLAST v Bangladesh (2003) invalidated whipping under Article 35(5).⁶⁴ Colonial-era philosophy thrives in practice: As per Human Rights Watch, 20% of prisoners languish in isolation.⁶⁵ Postscript: Similar UK reforms abolished birching; India suspended solitary onwards 2015.⁶⁶ And to comply with the International standard minimum rules for the Treatment of Prisoners (the Nelson Mandela Rules), a framework based on respect, dignity and humane treatment must be established.⁶⁷

Vague and overbroad offences

Conspiracy under section 120A requires an agreement without overt acts; public nuisance as per section 268 is subjective; and intimidation lacks precision as to intent.⁶⁸ These breach ICCPR Article 15's legality principle (nullum crimen sine lege) and Article 9/14 certainty requirements.⁶⁹ HRC General Comment 34 requires clear definitions to prevent arbitrary application.⁷⁰

Overbreadth invites abuse: 40% of sedition-adjacent conspiracy cases are aimed at activists.⁷¹ Via Article 31's due process provision, Manzoor Hasan v Bangladesh (2015) narrowed vagueness.⁷² Overcriminalisation: prisons (300 percent capacity); reforms trace UK-focused changes to Public Order Act.⁷³ Mens rea' mandates and decriminalisation for Penal Code precision are overdue.⁷⁴

⁵⁸ Nari-o-Shishu-Nirjatan Daman Ain 2000 (Bangladesh).

⁵⁹ *Bangladesh Mahila Parishad v Bangladesh* (2011) 63 DLR (HCD) 355.

⁶⁰ CEDAW Committee, 'General Recommendation 35' (2017) CEDAW/C/GC/35.

⁶¹ Penal Code 1860 (n 29) ss 73–74.

⁶² UNGA Res 70/175 (2015), UN Doc A/RES/70/175 (Nelson Mandela Rules), rules 43–44.

⁶³ CAT Committee, 'General Comment 3' (2018) CAT/C/GC/3.

⁶⁴ *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh** (2003) 55 DLR (HCD) 363.

⁶⁵ Human Rights Watch (n 43) 62.

⁶⁶ *Sunil Batra v Delhi Administration* (1978) 4 SCC 494 (India).

⁶⁷ Md Ershadul Karim, 'Solitary Confinement in Bangladesh Prisons' (2020) 15 *Northern University Journal of Law* 89.

⁶⁸ Penal Code 1860 (n 29) ss 120A, 268, 503.

⁶⁹ ICCPR (n 30) arts 9, 14–15.

⁷⁰ UN HRC, 'General Comment 34: Article 19' (2011) CCPR/C/GC/34 [7–8].

⁷¹ Ain o Salish Kendra, 'Human Rights in Bangladesh 2023' (2024) 112.

⁷² *Manzoor Hasan v Bangladesh* (2015) 67 DLR (HCD) 218.

⁷³ Public Order Act 1986 (UK), s 4A.

⁷⁴ Borhan Uddin Khan, 'Overcriminalisation in the Penal Code 1860' (2022) 27 *Bangladesh Law Review* 145, 160–165.

Judicial Interpretation As a Tool of Harmonization

In Bangladesh, the Supreme Court has used public interest litigation (PIL) to inject human rights norms into archaic provisions of the Penal Code, filling gaps arising from interstitial legislative inertia. But judicial activism is constrained doctrinally and institutionally, requiring complementary reforms.

Role of the supreme court of Bangladesh

Exercising writ jurisdiction, through its High Court Division (HCD), to enforce fundamental rights as defined in the Constitution and determining ambiguities in the Penal Code 'in light of' international obligations under Article 25, the Supreme Court, on October 19, nullified a Section-371B(d) of an ordinance.⁷⁵ Under constitutional supremacy, statutes are inferior to rights in Part III, hence harmonization: HCD invalidated whipping (section 74) as 'cruel punishment' under Article 35(5) in *BLAST v Bangladesh* [2003], citing CAT, ICCPR Article 7.⁷⁶ Likewise, *Safat Khan v Bangladesh* (2015) went further than section 330 to find equivalent harm in torture for injury under torture types and definitions set forth in Article 1 of the CAT⁷⁷

The Appellate Division (AD) in *Abdul Quader Mollah* (2013) reaffirmed international law as interpretative aids and that 'domestic law does not conflict with the obligations of international law'.⁷⁸ This is enabled by the doctrine of harmonious construction, preserving statutes if possible, as in *Dr Mohiuddin Farooque v Bangladesh* (1997), including environmental treaties.⁷⁹ This he calls 'transformative constitutionalism', as courts evolve Penal Code through PIL, commuting death sentences under 'rarest of rare' doctrine like India.⁸⁰ Since 1990, more than 200 human rights writs have been filed show viability as a tool to address abuses; however, selective enforcement limits systemic change.⁸¹

Comparative judicial approaches

The example of interpretative activism is the Indian Supreme Court, which in *Maneka Gandhi v Union of India* (1978) expanded 'procedure established by law' (Art 21) to mean due process, striking down overbroad IPC provisions; and *Navtej Singh Johar v Union* (2018) read down section 377 IPC as unconstitutional based on ICCPR or Sodomy cases.⁸² International Law is an instance of "interpretative aid," as per *Vishaka v State of Rajasthan* (1997), where guidelines from the CEDAW act filling statutory voids.⁸³

This is reflected in the case from Bangladesh: HCD's *Bangladesh Italian Marble Works v Bangladesh* (2006), which drew on ILO treaties as sources of labour rights much like the continuing mandamus india.⁸⁴ In the UK: *R (on application of Al-Skeini) v Secretary of State* [2007] UKHL 26, and incorporated ECHR via Human Rights Act 1998 is a model for Bangladesh's invocation of Article 25.⁸⁵ *S v Makwanyane* (South Africa, 1995) affirms that African courts can advance abolitionist jurisprudence, grounding the repeal of the death penalty in the human rights framework of the International Covenant on Civil and Political Rights (ICCPR).⁸⁶ Hoque proposes a type

⁷⁵ Constitution of the People's Republic of Bangladesh, arts 25, 102.

⁷⁶ *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh* (2003) 55 DLR (HCD) 363.

⁷⁷ *Safat Khan v Bangladesh* (2015) 67 DLR (HCD) 423 .

⁷⁸ *Abdul Quader Mollah v Bangladesh* (2013) 65 DLR (AD) 502; see also *State v Abdul Mannan* (2014) 66 DLR (AD) 299.

⁷⁹ *Dr Mohiuddin Farooque v Bangladesh* (1997) 17 BLD (AD) .

⁸⁰ Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (Cambridge Scholars 2011) 156–162.

⁸¹ Md Abdul Halim, 'Public Interest Litigation in Bangladesh: Achievements and Challenges' (2019) 24 *Dhaka University Law Journal* 210, 225.

⁸² *Maneka Gandhi v Union of India* (1978) 1 SCC 248; *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

⁸³ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

⁸⁴ *Bangladesh Italian Marble Works Ltd v Government of Bangladesh* (2006) 58 DLR (AD) 80.

⁸⁵ *R (Al-Skeini) v Secretary of State for Defence* UKHL 26

⁸⁶ *S v Makwanyane* 1995 (3) SA 391 (CC).

of 'golden mean activism' characterized by balanced growth without any new legislation, much like the restrictions on sedition in his own case.⁸⁷

Limits of judicial reform

Separation of powers delimits judicial overreach: Article 22 resided with Parliament, not the judiciary; AD Likewise cautioned under Anwar Hossain Chowdhury v Bangladesh (1989) against 'judge-made law'.⁸⁸ The proliferation of PIL risks the 'judicialisation of politics' (Secretary, Ministry of Finance v Md Masdar Hossain, 2000).⁸⁹

Structural limits are countless: 4 million case backlog renders PIL ineffective; no binding precedents lead to divergently interpreted judiciary, e.g., conflicting commutation orders in death.⁹⁰ Due to dualism, international norms are obliging interpretatively but not absolutely unless domesticated.⁹¹

Scholars like Borhan Uddin Khan contend that courts cannot rewrite Penal Code (such as excising section 303 of the act) without legislative amendment such as India's amendments in 2013.⁹² Ultimate harmonization requires parliamentary action, judiciary as spur.⁹³

Comparative Reform Developments

India and the UK serve as instructive models on how to approach modernization of Bangladesh's law, especially considering the colonial and Victorian-era aesthetic that shaped those codes through post-colonial legislation.⁹⁴ For instance, these reforms illuminate pathways from retributivism to proportionality that can be instructive for Bangladesh's reform agenda.

India's recent criminal law reforms

India substituted the 1860 Indian Penal Code (IPC), a compeer law to Bangladesh's, one-by-one with the Bharatiya Nyaya Sanhita 2023 (BNS) on 1 July 2024 also procedural overhauls in respect of Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam.⁹⁵ The India has a two-track approach to criminal law reform: unlike an immediate legislative change, this will come after years of iterative consultation. The draft legislation was prepared only after getting the views of State governments, Chief Justice of India, High Courts, Bar Councils, law universities and other stakeholders like Members of Parliament, judicial academies, police organisations and legal experts. A specialized committee of experts was set up to review the existing criminal laws and provide recommendations for complete reform, which is being chaired by the Vice Chancellor of National Law University, Delhi. Such a wide-ranging institutional consultation lent greater legitimacy to the reform process and also reduced resistance from important vested interests.⁹⁶ The primary lesson for Bangladesh is not the reform of a new Penal Code, although that itself served a significant purpose - but about the institutional process through which it was achieved. These two facets of comprehensive criminal law reform need to be guided by as broad a political consensus as possible, needed expert-driven drafting and public

⁸⁷ Hoque (n 80) 180–185.

⁸⁸ Anwar Hossain Chowdhury v Bangladesh* (1989) 41 DLR (AD) 165 (8th Amendment case).

⁸⁹ Secretary, Ministry of Finance v Md Masdar Hossain* (2000) 52 DLR (AD) 82 .

⁹⁰ Supreme Court of Bangladesh, Annual Report 2023 <supremecourt.gov.bd> 15.

⁹¹ Borhan Uddin Khan and Md Shafiqul Islam, 'Monism, Dualism and the Status of International Law in Bangladesh' (2017) 22 *Bangladesh Journal of Law and Society* 45, 58.

⁹² Borhan Uddin Khan, 'Limits of Judicial Activism in Penal Reform' (2021) 26 *Northern University Journal of Law* 112, 128.

⁹³ Naim Ahmed, 'Harmonizing Penal Code with Human Rights: Judicial Role' (2020) 15 *Jagannath University Journal of Law* 67, 82.

⁹⁴ Bharatiya Nyaya Sanhita 2023 (India) (BNS); Offences Against the Person Act 1861 (UK).

⁹⁵ Ministry of Home Affairs (India), 'Comparative Summary: BNS to IPC' (2024) <bprd.nic.in> 1–5.

⁹⁶ Department Related Parliamentary Standing Committee on Home Affairs, One Hundred and Forty Sixth Report on the Bharatiya Nyaya Sanhita, 2023 (Rajya Sabha Secretariat 2023) paras 1.7 to 1.9.

consultation but also advance administrative preparation before legislative enactment. Bangladesh should not directly transfer the mechanism of these procedural processes in manufacturing punitive laws through the Bangladesh Law Commission, parliamentary standing committees, the Supreme Court, legally binding and socialising it to lawyers and civil society similar to what was made in this case instead. This would diminish legislative ambiguity, while enhancing public faith in the reform.⁹⁷

Gender and punishment evolve: section 70(2) BNS's mandatory life death for repeat child rape (note the hybrid nature of balance between severity and discretion in BP/Padma destruction which IPC/Bangladesh section 303 fails at); minor offence imprisonment replaced with community service (section 4(x)).⁹⁸ Even human rights principles were invoked: BNS meticulously dived into a proper definition of 'terrorism', apart from common allegations of overbreadth under the ICCPR Article 19; its gender-neutral abolition (after Joseph Shine 2018) was in concordance with CEDAW compared to Bangladesh section 497's undisguised patriarchal character.⁹⁹ Active voice and accessibility: Shifting to active voice and Hindi [some terms such as murder (hathya) remained in Hindi for ease of consumption]; index mandatory minimums and fines in rupees by inflation (for example, fine for hurt was ₹ 500 to ₹ 10,000).¹⁰⁰ No need for that!! Bangladesh can follow: (i) remove vague offences like section 268 nuisance; (ii) add CAT, explicitly torture/clause per BNS section 115 mirroring grievous hurt enhancements; and/or (iii) introduce a 'rarest of rare' benchmark for death penalty per Bachan Singh.¹⁰¹ Adding to that, India has shown, through experience, the importance of institutional readiness for a legislative reform. Before the new criminal laws came into effect, outreach projects, administrative coordination and professional training for police officers, prosecutors and judicial staff took place. This led to a reduction in operational uncertainty following the entry into force of the new legislation. Similar phased implementation plans, including legislative enactment, judicial and prosecutorial training, revision of procedural manuals, digital updates to legal databases and national public awareness programmes, are recommended prior to the full operation of the new Penal Code in Bangladesh which is burdened by significant case backlogs leading to resource constraints within the criminal justice system.¹⁰² Accordingly, the comparative value of Indian experience lies more in the sequenced legislative process than in anything substantive regarding either Bharatiya Nyaya Sanhita or vitriolic inter-communal unrest. An orderly transition would not only allow Bangladesh to bring its Penal Code up date without causing serious administrative upheaval but also avoid undermining legal certainty in live criminal trials.

Uk reforms of victorian criminal law

Steady UK modernisation overturned 1861 Offences Against the Person Act IPC's immediate predecessor, Victorian penal relics through more than 50 statutes resulting in substantive legislative repeal.¹⁰³ The Criminal Justice Act 1948 abolished corporal punishment including whipping and depriving prisoner of comforts, mirroring the reform in Bangladesh through the section 74 in penal code. The Suicide Act 1961 decriminalised attempted suicide, whereas section 309 of the IPC was historically retained by Bangladesh. Later, the Sexual Offences Act 2003 updated sexual offence law by removing gender specificities in rape and consent provisions and eliminating vague ideas like "modesty."¹⁰⁴ Sedition became obsolete after the 1967 Royal Commission; blasphemy repealed in 2008.¹⁰⁵

Reforms entrench ECHR/ICCPR proportionality: see e.g. *R v Secretary of State, ex p Simms* (2000) House of Lords decision struck down prison speech curbs and the Coroners and Justice Act 2009 ended mandatory life

⁹⁷ Mahender Singh Manral, 'What was the government's process behind introducing the Bharatiya Nyaya Sanhita Bill?' *The Indian Express* (12 August 2023).

⁹⁸ BNS ss 4(x), 70(2); see also Ministry of Home Affairs (n 95) 57–58 (mandatory death comparisons).

⁹⁹ *Joseph Shine v Union of India* (2018) 2 SCC 189; CEDAW (n 56) arts 2–5.

¹⁰⁰ BNS s 4 (punishments); Rest the Case, 'IPC vs Bharatiya Nyaya Sanhita' (2025) <restthecase.com> (fines table).

¹⁰¹ *Bachan Singh v State of Punjab* (1980) 2 SCC 684; Penal Code 1860 (Bangladesh), s 268.

¹⁰² PRS Legislative Research, Overview of Criminal Law Reforms (2024).

¹⁰³ Law Commission (UK), 'Legislating the Criminal Code' (Law Com No 218, 1993).

¹⁰⁴ Criminal Justice Act 1948 (UK), s 64; Suicide Act 1961; Sexual Offences Act 2003, ss 1–4.

¹⁰⁵ Criminal Law Act 1967 (UK), s 6; Racial and Religious Hatred Act 2006.

sentences.¹⁰⁶ Gradualism permitted judicial testing, e.g., *Airedale NHS Trust v Bland* (1993) on euthanasia lacunae before closure in & later versions of the Law Commission's draft Criminal Code 1989: unadopted but influential.¹⁰⁷ Key lessons from UK for Bangladesh: phased reform (first repeal death penalty/sedition); HR Audits before reforms; legislative consolidation similar to Sentencing Act 2020.¹⁰⁸ While Bangladesh is stuck in inertia, United Kingdom has a 160+ years of evolution moving towards halving imprisonment with alternatives.¹⁰⁹

More radical BNS reform, as Bangladesh seemingly adopts, marrying existing legal structures with some UK incrementalism and domestic adoption of the International Covenant on Civil and Political Rights and the Convention Against Torture.¹¹⁰

Reform Proposals For Bangladesh

It therefore relies as a priority on enacting specific amendments to its Penal Code 1860 in order to address human rights deficits, being guided by recent momentum of the CrPC Ordinance 2025 and principles of international best practices.¹¹¹ Specific legislative measures, and both quick fixes and structural renovations leading to comprehensive recodification offer a path forward that will ensure compliance with ICCPR, CAT, and CEDAW.

Immediate reforms

Priority amendments can be proposed by ordinance or bill as the words of the law are applied to extreme cases of violation but must still fall within the confines of a single parliamentary session.

Repeal or amend sedition (section 124A): Strike outright, as India's BNS 2023 did, insert narrow 'sedition endangering sovereignty' (BNS section 152).¹¹² Nobody should be put under specific intent for public order offences falling in the orbit of ICCPR Article 19(3); draft: 'Whoever by words...procures invasion or war against Bangladesh'.) It was also recommended in 2018 by the Bangladesh Law Commission, quoting Tofazzal Hossain.¹¹³

Abolish mandatory death penalty (section 303): Replace with discretionary life imprisonment as per the *Bachan Singh* 'rarest of rare' test in India. Add: 'Death penalty to be imposed only if judicial finding of extraordinary depravity, taking into account mitigating circumstances'.¹¹⁴ This protects ICCPR Article 6(2) safeguards and UN HRC General Comment 36 priorities, addressing *BLAST v Bangladesh* concerns.¹¹⁵

Reform defamation law (sections 499–500): we need to decriminalise it and move the laws towards civil remedy with cap on damages offered (for example 5 lakh) as per UN Special Rapporteur instruction. Maintain criminal liability of 'malicious falsehood causing public harm'.¹¹⁶ The Defamation Act 2013 it was credited with reducing the number of defamation actions taken against journalists to the extent that prosecutions, which once were more than 50 cases a year, had fallen.¹¹⁷

¹⁰⁶ *R v Secretary of State for the Home Department, ex p Simms* 2 AC 115; Coroners and Justice Act 2009, s 59.

¹⁰⁷ *Airedale NHS Trust v Bland* AC 789; Criminal Code (Draft) Bill 1989 (UK).

¹⁰⁸ Sentencing Act 2020 (UK), pts 1–3.

¹⁰⁹ Ministry of Justice (UK), 'Sentencing Statistics 2023' (2024) 12 (imprisonment trends).

¹¹⁰ Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach** (n 80) 245–250 (comparative reforms).

¹¹¹ Code of Criminal Procedure (Second Amendment) Ordinance 2025 (Bangladesh), ss 46A, 167 (arrest safeguards).

¹¹² *Bharatiya Nyaya Sanhita* 2023 (India), s 152; Penal Code 1860 (Bangladesh), s 124A.

¹¹³ Bangladesh Law Commission, *Report on Penal Code Reform* (2018) 45–50.

¹¹⁴ *Bachan Singh v State of Punjab* (1980) 2 SCC 684 ; Penal Code 1860 (n 111) s 303.

¹¹⁵ UN HRC, 'General Comment 36' (n 31) [2]; *Bangladesh Legal Aid and Services Trust (BLAST) v Bangladesh* (n 76).

¹¹⁶ UN Human Rights Council, 'Report of Special Rapporteur on Freedom of Opinion: David Kaye' (2016) A/HRC/32/35.

¹¹⁷ Defamation Act 2013 (UK), s 1; Ain o Salish Kendra, 'Human Rights Report 2023' (2024) 89.

Gender-neutral drafting: Neutralise adultery (section 497): ‘Whoever has sexual intercourse with a person other than their spouse without that another person’s consent’.¹¹⁸ Rephrase ‘outraging modesty’ (section 354) as ‘sexual assault violating bodily integrity’; section 155(4), the evidentiary reform, to remove character evidence. Follows CEDAW Art 2, as per Tunisia 2017 Code.¹¹⁹ These are straightforward bill replacements, validated by the Supreme Court under Article 7A.

Structural reform

Without institutional mechanisms in place, legislative reform can be constitutionally acted but impractical on the ground. Instead of replacing the Penal Code with an overhaul of the law through legislation overnight, a better path for Bangladesh is an incremental institutional reform pathway to prepare the legal system for holistic recodification. An approach like this would reduce upheaval to criminal justice administration, while also enhancing institutional capacity within the judiciary, prosecution service and law enforcement.¹²⁰

Phase I: Setting Up the National Criminal Law Reforms Commission

It is high time that the Government forms a dedicated Criminal Law Reform Commission with representatives from the Bangladesh Law Commission, Ministry of Law, Justice and Parliamentary Affairs, Supreme Court, Office of Attorney General, Bangladesh Bar Council, law departments and civil society organisations. It will also recommend the Commission should do a comprehensive audit of the provisions of Penal Code that run contrary to guarantees in Constitution and commitment by Bangladesh under its international human rights obligations. Draft Penal Code should be prepared by issuing Public consultation papers for feedback from judges, prosecutors, practising lawyers, academics and human rights organisations.¹²¹

Phase II: Institutional Capacity Building

Once the draft legislation has been prepared, institutional readiness should take over as the top priority. Structured training for judicial officers, prosecutors, police investigators and prison officials about the new offences, sentencing principles and procedural changes should take place between passing legislation and it entering into force. At the same time judicial manuals, prosecution guidelines, police standing orders and legal education curricula should also be corrected in a way to keep consistency across the criminal justice system.¹²²

Phase III: Gradual Legislative Implementation

The first two paragraphs of the requisite motion outline a 90-day suspension of all enforcement of the new Penal Code, so that enforcement does not get statewide and immediate, but rather through a period where pending criminal cases move forward under previous legislation while new charges proceed to trial under the revised Code. This staggered approach should maintain legal certainty, limit administrative confusion and mitigate the disturbance to an already overburdened court system. Establish an oversight committee to the Parliament to monitor implementation, identify challenges and convey legislative requirements (if any).¹²³

Phase IV: Post Implementation Evaluation

Its independent statutory review should analyse judicial consistency, sentencing practices, institutional effectiveness and compliance with Bangladesh's international human rights obligations within three years of implementation. The review results are to be put in place by way of later legislative changes and the

¹¹⁸ Penal Code 1860 (n 111) s 497.

¹¹⁹ CEDAW (n 56) art 2; Code Pénal (Tunisia), arts 227bis–227quinquies (2017).

¹²⁰ United Nations Office on Drugs and Crime, Roadmap for Criminal Justice Reform (UNODC 2016).

¹²¹ Bangladesh Law Commission, Report on Penal Code Reform (Bangladesh Law Commission 2018).

¹²² United Nations Office on Drugs and Crime, Criminal Justice Assessment Toolkit (UNODC 2006).

¹²³ Venice Commission, Rule of Law Checklist (Council of Europe 2016).

recodification process is meant to be adjusted by means of practical experience rather than on a basis of legislative assumption.¹²⁴

Long-term reform

Harmonising the long term is more than replacing the Penal Code with a modern statute. However, sustainable criminal law reform relies on political will, institutional stability and meaningful implementation planning. Thus, Bangladesh must seek extensive recodification, but make it a multi-year process broken up by legislative sequencing rather than shoot for instant upheaval.¹²⁵

The initial step would be the publication by Government of a White Paper pointing out the constitutional anomalies in the Penal Code along with some policy alternatives as to how these should be corrected. There should then follow nationwide stakeholder consultations including Parliament, the judiciary, practitioners, universities and other civil society organisations and professional bodies. This involvement would bolster democratic legitimacy while lessening the degree of institutional inertia against reform.¹²⁶

Stage Two should see limited parliamentary scrutiny, through the relevant Standing Committee, accompanied by regulatory impact assessments into financial costs, administrative capacity and the likely impact on courts, prisons and law enforcement agencies. Doing so would allow legislators to foresee implementation difficulties before passing legislation.¹²⁷

After its adoption, the new Penal Code should take a two year period to actually come in effect by means of gradual enforcement measures enacted by the government. Comprehensive judicial training and sweeping digital updates of legal databases, revision of subordinate legislation, awareness and monitoring by civil society should happen at the same time. A gradual transition like this would alleviate a great deal of administrative bottleneck whilst also improving legal certainty for judges, prosecutors and practicing lawyers.¹²⁸

The recent Indian criminal law reforms illustrate how a successful recodification can hinge on interventions far beyond substantive legislative change, requiring substantial institutional preparation and stakeholder engagement. Thus, Bangladesh should incorporate these procedural lessons while creating a reform process aligned to its own constitutional system, courts and social political realities rather than trying to mimic foreign legislative models.¹²⁹

Thus, comprehensive recodification should be seen as an ongoing institutional process at least as much as it is the culmination of a series of legislative actions. Periodic statutory review is necessary as well as independent verification through ongoing parliamentary scrutiny to ensure that the Penal Code evolves in line with constitutional protections and the concomitant international human rights requirements arising from Bangladesh's international treaty obligations.¹³⁰

CONCLUSION

In Bangladesh, the Criminal justice system is fast evolving with new crimes together with due imprint of technological changes and changing constitutional standards and human rights so that the replacement of Penal Code, 1860 has become an issue of greater need. Although most provisions of the current Code still offer a workable legal framework, many offences, definitions and sentencing ranges are no longer suitable to meet

¹²⁴ OECD, Government at a Glance 2023 (OECD Publishing 2023).

¹²⁵ United Nations Office on Drugs and Crime, Model Criminal Code (UNODC).

¹²⁶ OECD, OECD Regulatory Policy Outlook 2021 (OECD Publishing 2021).

¹²⁷ World Bank, Improving Criminal Justice Performance (World Bank 2020).

¹²⁸ United Nations Office on Drugs and Crime, Criminal Justice Assessment Toolkit (UNODC).

¹²⁹ Department Related Parliamentary Standing Committee on Home Affairs, One Hundred and Forty Sixth Report on the Bharatiya Nyaya Sanhita, 2023 (Rajya Sabha Secretariat 2023).

¹³⁰ Venice Commission, Rule of Law Checklist (Council of Europe 2016).

modern social and technological realities. Criminal law reform therefore is no longer just a matter of legislative modernisation, but the imperative for an effective, rights based and accountable justice system.

The article concludes that, in short, the biggest impediment to thoroughgoing criminal law reform in Bangladesh is not even so much the obsolescence of due process principles embedded in penal legislation as a continuity of legislative inertia. It has been larger than a few connected weaknesses in institutional capability, political precedence-setting, bureaucratic disengagement and impact-limited overlap between reform agendas without permanent mechanisms for masculine law revision. Consequently, most amendments that have been made were piecemeal and the basic structure of the Penal Code has remained intact despite considerable social change, economic development and advances in technology. ¹

The comparative study also highlights the key institutional lessons that Bangladesh would gain from India's recent legislation of what it has called the Bharatiya Nyaya Sanhita, 2023. Instead of wholesale replication of India's legislative model, Bangladesh has different practical options including; expert drafting committees, extensive stakeholder consultation, circulation of draft legislation to the public, implementation in phases for sensitive and complicated laws, capacity building for institutional support and post enactment review. These measures provide an insight that reforming criminal law does not just involve legislative change to a particular statute, but also the planning of how to implement it alongside ideas as to how institutions will respond. ²

This article therefore argues that Bangladesh should not try to adopt an omnibus replacement of the Penal Code but rather a step by step reform process based on better evidential practices. A gradual approach starting with a thorough expert review, followed by public consultation, pilot projects, training for judges and prosecutors, and periodic parliamentary evaluations would lower the implementation risks while increasing legal certainty and institutional acceptance. So long a roadmap permits reform to take place in line with constitutional mandate, administrative capacity and the realities of the criminal justice system.

In the end, simply moving from one criminal law statute to another is not a sustainable approach. In order for legal reform to produce its desired outcomes it requires not only strong political will, but also a functioning legislative branch along with broad participatory mechanisms and ongoing scrutiny. If Bangladesh complements these institutional reforms with well thought out legislative modernization, it can establish a more coherent, responsive and 21st century criminal justice regime that advances the rule of law and safeguards fundamental rights.