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Bullets and Ballots in Bangladesh: Does the Bangladeshi Government’s Usage of Coercion and Co-Optation Breach Article 25 of the International Covenant on Civil and Political Rights?

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ABSTRACT

State violations of human rights are typical in autocracies where governments are unaccountable to their people. These governments lack the deterrence required to prevent human rights abuses. Meanwhile, the domestic democratic infrastructure is too weak or non-existent to threaten autocracies with regime change or legal penalties. Undeterred, these governments utilise state power to viciously pursue autocratic interests, which centre around keeping the ruling elite in power. To address this, Articles 25(a) and (b) of the International Covenant on Civil and Political Rights mandate electoral rights for citizens to ensure they can partake in state matters and progress their political interests through elections. Despite its commendable aspirations, a question remains: How comprehensive is Article 25 as a legal instrument to deliver electoral rights under autocratic governments? The People’s Republic of Bangladesh is used as a case study to provide insight into this question. This article takes an interdisciplinary approach, drawing from both legal and political science literature as well as primary sources in the form of cases submitted to the Human Rights Committee. Bangladesh’s attempts to curtail electoral rights from 2011 through 2020 will be analysed from the perspective of

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‘coercion’ and ‘co-optation’, a method of analysis endorsed by political science researchers including Gerschewski. This research will contribute to both political science and legal disciplines by applying Gerschewski’s framework to Bangladesh, and by assessing the capacity of Article 25 to respond to coercion and co-optation. This article will conclude that while coercive activities are extensively dealt with by Article 25, the status of some co-optative activities under Article 25 is relatively ambiguous.

Keywords: coercion, co-optation, human rights, Bangladesh, Public International Law

I. INTRODUCTION

The People’s Republic of Bangladesh (Bangladesh) is a party to the International Covenant on Civil and Political Rights (ICCPR).¹ Amongst the rights the ICCPR guarantees, Article 25 is the most explicit in requiring states parties to grant its citizens the opportunity to participate in the state’s political affairs. Political violence has been a persistent issue in Bangladesh since its liberation in 1971.² This challenges Bangladesh’s ability to comply with the ICCPR. In 2011, political violence gained new momentum when the political party that formed the government since 2009, namely, the ‘Bangladesh Awami League’ (BAL), abolished the ‘Caretaker Government’ using its parliamentary majority.³ The Caretaker Government was formed to ensure fair elections during interim periods when a ruling government completed their tenure.⁴ The BAL has since accumulated power rapidly, building upon its ruling party status to dramatically shift the climate of political violence in its favour.⁵ Prominent journalist Sayemi described the beginnings of the BAL’s current tenure as “the thieves have been replaced by a dangerous gang of robbers”.⁶

Gerschewski, as part of his in-depth research concerning autocracies, provides a useful political science framework to comprehend the disempowerment

¹ International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 U.N.T.S. 171, entered into force 23 March 1976 (ICCPR).

² Mohammed Moniruzzaman, ‘Party Politics and Political Violence in Bangladesh: Issues, Manifestation and Consequences’ (2009) 16(1) South Asian Survey 81, 84.

³ Mirza Hassan and Sohela Nazneen ‘Violence and the Breakdown of the Political Settlement: An Uncertain Future for Bangladesh?’ (2017) 17(3) Conflict, Security & Development 205, 210.

⁴ *ibid* 211.

⁵ Jasmin Lorch, ‘Civil Society Support for Military Coups: Bangladesh and the Philippines’ (2017) 13(2) Journal of Civil Society 184, 192.

⁶ M Sayemi, ‘Awami Atrocities Know No Bounds’ Bulletin (New York, 31 July 2010) 1.

the BAL's political activities cause to Bangladesh's citizens.⁷ The framework analyses autocratic strategies comprehensively, classifying them into the categories of coercion and co-optation.

Coercion involves using or threatening to use physical sanctions against actors to force them into complying with the regime's demands.⁸ High intensity coercion involves visible acts which are either targeted at widely-known individuals or at significant oppositional organisations.⁹ These acts include violently repressing mass demonstrations and assassinating opposition party members.¹⁰ Low intensity coercion generally takes more subtle forms.¹¹ Examples include denying employment opportunities and political rights, such as the freedom of assembly.¹² Coercion reduces pressure on the regime to change its policies or allow for a replacement per popular opinion.¹³

Alternatively, co-optation is used by ruling regimes to secure relationships among strategically relevant actors who hold powers suited to maintaining the *status quo*.¹⁴ Formal channels of co-optation include creating alliances between the regime and other political candidates and parties.¹⁵ These channels also include nurturing political affiliations from and within civil society organisations.¹⁶ Informal channels of co-optation include using clientelism, patronage, and corruption for the regime elite to rule by a close network involving indirect and direct ties to subordinate actors.¹⁷ Co-optation is instrumental to autocratic survival and the maintenance of political order as it builds the regime's support whilst dislodging and dividing its opponents.¹⁸

Although such power accumulating behaviours are characteristic of Bangladesh's political context, the BAL surpasses its predecessors with its extensive use of co-optation and coercion. For example, previous governments were generally restricted to controlling their armed cadres, some factions within the

⁷ Johannes Gerschewski, 'The Three Pillars of Stability: Legitimation, Repression, and Co-optation in Autocratic Regimes' (2013) 20(1) *Democratization* 13.

⁸ *ibid* 16.

⁹ *ibid*.

¹⁰ *ibid*.

¹¹ *ibid*.

¹² *ibid*.

¹³ Erica Frantz and Andrea Kendall-Taylor, 'A Dictator's Toolkit: Understanding How Co-optation Affects Repression in Autocracies' (2014) 51(3) *Journal of Peace Research* 332, 334.

¹⁴ Gerschewski, 'The Three Pillars of Stability' (n 7) 22.

¹⁵ *ibid*.

¹⁶ *ibid*.

¹⁷ *ibid*.

¹⁸ *ibid*.

bureaucracy, and law enforcement.¹⁹ Unlike the BAL, they were not able to extend their control to factions, such as Bangladesh's armed forces, civil societies, and others.²⁰ Tensions particularly arise between the BAL's interests in eliminating any challenges to its power and upholding the object and purpose of Article 25. A politically empowered citizenry, as demanded by Article 25, will render the BAL's largely unchecked political control over Bangladesh vulnerable against the nation's political demands.

Article 25 has three subsections detailing the rights of political participation, which Bangladesh must respect. This article will deal with the first two. These are the right to participate in "public affairs, directly or through freely chosen representatives",²¹ and the right "to vote and be elected at genuine periodic elections".²² As implied by the wording of the text, the first is a 'catch-all' broad provision designed to ensure fair access to political power, whilst the second provides a method to realise the first. Accordingly, violating the second right, by manipulating the electoral process, also infringes on the first one. The impact autocratic activities in Bangladesh have on these interrelated Articles is considered by the research question: since 2011, does the Bangladeshi government's political strategies of coercion and co-optation violate the rights of political participation set out in Articles 25(a) and (b) of the ICCPR?

In answering the research question, this article aims to highlight gaps in the current understanding of Article 25. This will ideally stimulate future dialogue towards refining the protections of Article 25 by altering its interpretation. This article also aims to provide a more nuanced lens to view the protections offered by Article 25, by combining the political science and legal literature when analysing Bangladesh's electoral process. Having Bangladesh as a case study, it aims to identify the specific and general activities of Bangladesh's government which violate Article 25. Thereby, it will help guard against such activities to uphold the purpose of Article 25 ensuring democratic representation for the citizenry.

This article will address the research question through an interdisciplinary methodology. It combines qualitative doctrinal research under a legal positivist tradition with insights from the political science literature. The analysis aims to clarify the relationships between three broad categories of information: information relevant to interpreting the law, such as cases and commentary; political science literature to deconstruct co-optation and coercion, and track their effects; and

¹⁹ Bert Suykens, 'The Bangladesh Party-State: A Diachronic Comparative Analysis of Party-Political Regimes' (2017) 55(2) *Commonwealth & Comparative Politics* 187, 197.

²⁰ *ibid.*

²¹ ICCPR Article 25(a).

²² *ibid* Article 25(b).

information regarding the BAL's political activities since 2011, the sources for which include news Articles, reports from Non-Governmental Organisations (NGO), and correspondences between the BAL and the Human Rights Committee (HRC).

Gerschewski's political science framework will be used to shed light on the BAL's autocratic strategies of coercion and co-optation.²³ Then the interactions these strategies have with Article 25 will be categorised in two ways: strategies which constitute clear violations, and strategies where Article 25 is relatively silent, though their effects can be demonstrated to undermine the electoral process. By establishing these categories and relationships, this article will explicate how Article 25 addresses each strategy. This explanation will help reveal the adequacy of Article 25 when considering the impact these strategies have on the electoral process.

This article consists of four chapters. It will first engage in literature review, highlighting the originality and significance of this research. The legal and electoral impacts of coercion and co-optation will then be discussed in sections III and IV, respectively. The article will conclude that the activities associated with coercion *prima facie* violate Article 25. Only two activities under co-optation, however, do the same whilst the rest await further legal discourse to determine their status with the same level of certainty.

II. LITERATURE REVIEW

The HRC, in its 2017 Concluding Observations on Bangladesh, only had one concern regarding Bangladesh's compliance with Article 25.²⁴ The concern was that the excessive force the government uses during elections deters people from voting.²⁵ This can lead one to assume that Article 25 is narrow in its application or that the BAL does not engage in any other activity subverting the electoral process, or both. Both assumptions, upon a review of legal literature, lack positive support.

The legal literature identifies, broadly and specifically, a range of political actions which Article 25 obligates or prohibits.²⁶ Such literature includes the HRC's General Comments (GC), which provide authoritative guidelines to interpret Article 25, though they are not legally binding on states parties. The GC are different from the Concluding Observations; the former focusses on the law, and

²³ Gerschewski, 'The Three Pillars of Stability' (n 7) 16-22.

²⁴ Human Rights Committee, 'Concluding Observations on the Initial Report of Bangladesh' (27 April 2017) CCPR/C/BGD/CO/1 at 7 [29] (Concluding Observations on the Initial Report of Bangladesh).

²⁵ *ibid.*

²⁶ Human Rights Committee, 'General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights' (27 August 1996) CCPR/C/21/Rev.1/Add.7 at 3-8 (GC).

its analysis is not restricted to evidence sent by various stakeholders. They indicate that many activities associated with coercion and co-optation violate Article 25. For example, they assert that adherence to Article 25 requires states to allow the freedoms of assembly, association, and expression.²⁷

The GC, however, do not directly deal with the strategies themselves. This observation holds true for three other general categories of sources, which are nevertheless useful to attain more specific information regarding Article 25 and its applicability: journal Articles applying Article 25 to the political systems of states, including Russia, Sri Lanka, and Turkey;²⁸ the HRC's decisions on individual complaints submitted to it;²⁹ and the Concluding Observations the HRC compiles on various states.³⁰ The absence of existing literature making this linkage deprives the legal field from a multidimensional understanding regarding the effectiveness of Article 25 in the complex arena of state-based politics.

Incorporating the political science literature here is useful due to the in-depth analysis it provides to understand autocratic behaviour. This includes Gerschewski's framework, which follows the recent wave in autocracy research as it has been continuing since the end of the 1990s.³¹ This framework highlights the immense utility, besides significance, of coercion and co-optation as characteristic political strategies strengthening autocratic power. Though the GC state that autocracies run contrary to the purposes of Article 25, they do not provide insight into their strategies, nor provide specifics on how they violate Article 25.³² Thus, this article will attempt to provide this insight through the political science literature, then apply Article 25 and clarify potential violations.

The political science literature has also neglected how autocratic strategies affect domestic and international laws, including Article 25. If under rare

²⁷ *ibid* 4 [8].

²⁸ See Mariya Riekkinen, 'Russian Legal Practices of Citizens' Involvement in Political Decision-Making: Legal Study of their Genesis under the Influence of International Law' (2013) 17(1) *International Journal of Human Rights* 79; Ben Saul, 'Election Violence in Sri Lanka: Implementing the Right to a Free and Fair Election' (2002) *Asia-Pacific Journal on Human Rights and the Law* 1; Zachary Towle, 'Why Article 25 of the International Covenant on Civil and Political Rights should be Explicitly Excluded from Derogation under Article 4' (2018) 14(2) *Suffolk Transnational Law Review* 479.

²⁹ See Human Rights Committee, 'Views of the Human Rights Committee under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights' (16 January 2007) CCPR/C/88/D/1047/2002 (Views of the Human Rights Committee under Article 5, Paragraph 4).

³⁰ See Human Rights Committee, 'Concluding Observations on the Second Periodic Report of Honduras' (22 August 2017) CCPR/C/HND/CO/2 at 8 [44] (Concluding Observations on the Second Periodic Report of Honduras).

³¹ Gerschewski, 'The Three Pillars of Stability' (n 7) 17.

³² Concluding Observations on the Initial Report of Bangladesh (n 24) 4 [5].

circumstances the literature mentions law, it occurs in the context of how the law advances autocratic strategies rather than asking how the strategies violate the law.³³ When conducting research into autocracies, the literature generally focusses on the characteristics of coercion and co-optation,³⁴ their effects,³⁵ and their prevalence.³⁶

Whilst the political science literature has elaborated on the coercion and co-optation activities of the BAL,³⁷ none have distinguished them into clear categories. This has precluded the literature from achieving an additional layer of analysis by contextualising the BAL's activities within the discipline of autocratic research. Sections III and IV will now focus on how Article 25 responds to coercion and co-optation, respectively, and provide further insight into Bangladesh's position under international law.

III. COERCION

For Article 25 to be effective against autocracies, it must deal with what is described as the “hallmark” of autocracies,³⁸ namely, coercion. The BAL's coercion co-ordinates various state apparatus to reduce reliance on dialogue-based democratic sources for power, but instead consolidate power through force.³⁹ This section will examine the extent to which the BAL's coercion constitutes a breach of Articles 25(a) and (b). It will first analyse the BAL's coercion targets, including dissident gatherings, opposition party leaders, and voicers of dissent. Then the

³³ See Lee Morgenbesser, ‘The Autocratic Mandate: Elections, Legitimacy and Regime Stability in Singapore’ (2016) 30(2) *The Pacific Review* 205, 210.

³⁴ See Gerschewski, ‘The Three Pillars of Stability’ (n 7) 16-22.

³⁵ See Mauricio Rivera, ‘Authoritarian Institution and State Repression: The Divergent Effects of Legislatures and Opposition Parties on Personal Integrity Rights’ (2017) 61(10) *Journal of Conflict Resolution* 2183, 2202.

³⁶ See Jørgen Møller & Svend-Erik Skaaning, ‘Autocracies, Democracies, and the Violation of Civil Liberties’ (2013) 20(1) *Democratization* 82, 89.

³⁷ See Adeeba Aziz Khan, ‘Power, Patronage, and the Candidate-nomination Process: Observations from Bangladesh’ (2020) 54(1) *Modern Asian Studies* 314.

³⁸ Frantz, ‘A Dictator’s Toolkit’ (n 13) 332.

³⁹ Shelly Feldman, ‘Bangladesh in 2014: Illusive Democracy’ (2015) 55(1) *Asian Survey* 67, 68.

major coercion sources will be analysed, which include arbitrary detention, violence from law enforcement, judicial bias, and financial deprivation.

A. PROTESTS, CAMPAIGNS, AND PEACEFUL ASSEMBLY

Coercion is highly apparent when used to disperse gatherings held against the BAL or its policies, such as protests and campaigns, or both.⁴⁰ The informal method of dispersion involves the BAL's hired thugs and the BAL's student wing 'Chattro League', which clashes with dissidents and turn a politically meaningful gathering into a violent brawl.⁴¹ The formal and more commonly used method involves police swinging batons, lobbing tear gas shells, spraying water cannons, and driving armoured vehicles in the dissidents' direction.⁴² The police justify these on grounds of "maintaining public order" and "national security".⁴³ They frequently deny the opposition to hold political rallies, leaving them without domestic legal protections and subject to dispersion by police.⁴⁴ The police typically escalate tensions and use excessive force against dissidents irrespective of the legality or peacefulness of the gathering, often accusing the dissidents of initiating the conflict.⁴⁵ Even informal gatherings are not safe from coercion. In an incident named the 'Uttara dinner fiasco', police stormed and dissolved a gathering in the private residence of an opposition leader, which included a former President.⁴⁶ They later denied knowledge despite vast media evidence suggesting

⁴⁰ Bert Suykens and Aynul Islam, 'Hartal as a Complex Political Performance: General Strikes and the Organisation of (Local) Power in Bangladesh' (2013) 47(1) *Contributions to Indian Sociology* 61, 72.

⁴¹ 'Bangladesh: Stop Attacks on Student Protesters, Critics' (*Human Rights Watch*, 6 August 2018) <<https://www.hrw.org/news/2018/08/06/bangladesh-stop-attacks-student-protesters-critics>> accessed 11 November 2020.

⁴² David Jackman, 'The Threat of Student Movements in Bangladesh: Injustice, Infiltrators and Regime Change' (2019) *Effective States and Inclusive Development Research Centre Working Paper* 125, 14 <http://www.effective-states.org/wp-content/uploads/working_papers/final-pdfs/esid_wp_125_jackman.pdf> accessed 11 November 2020.

⁴³ US Department of State, '2018 Country Reports on Human Rights Practices: Bangladesh' (Report, 2018) 7–21.

⁴⁴ Faisal Mahmud, 'Is Bangladesh Moving Towards One Party State' (*AlJazeera*, 4 April 2018) <<https://www.aljazeera.com/features/2018/4/4/is-bangladesh-moving-towards-one-party-state>> accessed 11 November 2020.

⁴⁵ Bert Suykens, 'A Hundred Per Cent Good Man Cannot do Politics': Violent Self-sacrifice, Student Authority, and Party-State Integration in Bangladesh' (2018) 52(3) *Modern Asian Studies* 883, 907.

⁴⁶ C R Abrar, 'Compromising freedom of assembly' (*Daily Star*, 3 August 2017) <<https://www.thedailystar.net/opinion/human-rights/compromising-freedom-assembly-1442614>> accessed 11 November 2020.

the contrary.⁴⁷ Accordingly, the constant threat of violence has increased dissidents' costs of gathering, discussing political issues, campaigning, and mobilising to voice their grievances. The citizenry is unable to fully perceive and understand the gravity and nature of political issues, as dissident gatherings are deterred from responding adequately to the respective issue. This can leave many uninformed and unmotivated to exercise their rights through the electoral process.⁴⁸

Using street clashes and police brutality to disrupt protests, campaigns, and other political gatherings violates Article 25 through its interference with the freedom of peaceful assembly. This freedom, as found under Article 21,⁴⁹ is explicitly mentioned as essential to realising the rights under Article 25.⁵⁰ Still, this freedom is also found under Articles 17, 18, and 22.⁵¹ This suggests that Article 21 covers assemblies not covered by the other articles, specifically those concerned with the proclamation and discussion of ideas.⁵² The gatherings it deals with can include informal ones, such as the Uttara dinner fiasco, which can also attract the protections under Article 17 as it is concerned with private gatherings. Restrictions to this freedom can only be justified if it is "necessary in a democratic society"⁵³ and in accordance with the law. The HRC found that a severe restriction to the freedom of assembly in Kazakhstan was the frequent denial of permission to hold assemblies.⁵⁴ The denial placed demonstrators at a risk of being arrested and charged with civil disobedience.⁵⁵ Similarly, the denial of permission and subsequent clashes with demonstrators in Bangladesh taints Bangladesh's adherence to Article 25. In Bangladesh, demonstrators are not only at risk of being arrested, but also being murdered or charged with attempted murder of police officers, even when it is the police who escalated the conflict. Therefore, Bangladesh violates Article 25

⁴⁷ *ibid.*

⁴⁸ Guillermo Trejo, 'The Ballot and the Street: An Electoral Theory of Social Protest in Autocracies' (2014) 12(2) *Perspectives on Politics* 332, 347.

⁴⁹ ICCPR Article 21.

⁵⁰ 'GC' (n 26) 4 [8].

⁵¹ ICCPR Articles 17(1), 18(1), 22(1).

⁵² Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, Kehl am Rhine: Engel 2005) 485.

⁵³ ICCPR Article 21.

⁵⁴ Human Rights Committee, 'Consideration of Reports Submitted by States Parties under Article 40 of the Covenant' (21 July 2011) CCPR/C/KAZ/CO/1 at 7 [26].

⁵⁵ *ibid.*

as dissidents are unable to freely gather and participate politically in a collective manner.

B. THE OPPOSITION AND FREE ASSOCIATION

The existence of dissidents themselves, in the form of opposition leaders and their supporters, is a major focus for the BAL's coercion. The harassment of opposition leaders overtly signals that one's place in the hierarchy of political power does not save them from coercion.⁵⁶ This demotivates the opposition as a whole to oppose the regime.⁵⁷ During the 2018 elections, sixteen opposition party candidates were jailed,⁵⁸ whilst nineteen political activists were reported dead.⁵⁹ Harassment against the opposition signals that the BAL is committed to retain their power at all cost, since it breaks a taboo which used to save political leaders from coercion in the event of a regime change.⁶⁰ This casts doubt on the opposition's commitment and strength levels to protect its supporters, a fact confirmed by interviews conducted with opposition members in 2018.⁶¹ Hence, the citizenry is deterred and dissuaded from freely associating with the opposition when their leaders cannot even save themselves. The coercion eliminates existing candidates and deters future candidates from allying with the opposition in the electoral process. The opposition's lack of affiliates can also portray the opposition as unworthy of support, even though the affiliation is actually withheld due to deterrence.⁶²

To effectively implement Article 25, voters must have a "free choice of candidates", which cannot be granted if candidates are deterred and thereby restricted from contesting elections.⁶³ The mistreatment of the opposition's leaders and supporters further undermines the freedom of association and violates Article

⁵⁶ David Armstrong, Ora John Reuter and Graeme Robertson, 'Getting the Opposition Together: Protest Coordination in Authoritarian Regimes' (2020) 36(1) *Post-Soviet Affairs* 1, 4.

⁵⁷ *ibid.*

⁵⁸ Galib Shraf, 'Litigation, Arrest, Legal Barriers Plague BNP Campaign' Prothom Alo (18 December 2018) <<https://en.prothomalo.com/bangladesh/Litigation-arrest-legal-barriers-plague-BNP>> accessed 11 November 2020.

⁵⁹ Saif Khalid, 'Opposition Crushed, Hasina to Rule over Bangladesh Unchallenged' (*Al Jazeera*, 3 January 2019) <<https://www.aljazeera.com/news/2019/1/3/opposition-crushed-hasina-to-rule-over-bangladesh-unchallenged>> accessed 11 November 2020.

⁶⁰ Mohammad Mozahidul Islam, 'Electoral Violence in Bangladesh: Does a Confrontational Bipolar Political System Matter?' (2015) 53(4) *Commonwealth and Comparative Politics* 359, 374.

⁶¹ David Jackman, 'Violent Intermediaries and Political Order in Bangladesh' (2019) *The European Journal of Development Research* 705, 717–18.

⁶² Carl Henrik Knutsen, Håvard Mokleiv Nygård and Tore Wig, 'Autocratic Elections: Stabilizing Tool or Force for Change?' (2017) 69(1) *World Politics* 98, 111.

⁶³ GC (n 26) 5 [15].

25. The freedom of association, as found under Article 22⁶⁴ is adjunct to Article 25.⁶⁵ This freedom permits people to formally gather into groups, including political parties, to progress common interests.⁶⁶ It can be restricted alike Article 21 when “necessary in a democratic society”⁶⁷ through legally compliant measures. In its 4th periodic report to the United Nations General Assembly, the HRC expressed concerns at Armenia’s intimidation and “detention and conviction of some opposition leaders”,⁶⁸ which signify violations of Article 25. These concerns are visible in Bangladesh as exemplified during its 2018 elections with the BAL’s imprisonment and extrajudicial killings of opposition members and supporters. Hence, the BAL’s activities against political dissidents violates Article 25 as people are coerced to distance themselves from the opposition, jeopardising the citizenry’s power to politically contend the regime.

C. DISSIDENCE AND SPEECH

Exposing the BAL’s coercive practices for public awareness is hindered as the BAL also coerces the voices of political dissent, such as journalists. In 2017 alone, eleven journalists were threatened, nine were assaulted, twenty-four were injured and one was killed.⁶⁹ Similar treatment extends to those posting political dissent on social media.⁷⁰ To legitimise and promote this, the BAL uses broad legislation which incriminates many forms of speech. Under the Digital Security Act 2018, offenders can be sentenced to life imprisonment and fined heavily for digitalised speech “against liberation war, father of the nation, National Anthem or National Flag”.⁷¹ They can be jailed for up to ten years for speech destroying “any communal harmony or create unrest”.⁷² Police can arrest anyone without warrants when merely suspicious about a potential crime through digital media.⁷³ Approximately one thousand three hundred and twenty-five people were arrested

⁶⁴ ICCPR Article 22.

⁶⁵ GC (n 26) 8 [26].

⁶⁶ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press 2013) 652.

⁶⁷ ICCPR Article 22.

⁶⁸ Human Rights Committee, ‘Concluding Observations on the Fourth Periodic Report of Azerbaijan’ (16 November 2016) CCPR/C/AZE/CO/4 at 9 [42].

⁶⁹ Odhikar, ‘Annual Human Rights Report 2017’ (Report, January 2018) 11.

⁷⁰ *ibid* 8.

⁷¹ Digital Security Act 2018 (Bangladesh) s 21.

⁷² *ibid* s 31(1).

⁷³ *ibid* s 42.

under this act in 2019 alone.⁷⁴ The Information and Communication Technology Act 2006 further criminalises electronic communications which “[tend] to deprave or corrupt”⁷⁵ the state’s image. This was used to arrest prominent journalist Shahidul Alam in front of mass media, due to an Al Jazeera interview where he exposed the BAL’s coercion.⁷⁶ The arrest was unprecedented, as previously, non-political urban intellectuals would be coerced into secrecy.⁷⁷ Furthermore, the meaning of ‘sedition’ under the Penal Code 1860⁷⁸ is also stretched to excuse criminal penalties against those publicising mere comments against the BAL.⁷⁹ To appeal these charges, victims are subjected to gruelling administrative and procedural requirements, such as extensive wait times, filing requirements and legal costs.⁸⁰ They are also typically urged to pay hefty bribes.⁸¹ Thus, the citizenry is coerced into self-censorship when expressing dissident opinions in political matters.

The BAL’s crackdown on dissident views violates Article 25 by infringing on the freedom of expression,⁸² which is guaranteed under Article 19.⁸³ This freedom includes to impart ideas and information in political discourse.⁸⁴ Means of expression include banners, posters, pamphlets, newspapers, books, legal submissions, and dress.⁸⁵ Expression can also be through the internet.⁸⁶ The HRC explicitly highlights that states must protect this right even from private entities.⁸⁷

⁷⁴ ‘Bangladesh: Rising Attacks on Freedom of Expression and Peaceful Assembly must be Urgently Stopped’ (*Amnesty International*, 11 August 2020) <<https://www.amnesty.org/en/latest/news/2020/08/rising-attacks-on-freedom-of-expression-and-peaceful-assembly-in-bangladesh-must-be-stopped/>> accessed 11 November 2020.

⁷⁵ Information and Communication Technology Act 2006 (Bangladesh) s 57.

⁷⁶ Qumr Ahmed, ‘Why did Bangladesh Arrest Shahidul Alam?’ Al Jazeera (9 August 2018) <<https://www.aljazeera.com/indepth/opinion/bangladesh-arrest-shahidul-alam-180809112820231.html>>. accessed 11 November 2020.

⁷⁷ *ibid.*

⁷⁸ Penal Code 1860 (Bangladesh) s 124A.

⁷⁹ Mark Lacy and Nayanika Mookherjee, ‘Firing Cannons to Kill Mosquitoes’: Controlling Virtual ‘Streets’ and the ‘Image of the State’ in Bangladesh’ (2020) 54(2) *Contributions to Indian Sociology* 280, 289.

⁸⁰ See Kim A Young and Shahidul Hassan, ‘How Procedural Experiences Shape Citizens’ Perceptions of and Orientations toward Legal Institutions: Evidence from a Household Survey in Bangladesh’ (2020) 86(2) *International Review of Administrative Sciences* 278, 291.

⁸¹ *ibid* 292.

⁸² GC (n 26) 4[8].

⁸³ ICCPR Article 19.

⁸⁴ Human Rights Committee, ‘General Comment No. 34, Article 19: Freedoms of Opinion and Expression’ (12 September 2011) CCPR/C/GC/34 at 3 [11] (General Comment No. 34).

⁸⁵ *ibid* 5 [12].

⁸⁶ *ibid.*

⁸⁷ *ibid* 2 [7].

It is recognised as the “foundation stone”⁸⁸ for all democratic societies and integral to exercising the right to vote. This right is necessary to realise the principles of accountability and transparency, which are essential to promote and protect human rights.⁸⁹ The GC on Article 25 require this accountability in the electoral process to ensure effective democratic representation.⁹⁰ The freedom does not protect hate speech and can be limited to respecting others’ rights and reputation, and protect national security, public order, health, and morals.⁹¹ These restrictions do not allow harassing journalists who report on general political issues, which aroused concern in the HRC over Armenia.⁹² According to the HRC, journalists can be a wide range of actors including reporters, analysts, and bloggers.⁹³ The BAL’s various methods of attacking journalists, including through legislation, therefore constitutes a violation as they should be allowed to “comment on public issues without censorship or restraint”.

D. DETENTIONS, LEGISLATIONS, AND EXECUTIONS

Arbitrary detentions massively augment the BAL’s coercive armoury.⁹⁴ Under the Special Powers Act 1974, people can be indefinitely detained without a charge when authorities are satisfied that this is necessary to prevent broadly ranging “prejudicial acts”⁹⁵ from being committed. The only safeguard is that the detention will be reviewed after four months by an advisory board constituted by the government.⁹⁶ Reviews are confidential and lawyers cannot assess the evidence on which the detention is based.⁹⁷ All dissident activity, including writing media articles critical of the BAL, is subject to this act due to its broadness.⁹⁸ Thus, these wide powers allow security forces to disrupt the electoral process with arrests.

Alternatively, extrajudicial killings decrease the present dissident population whilst deterring others from becoming dissidents in the future. The BAL uses the

⁸⁸ *ibid* 1 [2].

⁸⁹ *ibid* 1 [3].

⁹⁰ GC (n 26) 4 [9].

⁹¹ ICCPR Articles 19(3), 20.

⁹² Human Rights Committee, ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant’ (19 November 1998) CCPR/C/79/Add.100 at 4 [20].

⁹³ General Comment No. 34 (n 84) 11 [44].

⁹⁴ Hussain Md Fazlul Bari, ‘Evolution of the Criminal Justice System in Bangladesh: Colonial Legacies, Trends and Issues’ (2019) 45(1) Commonwealth Law Bulletin 25, 40.

⁹⁵ Special Powers Act 1974 (Bangladesh) sections 2–3.

⁹⁶ *ibid* sections 9, 10, 12.

⁹⁷ Human Rights Watch, ‘Ignoring Executions and Torture: Impunity for Bangladesh’s Security Forces’ (Report, 18 May 2009).

⁹⁸ M Ehteshamul Bari, ‘Preventive Detention Laws in Bangladesh and Their Increased Use during Emergencies: A Proposal for Reform’ (2017) 17(1) Oxford University Commonwealth Law Journal 45, 60.

police and the Rapid Action Battalion (RAB) the most in extrajudicial killings.⁹⁹ The RAB is a high-ranking security force comprising of members from the police and the military.¹⁰⁰ In 2017, from the one hundred and fifty-five extrajudicially killed, the police killed one hundred and seventeen, and the RAB killed thirty-three.¹⁰¹ They jointly conduct ‘anti-drug drives’ which killed two hundred and twenty-eight between May and August 2018.¹⁰² Many families of the victims claim that the victims were not involved in activities relating to drugs.¹⁰³ These killings were likely to stop the opposition from mobilising or speaking against the regime; many victims were dissidents whilst none killed were affiliated with the BAL.¹⁰⁴ The excuses provided for these killings are commonly that the victim was killed in “self-defence” or in a “crossfire”.¹⁰⁵ Families are hindered from contesting these claims through the judiciary as it is also engaged in coercion.¹⁰⁶

Both these methods, implemented through law enforcement, have demonstrated violations of Article 25. When reviewing the Islamic Republic of Iran’s adherence to Article 25, the HRC raised concerns at the arrests and arbitrary detentions of multiple dissident types, including political and human rights activists.¹⁰⁷ Furthermore, the HRC expressed concern at the murder of approximately twelve opposition candidates and activists in Honduras’ electoral campaign, as undermining Honduras’ Article 25 obligations.¹⁰⁸ In Bangladesh, the arrests and murders of such dissidents and more have been given legislative sanctions, which domestically encourage them to be done on a large scale. Therefore, Bangladesh veers towards violating Article 25 through these laws and activities.

E. TYRANNY THROUGH THE JUDICIARY

The judicial system is used to reinforce coercion by denying procedural fairness to the BAL’s rivals. Dissidents are harshly sentenced even if the evidence

⁹⁹ Md Sazzad Hossain, ‘Extra-judicial Killings and Human Rights Law: Bangladesh Perspective’ (2017) 59(6) *International Journal of Law and Management* 1116, 1117.

¹⁰⁰ *ibid* 1118.

¹⁰¹ Odhikar, ‘Human Rights Monitoring Report on Bangladesh’ (Report, September 2018) 30.

¹⁰² *ibid* 20.

¹⁰³ *ibid*.

¹⁰⁴ C Christine Fair, ‘Bangladesh in 2018: Careening Toward One-Woman Rule’ (2019) 59(1) *Asian Survey* 124, 130.

¹⁰⁵ Md Saidul Islam, ‘Trampling Democracy: Islamism, Violent Secularism, and Human Rights Violations in Bangladesh’ (2011) 8(1) *Muslim World Journal of Human Rights* 1, 14.

¹⁰⁶ Ali Riaz, ‘Legislature as a Tool of the Hybrid Regime: Bangladesh Experience’ (2019) 52(2) *Political Science and Politics* 275.

¹⁰⁷ Human Rights Committee, ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant’ (29 November 2011) CCPR/C/IRN/CO/3 at 26 [6] (Consideration of Iran).

¹⁰⁸ Concluding Observations on the Second Periodic Report of Honduras (n 30) 8 [44].

does not establish guilt.¹⁰⁹ Specifically, the BAL's prosecution of the 'war crimes' offence eliminates and intimidates the opposition through the judiciary.¹¹⁰ The offence frames the accused as a wartime collaborator with Pakistan when it was at war with Bangladesh.¹¹¹ As Samad observes, the trials do not comply with the "basic standards of international criminal procedure".¹¹² All one hundred and ninety-five commonly-known war criminals were excluded from being tried.¹¹³ The judiciary, therefore, provides a way to challenge the opposition under a façade of legality, whilst tarnishing the relevant opposition member's reputation to those that do not investigate further into these trials and uncover the bias present.¹¹⁴

Legal material regarding Article 25 has yet to explicitly consider fake trials as an issue of concern. Nevertheless, in *Simistin v Belarus*, the HRC clarified that giving effect to Article 25 requires state adherence to Article 14, which deals with the right to a fair trial.¹¹⁵ This was in the context where the plaintiff's right to stand in elections was not enforced by the judiciary.¹¹⁶ The HRC concluded that the plaintiff's right under Article 25 was violated through an infringement of Article 14.¹¹⁷ Albeit this context, as the HRC references Article 14, it is not farfetched to consider that Article 25 can be violated when the judiciary itself is the one that violates the victim's political rights. The right to a fair trial is diminished when the judiciary does not consider the defendant's arguments and evidence, instead passing judgment due to political reasons. Thus, coercion through the judiciary in Bangladesh violates Article 25 by compromising judicial independence, which is necessary to a fair trial guaranteed under Article 14.

F. ECONOMIC COERCION

Economic rights of the BAL's rivals are also subjected to coercion. The considerable influence the BAL has in the public and private sectors is used to hinder employment opportunities for dissidents and their ability to progress through the ranks.¹¹⁸ Military and police officers are regularly forced into retirement or

¹⁰⁹ Riaz, 'Legislature as a Tool of the Hybrid Regime' (n 106) 276.

¹¹⁰ Md Awal Hossain Mollah, 'War Crimes Trial in Bangladesh: Justice or Politics' (2020) 55(5) *Journal of Asian and African Studies* 652, 658.

¹¹¹ Abdus Samad, 'The International Crimes Tribunal in Bangladesh and International Law' (2016) 27(3) *Criminal Law Forum* 257, 258.

¹¹² *ibid* 290.

¹¹³ Islam, 'Trampling Democracy' (n 105) 11.

¹¹⁴ Ali Riaz, 'Shifting Tides in South Asia: Bangladesh's Failed Election' (2014) 25(2) *Journal of Democracy* 119, 121.

¹¹⁵ Views of the Human Rights Committee under Article 5, Paragraph 4 (n 29) 9 [2].

¹¹⁶ *ibid* 6 [4].

¹¹⁷ *ibid* 8 [8].

¹¹⁸ Islam, 'Trampling Democracy' (n 105) 27.

dismissed for associating with the opposition.¹¹⁹ Through legislation, NGOs that voice dissent can be prohibited from receiving foreign donations.¹²⁰ Electorates where the opposition has more support are sidelined from state investment.¹²¹ These economic disadvantages reinforce each other to sabotage the prosperity and economic status the opposition has or might have had in the future.

Economic coercion against these dissidents is identified as a potential method to violate Article 25. The HRC expressed concern over NGO independence in the Russian Federation as it introduced laws discouraging foreign funding for NGOs.¹²² The BAL's laws prohibiting selected NGOs from receiving foreign funding has the same effect of pressuring NGOs to placate the BAL. The laws decrease the power and ability of NGOs to remain independent. Moreover, when reviewing the Republic of Chile, the HRC was concerned at reports of dismissal when workers engaged in dissident political activities.¹²³ The BAL's informal policy against dissidents in the private and public sectors where it has influence is similarly alarming as redundancy and employment procedures sideline dissident employees. There is, however, relatively less guidance on determining the effect of state investment sidelining areas where the opposition has more influence than the BAL. The practical effect is akin to making employees redundant, though they do not achieve employment in the first place due to the lack of investment.

Overall, the BAL's coercion against dissident gatherings, the political opposition, and expressers of dissent, respectively, violate the freedoms of assembly,¹²⁴ association,¹²⁵ and speech.¹²⁶ The positive correlational relationships these freedoms have with Articles 25(a) and (b) in the electoral process indicate violations of Article 25. The BAL's usage of law enforcement, the judiciary, and economy against dissidents, further signals such violations.

¹¹⁹ *ibid.*

¹²⁰ Foreign Donations (Voluntary Activities) Regulation Act 2016 (Bangladesh) s 14.

¹²¹ Suykens, 'The Bangladesh Party-State' (n 19) 213.

¹²² Human Rights Committee, 'Concluding Observations on the Seventh Periodic Report of the Russian Federation (28 April 2015) CCPR/C/RUS/7 at 10 [22].

¹²³ Human Rights Committee, 'Consideration of Reports Submitted by States Parties under Article 40 of the Covenant' (18 May 2007) CCPR/C/CHL/CO/5 at 4 [14] (Consideration of Chile).

¹²⁴ ICCPR Article 19.

¹²⁵ *ibid* Article 21.

¹²⁶ *ibid* Article 22.

TABLE I

COERCION IN BANGLADESH		
<i>Coercive action in Bangladesh</i>	<i>Effect on Electoral Process</i>	<i>Violation of Article 25</i>
Dispersing dissident gatherings.	Limits outlets to voice dissent. Gives the citizenry the impression that the lack of such dissent means that issues are not severe. Demotivates gathering for a political cause to influence government.	Clear violation through the violation of the “freedom of peaceful assembly” under Article 21.
Coercing those affiliated with the opposition.	Reduces the range of candidates people can vote for. Showcases the opposition as weak.	Clear violation through the violation of the “freedom of association” under Article 22.
Suppressing dissident speech.	Decreases the availability of material criticising the regime. Undermines voter education and their full political development to understand the political arena from multiple perspectives for their effective participation. Precludes citizens from exercising an informed vote.	Clear violation through the violation of the “freedom of speech” under Article 19.
Arbitrary detention, extrajudicial killings, show trials, and economic coercion.	Deters, eliminates, and defames the opposition.	Signifies violations of Article 25.

IV. CO-OPTATION

If the BAL’s coercion can be described as a sword, co-optation is its shield. Co-optation protects the BAL and its sources of coercion from accountability when they disrupt the electoral process. It placates potential rivals and cultivates support amongst the elite to limit venues for regime change. This section will analyse

the methods and effects of the BAL's co-optation with regard to political elites, the judiciary, law enforcement, private sector elites, and those involved in ballot counting. It will examine the potential these activities have in violating Articles 25(a) and (b).

A. POLITICIANS, PATRONAGE, AND POLITICAL PARTICIPATION

With its control over public funds, the BAL provides strong incentives for political cooperation when co-opting elite politicians.¹²⁷ State resources are often channelled through the BAL's ministers and parliamentary members under circumstances making embezzlement easy.¹²⁸ As a recent example, over two hundred tonnes of food relief meant for distribution during the COVID-19 lockdowns were uncovered as being hoarded by politicians affiliated with the BAL. In one electorate, only twenty percent of the relief reached their intended targets.¹²⁹ These activities subvert a dynamic democratic dialogue representing opposing viewpoints as representatives exchange their electorate's interests for personal gain.

Notably, internal party democracy is absent within the BAL, which would otherwise allow politicians to voice and represent their electorate's interests.¹³⁰ The BAL does not routinely conduct party meetings where this dialogue can occur; the meeting dates in its charter are not adhered to.¹³¹ Additionally, the BAL's politicians rarely meet with the citizenry they are supposed to represent, if ever.¹³² They generally reside in the nation's capital, Dhaka, away from their electorates. Even if they wish to progress their electorate's interests, they are required by the Constitution to ultimately make decisions based on the party's interests when voting on parliamentary issues, regardless of how their electorate is affected.¹³³ Therefore, co-optation rewards politicians for pursuing self-interest, which becomes associated with the party's interest, discouraging them from painstakingly representing their electorate. The corruption it causes places candidates on an uneven platform in the

¹²⁷ Arild Engelsen Ruud and Mohammad Mozahidul Islam, 'Political Dynasty Formation in Bangladesh' (2016) 39(2) *South Asia: Journal of South Asian Studies* 401, 412.

¹²⁸ M Naiz Asadullah and N N Tarun Chakravorty, 'Growth, Governance and Corruption in Bangladesh: A Re-assessment' (2019) 40(5) *Third World Quarterly* 947, 959.

¹²⁹ 'Rice Theft Goes on, the Poor Bear Brunt' (*Daily Star*, 13 April 2020) <<https://www.thedailystar.net/frontpage/news/rice-theft-goes-the-poor-bear-brunt-1892383>> accessed 11 November 2020.

¹³⁰ Inge Amundsen, 'Democratic Dynasties? Internal Party Democracy in Bangladesh' 22(1) *Party Politics* 49, 50.

¹³¹ *ibid* 55.

¹³² Tim Meisburger, 'Strengthening Democracy in Bangladesh' (The Asia Foundation Occasional Paper No 13, June 2012) 5.

¹³³ Constitution of Bangladesh Article 70.

electoral process.¹³⁴ Power becomes reserved for those loyal to the regime, who can then campaign effectively and violently with their acquired resources.¹³⁵

The relationship between co-opting politicians and Article 25 is multifaceted. Recourse to embezzlement as a method for co-optation is expressed by the HRC as a point of concern challenging Honduras' obligations under Article 25.¹³⁶ There was a "lack of transparency in campaign financing"¹³⁷ which undermined the authenticity of Honduras' 2013 elections. The sources of the BAL's campaign financing are similarly concealed from being publicised in official documents. The GC also expressed concern that democratic processes can be distorted by disproportionate expenditure by candidates and parties.¹³⁸ This is cited as a reason that can justify legislating a limitation on campaign expenditure.¹³⁹ This concern in the GC advocates against the expenditure politicians tend to engage in following co-optation, which grants them access to the vast pool of state resources the BAL has control over. Moreover, the GC do not completely ignore the overall impact that co-optation has, which douses democratic dialogue representing voters' interests and replacing them with those of their patron, the regime.¹⁴⁰ The GC advocate that states should ensure that the internal management of political parties uphold Article 25, to ensure political participation for the citizenry.¹⁴¹ This can imply that representatives be given the opportunity and encouragement to voice their electorate's interests and concerns, instead of merely those of the elite. The BAL's intra-party co-optation can therefore violate Article 25 by nurturing an autocratic culture. Additionally, the corruption and the extravagant campaign expenditure it ushers is also of concern.

B. CRONIES, COURTS, AND CLEMENCY

Other than political elites, the BAL has extensively focussed on co-opting the judiciary.¹⁴² The twelve judges the BAL appointed to the High Court are well-known among legal practitioners to have political affiliations with the BAL.¹⁴³ The

¹³⁴ Abu Sarker and Mohammad H Rahman, 'The Role of Social Accountability in Poverty Alleviation Programs in Developing Countries: An Analysis with Reference to Bangladesh' 15(2) Public Organization Review 317, 321.

¹³⁵ Khan, 'Power, Patronage, and the Candidate-nomination Process' (n 37) 332.

¹³⁶ Concluding Observations on the Second Periodic Report of Honduras (n 30) 8 [44].

¹³⁷ *ibid.*

¹³⁸ GC (n 26) 6 [19].

¹³⁹ *ibid.*

¹⁴⁰ *ibid* 8 [26].

¹⁴¹ *ibid.*

¹⁴² Adeeba Aziz Khan, 'NGOs, the Judiciary and Rights in Bangladesh: Just Another Face of Partisan Politics' (2012) 1(3) Cambridge Journal of International and Comparative Law 254, 272.

¹⁴³ Islam, 'Trampling Democracy' (n 105) 9.

BAL restructured the High Court benches to give its own politically-affiliated judges key legal responsibilities and powers.¹⁴⁴ Approximately a hundred affiliated legal personnel were assigned as judges in lower courts.¹⁴⁵ They include those with criminal records and charged with murder.¹⁴⁶ Many junior judges, due to their loyalty to the BAL, superseded their seniors.¹⁴⁷ Hence, the legal sector is encouraged to work for the BAL, as political affiliation is valued more than capability when progressing or maintaining employment.

A co-opted judiciary enables the BAL and its associates to escape legal accountability when undermining the electoral process.¹⁴⁸ For example, when the BAL called the judiciary to withdraw four thousand six hundred and eighty-seven “politically-motivated cases” in 2011, the BAL was the only beneficiary of most of those withdrawn.¹⁴⁹ Contrariwise, cases filed against the opposition were retained.¹⁵⁰ Accordingly, when voters are unable to exercise their electoral rights due to obstacles the BAL creates, they are demotivated to approach the judiciary in response.¹⁵¹ Successfully obtaining a legal verdict against the BAL is unlikely irrespective of evidence suggesting otherwise, due to the political bias present during trials.¹⁵² Instead, the initiators can find themselves bearing substantial legal costs and the risk of becoming political targets.¹⁵³ Thus, the electoral process is left vulnerable to abuse in the absence of an independent judiciary.

The dangers of a co-opted judiciary are recognised in legal material regarding Article 25. The GC clarify that easy access to judicial review should be granted for the review to independently assess the quality of voting and approve the counting process whenever contentions arise.¹⁵⁴ This is to ensure that voters have “confidence in the security of the ballot and the counting of votes”.¹⁵⁵ In *Sinistin v Belarus*, the HRC found that Article 25 was violated as “the author could not secure the protection of his right under Article 25 by a competent, independent

¹⁴⁴ Khan, ‘Power, Patronage, and the Candidate-nomination Process’ (n 37) 273.

¹⁴⁵ Islam, ‘Trampling Democracy’ (n 105) 10.

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.* 9.

¹⁴⁸ *ibid.* 8.

¹⁴⁹ *ibid.* 10.

¹⁵⁰ US Department of State, ‘Country Reports on Human Rights Practices for 2011: Bangladesh’ (Report, 2012) 23.

¹⁵¹ Mohammad Mohabbat Khan and Md Shahriar Islam, ‘Democracy and Good Governance in Bangladesh: Are They Compatible?’ 5(1) *Millennial Asia* 23, 31.

¹⁵² *ibid.*

¹⁵³ *ibid.* 33.

¹⁵⁴ GC (n 26) 6 [20].

¹⁵⁵ Human Rights Committee, ‘Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 2250/2013’ (31 August 2018) CCPR/C/123/D/2250/2013 at [7.2].

and impartial authority and had no remedy by which to secure such protection".¹⁵⁶ Co-optation of the judiciary erodes judicial independence and faith in the judicial system, placing doubt on the legitimacy of rulings.¹⁵⁷ Therefore, in Bangladesh, the co-optation of the judiciary and its coercion violate Article 25.

C. EVADING LAW ENFORCEMENT

The BAL's co-optation also extends to the police and the military. Recruitment and appointment processes in these agencies favour those with political alliances with the BAL.¹⁵⁸ Key considerations for awarding higher positions include the candidate's past activities for the BAL and their potential for further political utilisation.¹⁵⁹ The police need not worry about the 'Police Internal Oversight Unit' when serving the BAL; this internal system for police accountability is largely non-transparent with reports suggesting that it also suffers from the BAL's co-optation.¹⁶⁰ Furthermore, the BAL allows the military to participate in commercial activities and manage its own non-transparent budget.¹⁶¹ This allows the military to remunerate itself for the services it provides the BAL, even if those services involve breaching statelike duties.¹⁶² Therefore, instead of upholding and enforcing the law, these agencies have privilege-based interests to keep the BAL in power through legal and illegal means.

Co-optation enters the military and the police into a mutually beneficial relationship with the BAL, where they save each other from legal accountability. The BAL takes advantage of Article 46 of the Constitution, which gives it power to pass legislation providing indemnity to any state officer for acts done to 'restore' or 'maintain' order within Bangladesh.¹⁶³ Military and police officers cannot be prosecuted in courts for criminal offences without the government's sanction.¹⁶⁴ Furthermore, the military is legally protected from the civilian criminal justice system,¹⁶⁵ nor does it need to worry about prosecution in internal courts as they lack independence and impartiality.¹⁶⁶ Members of the RAB enjoy wider immunity

¹⁵⁶ Views of the Human Rights Committee under Article 5, Paragraph 4 (n 29) 9 [2].

¹⁵⁷ *ibid* 9 [3].

¹⁵⁸ Mohammad Mozahidul Islam, 'The Toxic Politics of Bangladesh: A Bipolar Competitive Neopatrimonial State?' (2013) 21(2) *Asian Journal of Political Science* 148, 161.

¹⁵⁹ Hassan and Nazneen (n 3) 213.

¹⁶⁰ Anirudha Nagar, 'Police Investigating the Police' (*Daily Star*, 28 March 2013) <<https://www.thedailystar.net/news/police-investigating-the-police>> accessed 11 November 2020.

¹⁶¹ Hassan and Nazneen (n 3) 213.

¹⁶² *ibid*.

¹⁶³ Constitution of Bangladesh Article 46.

¹⁶⁴ The Code of Criminal Procedure 1898 (Bangladesh) s 197.

¹⁶⁵ *ibid*.

¹⁶⁶ Human Rights Watch (n 97).

as they cannot be tried for anything “done or intended to be done in good faith”.¹⁶⁷ The BAL further protects both the police and the military from accountability as the mechanism for external civilian oversight, the ‘National Human Rights Commission’ is ineffective against the Ministry of Home Affairs.¹⁶⁸ Legislation does not permit it to investigate violations by a ‘disciplined force’, but it can simply request the Ministry to provide investigation reports, which the Ministry can ignore without consequence.¹⁶⁹ These requests go ignored in most cases.¹⁷⁰ Thus, the BAL’s disruptive activities in the electoral process are ignored by law enforcement, whilst the law enforcement is protected from the law.

Legal material regarding the relationship between co-opting law enforcement and Article 25 is less conclusive than that focussing on judicial independence. Still, the GC hint that law enforcement should remain neutral.¹⁷¹ The GC clarify that lawful restrictions can be imposed on law enforcement to join political parties.¹⁷² These restrictions are to ensure their neutrality.¹⁷³ These restrictions, however, are not mandatory, though they are permitted and perhaps even encouraged as suggested by the wording and context.¹⁷⁴ Although this can imply that a co-opted and factionalised law enforcement can signal violations of Article 25, this cannot be confirmed without further legal commentary. Nevertheless, some effects of co-optation can violate Article 25. The GC assert that penal laws should prohibit abusive interferences with voter registration and the coercion of voters, and that these laws should be “strictly enforced”.¹⁷⁵ Strict enforcement cannot occur where law enforcement does not enforce the law on the regime, but merely on its opponents. The GC, however, do not provide further details on where else strict enforcement is required in the electoral process and what is meant by strict enforcement. This is unhelpful as even if judicial independence is assured to protect electoral rights, its verdicts may remain unenforced. For example, the lack of enforcement can encourage the Chattro League to disperse dissident political assemblies,¹⁷⁶ though judicial discourse supports the freedom of assembly

¹⁶⁷ Armed Police Battalions Ordinance 1979 (Bangladesh) s 13.

¹⁶⁸ National Human Rights Commission Act 2009 (Bangladesh) s 18.

¹⁶⁹ *ibid.*

¹⁷⁰ Nagar, ‘Police Investigating the Police’ (n 160).

¹⁷¹ GC (n 26) 6 [18].

¹⁷² *ibid.*

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*

¹⁷⁵ GC (n 26) 5 [11].

¹⁷⁶ Aparupa Bhattacharjee, ‘Behind Bangladesh’s Protests: Rising Frustration’, (*The Diplomat*, 22 August 2018) <<https://thediplomat.com/2018/08/behind-bangladeshs-protests-rising-frustration/>> accessed 11 November 2020.

guaranteed under the Constitution.¹⁷⁷ Hence, it is of similar importance that both the judiciary and law enforcement remain independent in Bangladesh, though it is unclear whether this importance is recognised by Article 25, however implied.

D. PRIVATE SECTOR PARTNERSHIPS

Alike the public sector, the BAL co-opts private sector business elites and elites within civil societies such as NGOs, labour unions, and business associations. The BAL allows cooperating elites to monopolise government contracts,¹⁷⁸ and forcibly seize land from Bangladesh's rural population who do not have the means to protect their land rights.¹⁷⁹ With administrative compliance, they easily forge certificates of title in their name, giving them a legal right to remove people living on their respective land.¹⁸⁰ Thus, businesses and financial interests urge private sector elites to support the BAL and compete effectively in a politicised marketplace.

Co-opted private sector elites subvert the electoral process for the BAL at a microlevel. Many key positions in their businesses and societies are reserved for the BAL's affiliates.¹⁸¹ This constrains upward social mobility to the BAL's supporters, politically factionalising the population and economically discriminating against the opposition.¹⁸² Earning favour due to political affiliation, beneficiaries are socially required to express their gratefulness to the regime through overt displays of loyalty.¹⁸³ This includes keeping and respecting a portrait of the Prime Minister in their office or desk, and praising the regime in formal and informal conversations.¹⁸⁴ These displays help spread political propaganda and give a false impression of widespread support for the regime to the public.¹⁸⁵ It also provides a 'bandwagon' for the layperson to join without fully understanding the political

¹⁷⁷ Constitution of Bangladesh Article 37.

¹⁷⁸ Andy McDevitt, Transparency International, 'Overview of Corruption and Anti-corruption with a Focus on the Health Sector (Report, 31 March 2015).

¹⁷⁹ Benjamin K Sovacool, 'Bamboo Beating Bandits: Conflict, Inequality, and Vulnerability in the Political Ecology of Climate Change Adaptation in Bangladesh' 102 *World Development* 183, 190.

¹⁸⁰ Shelley Feldman and Charles Geisler, 'Land Expropriation and Displacement in Bangladesh' (2012) 39(3) *The Journal of Peasant Studies* 971, 982.

¹⁸¹ Suykens, 'The Bangladesh Party-State' (n 19) 200.

¹⁸² David Lewis, 'Organising and Representing the Poor in a Clientelist Democracy: The Decline of Radical NGOs in Bangladesh' (2017) 53(10) *The Journal of Development Studies* 1545, 1548.

¹⁸³ Farhat Tasnim, 'Politicized Civil Society in Bangladesh: Case Study Analyses' (2017) 9(1) *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 98, 104.

¹⁸⁴ *ibid* 105.

¹⁸⁵ *ibid* 118.

ramifications and wider societal consequences.¹⁸⁶ Such activities reduce civil spaces for politically unbiased dialogue that allow the citizenry to objectively comprehend social issues and the policies of various political parties to resolve them.¹⁸⁷ The BAL's implantation of political agendas especially perverts the key role civil society plays in achieving social justice, empowerment, and structural changes.¹⁸⁸ Civil societies largely lose their independence as high-ranking members support and blindly endorse the BAL's policies, despite their implications on furthering the society's purpose. The citizenry accordingly loses its power to campaign, lobby, and gain unbiased political information to assert its rights effectively in the electoral process due to private sector co-optation.

Co-optation in the private sphere potentially conflicts with Article 25. The GC stress that voters should be allowed to form opinions independently, free from "inducement or manipulative interference".¹⁸⁹ Furthermore, the HRC highlighted 'vote buying' as a concern when reviewing Honduras' obligations under Article 25.¹⁹⁰ Without further detail, it is unclear whether building personal patronage networks with select private individuals amounts to vote buying, though that is conceivable. In the context of compulsory memberships in associations being a requirement to engage in employment, it was asserted in *Gauthier v Canada* that the state should be called to demonstrate that this is "necessary in a democratic society" in conformity with Article 25.¹⁹¹ Still, it is unclear whether this ruling extends to disparage situations where the state informally requires an association with itself before rewarding the individual with employment. Though not being a formal requirement, the BAL's informal co-optation has the same implication in the private sector, as it grants more employment opportunities for its supporters. The silence of legal commentary is unhelpful in confidently determining an

¹⁸⁶ Michael F. Meffert et al., 'More than Wishful Thinking: Causes and Consequences of Voters' Electoral Expectations about Parties and Coalitions' (2011) 30(4) *Electoral Studies* 804, 807.

¹⁸⁷ Gordon Schochet, 'Vices, Benefits, and Civil Society: Mandeville, Habermas, and the Distinction between Public and Private' (2008) 18(3) *Prose Studies* 244, 256.

¹⁸⁸ Caroline Hodges Persell, 'The Interdependence of Social Justice and Civil Society' (1997) 12(2) *Sociological Forum* 149, 150.

¹⁸⁹ GC (n 26) 6 [19].

¹⁹⁰ Concluding Observations on the Second Periodic Report of Honduras (n 30) 8 [44].

¹⁹¹ Human Rights Committee, 'Views Communication No 633/1995' (5 May 1999) CCPR/C/65/D/633/1995 at 16.

unbroken link between the BAL's informal inducements and the vote buying and undemocratic conduct, which violates Article 25.

E. EASY ELECTIONS

Co-optation of these groups has rendered easier the BAL's ballot manipulation during elections.¹⁹² The police at many polling stations facilitate this by ordering voters to wait long hours before being allowed to go inside.¹⁹³ Many voters give up on voting as the wait times endure, for reasons including disillusionment with the voting process, and the outside heat becoming unbearable to continue waiting.¹⁹⁴ As the general voters wait, those known to support the BAL are discretely allowed inside to cast their votes.¹⁹⁵ In numerous instances, the supporters also cast other people's votes and stuff the ballots.¹⁹⁶ When voters finally enter the polling station to vote, many are told to go home as their vote has already been cast.¹⁹⁷ Furthermore, as the electoral commission has been co-opted, its new rules make it difficult for neutral groups to register and observe the ballots.¹⁹⁸ The Bangladesh Election Commission no longer allows observers to remain the entire day in one polling station.¹⁹⁹ This breaks the chain of observation and diminishes transparency and credibility in the ballot counting procedure.²⁰⁰ Hence, the interplay of co-opted agents allows the BAL to distort elections and essentially vote for itself.

Co-optation surrounding electoral authorities is incompatible with Article 25. Co-opted electoral authorities can skew election results, tainting the citizenry's ability to politically express itself through its representatives.²⁰¹ If its vote does not count, the citizenry also cannot hold its representatives "accountable through the

¹⁹² Marzia Casolari, 'Bangladesh 2018: Sheikh Hasina's Triumph' (2018) 24 *Asia Maior* 247, 254.

¹⁹³ 'Police-aided Ballot Stuffing' *Daily Star* (*Daily Star*, 31 December 2018) <<https://www.thedailystar.net/bangladesh-national-election-2018/police-aided-ballot-boxes-stuffing-bangladesh-election-2018-1681033>> accessed 11 November 2020.

¹⁹⁴ *ibid.*

¹⁹⁵ *ibid.*

¹⁹⁶ 'Bangladesh: Election Abuses Need Independent Probe' (*Human Rights Watch*, 2 January 2019) <<https://www.hrw.org/news/2019/01/02/bangladesh-election-abuses-need-independent-probe>> accessed 11 November 2020.

¹⁹⁷ *ibid.*

¹⁹⁸ Md Awal Hossain Mollah and Rawnak Jahan, 'Parliamentary Election and Electoral Violence in Bangladesh: The Way Forward' (2018) 60(2) *International Journal of Law and Management* 741, 749.

¹⁹⁹ Meisburger, 'Strengthening Democracy in Bangladesh' (n 132) 5.

²⁰⁰ *ibid.*

²⁰¹ GC (n 26) 7 [21].

electoral process”,²⁰² a right which is emphasised in the GC. The GC expressly require that electoral authorities be ‘independent’ to supervise the electoral process and ensure it is conducted impartially and fairly.²⁰³ The voting process should be free from ‘arbitrary’ interferences.²⁰⁴ The electoral authority must guarantee the security of ballot boxes.²⁰⁵ Candidates or their agents should be present where the votes are counted.²⁰⁶ The voting and counting process should undergo “independent scrutiny” for voters to have confidence “in the security of the ballot” and trust that their vote was counted.²⁰⁷ Accordingly, the BAL’s co-optation of electoral authorities, hinderance of independent scrutiny, and other interferences during the electoral process, such as by forcing voters to wait long hours before voting, is incompatible with Article 25. These practices erode public confidence in the ballot, manipulate election results against voters’ wishes, and prevent the electoral process from being scrutinised by independent authorities. They present a major obstacle for elections to uphold Article 25, as it denies opportunities for the public to identify and demand corrections in the electoral process where corruption has been identified.

Ultimately, the clearest violations of Article 25 through co-optation are through the judiciary and electoral authorities. Co-optation erodes judicial independence guaranteed by Article 14, leaving victims without recourse to assert their electoral rights. Co-opting electoral authorities similarly allows the regime to manipulate elections without accountability. Though it is hinted, it is relatively unclear whether co-opting law enforcement attracts the same criticism as it leaves the BAL similarly unaccountable. It is also unclear whether co-opting political elites and the private sector is also prohibited, though their effects can be tracked to douse the representation of the public’s interest.

²⁰² *ibid* 4 [7].

²⁰³ *ibid* 6 [20].

²⁰⁴ *ibid*.

²⁰⁵ *ibid*.

²⁰⁶ *ibid*.

²⁰⁷ *ibid*; See also Human Rights Committee, ‘Views Communication No. 1392/2005’ (21 October 2009) CCPR/C/97/D/1392/2005 at 11 [8.3].

TABLE II

CO-OPTATION IN BANGLADESH		
<i>Co-optive Action in Bangladesh</i>	<i>Effect on Electoral Process</i>	<i>Violation of Article 25</i>
Co-opting political elites.	Douses democratic dialogue. Discourages representing voter's interests. Encourages corruption.	The lack of internal party democracy is acknowledged as problematic in the GC. The corruption allowed through co-optation has also raised concerns.
Co-opting the judiciary.	Violations of electoral rights by the regime are left without legal redress.	Clear violation by dissolving judicial independence guaranteed by Article 14.
Co-opting law enforcement.	The law is not enforced on the regime when it violates electoral rights.	The GC encourage law enforcement to be neutral, and hint that electoral laws be 'strictly' enforced.
Co-opting the private sector.	Creates a social 'bandwagon' to support the regime. Decreases spaces for politically unbiased dialogue for the citizenry to objectively understand political issues. Subverts civil societies and other politically empowering agencies, forcing the citizenry to lose their power to effectively assert their rights in the electoral process.	Legal commentary negatively views 'vote buying' and the inducement of voters.
Co-opting electoral authorities.	Allows ballot manipulations and distortions of election results in the regime's favour.	Clear violation as electoral authorities must be independent, and politicians must be held accountable through the electoral process.

V. CONCLUSION

The reports examined regarding the BAL's coercion and co-optation indicate violations of Articles 25(a) and (b) of the ICCPR. As Bangladesh's government, the BAL's acts are considered "acts of state" capable of violating international law.²⁰⁸ Considering that they are attributable to the BAL, some of these acts are clear in their capacity to violate Article 25. Others, however, are relatively unclear, though their effects on the electoral process can be traced to hinder political participation for the citizenry.

The characteristic autocratic recourse to coercion for power has clearly attracted the concern of Article 25. The BAL's usage of the judiciary, law enforcement, and economics to coerce dissidents has been addressed to signify violations of Article 25 in previous cases.²⁰⁹ Using them to forcefully disperse dissident gatherings, attacking those affiliating with the opposition, and silencing critics conflicts with Article 25 as it violates the freedoms of assembly, association, and expression. These rights, protected by Articles 21, 22 and 19 of the ICCPR, respectively, are recognised by the HRC as sharing a positive relationship with article 25.²¹⁰ Securing these rights is necessary to realise those under Article 25, due to their significance in allowing political rights to be exercised through the electoral process, as is clarified in section V. The freedom of assembly allows people to demonstrate the nature and extent of their grievances or political support, influencing people's views and motivation to participate in political activities. The freedom of association is necessary for people to engage in politics by becoming political candidates or voting for candidates which represent their interests. The freedom of expression is essential for the citizenry to exercise an informed vote and accordingly realise its political rights. Therefore, the BAL's coercion violates article 25 by infringing Articles 19, 21, and 22.

Comparatively, the threat posed by co-optation against Article 25 is unclear. Only two clear instances have been identified where the BAL's co-optation conflicts with Article 25: co-optation of the judiciary; and co-optation of electoral authorities. The mere possibility of a biased judiciary, which infringes Article 14 of the ICCPR is enough to establish a violation of Article 25 as it leaves the BAL unaccountable when it subverts political rights.²¹¹ Co-opting electoral authorities violates Article 25 since it undermines the authenticity and legitimacy of elections;

²⁰⁸ United Nations General Assembly 'Responsibility of States for Internationally Wrongful Acts' (28 January 2002) A/RES/56/83.

²⁰⁹ See Views of the Human Rights Committee under Article 5, Paragraph 4 (n 29) 9 [2]; Consideration of Iran (n 107) 26 [6]; Consideration of Chile (n 123) 4 [14].

²¹⁰ 'GC' (n 26) 4 [8].

²¹¹ Views of the Human Rights Committee under Article 5, Paragraph 4 (n 29) 9 [2].

votes become easier to manipulate as abuses are left unmonitored.²¹² Though a co-opted law enforcement has a similar effect of allowing the BAL to escape the law, it is not directly addressed as an issue, but hinted as a potential threat to the strict enforcement of electoral law as demanded by Article 25.²¹³ The co-optation of political and private sector elites is also unclear, though some of their effects on democracies are vaguely acknowledged as problematic when considering the purposes of Article 25.²¹⁴ Hence, although all the BAL's co-optation activities further the regime's interests even when they contradict the peoples', only those aimed at co-opting the judiciary and electoral authorities clearly violate Article 25; the rest require further jurisprudence to clarify the extent to which they violate Article 25.

In summary, this article concludes that the BAL's coercion clearly violates Article 25. The relationship between the BAL's co-optation and Article 25 requires further jurisprudence as only two instances have been identified as clear violations. Nevertheless, this article answers the research question regarding whether Bangladesh violates Articles 25(a) and (b) through coercion and co-optation in the affirmative. Several coercive and co-optative activities have been identified to be clear violations (Table I & Table II).

Accordingly, this article has achieved its three aims: providing a nuanced lens to view Article 25; highlighting the gaps in understanding Article 25; and identifying the activities which violate Article 25. Firstly, it integrated Gerschewski's political science framework and illustrated how coercion and co-optation interact with Article 25; secondly, gaps in understanding Article 25 were demonstrated in the case of co-optation, as co-opting law enforcement, political elites, and the private sector are merely hinted as potential violations; and thirdly, all coercive activities and the co-optative activities concerning the judiciary and electoral authorities were shown to bring Bangladesh in violation of Article 25. This understanding of what constitutes violations can also be applied to other states to deter violations of Article 25 and ensure that the citizenry can participate in political matters.

This article has contributed to legal and political literature through two modes of analysis: applying Article 25 to the BAL's coercion and co-optation strategies through the electoral process; and clearly classifying the BAL's political activities into the categories of coercion and co-optation. This analysis has made clearer the BAL's legal position regarding Article 25, and the comprehensiveness of Article 25 in achieving effective political participation for the citizenry. It helped deconstruct and comprehend the various ways in which the BAL interacts with

²¹² GC (n 26) 6 [20].

²¹³ *ibid* 5 [11].

²¹⁴ *ibid* 8 [26].

the electoral process and their international legal implications. More broadly, this article facilitated a holistic interdisciplinary understanding of autocratic power accumulation strategies. It presented Article 25 as an applicable international legal mechanism that can be used to defend against such strategies in Bangladesh and other states, where relevant.

Though the article did not consider issues of state attribution in-depth, the BAL's *prima facie* violations of Article 25 can be attributed to Bangladesh under international law.²¹⁵ International law recognises two relevant actions that warrant attribution: the first is where the action is done by an 'organ' or 'official' of a state even if they are acting *ultra vires*;²¹⁶ the second is where the action is done by a person or entity which is under the 'direction' or 'control' of a state.²¹⁷ As illustrated by sections III and IV, the BAL's political activities threaten Bangladesh's compliance with Article 25.

Considering the threat posed by the various autocratic power accumulation strategies in undermining the democratic ideals of Article 25, this article recommends adopting a balanced interpretation of Article 25. This interpretation should be broad enough, in that, Article 25 becomes easily referable when calling out and criticising such strategies as being undemocratic and illegal under international law. It should appropriately and clearly deal with the various co-optation strategies which hamper democratic participation, including the co-optation of political elites, law enforcement, and the private sector. The power these strategies grant a government comes at the expense of the people, widening the door to human rights abuse. These strategies keep the *status quo* in favour of the regime, regardless of whether it is beneficial for the people or desired by them. The government becomes increasingly parasitic, using state resources to pursue elitist interests instead of performing the duties it was assigned for. In such cases, Article 25 should offer a way for the international community to pressure a government and allow democracy to flourish.

At the same time, it must be specific enough to allow for genuine statecraft. Governments may need to use coercion to deter threats and safeguard civilians. They may also need to use a certain degree of co-optation to ensure that various groups are satisfied with the state and the government can run smoothly to accomplish legitimate stately objectives. Guidance as to how this balance in interpretation is to be achieved is beyond the scope of this article and will require further academic and legal discourse. Nevertheless, to stimulate such discourse,

²¹⁵ UNGA 'Responsibility of States for Internationally Wrongful Acts' (28 January 2002) A/RES/56/83.

²¹⁶ *ibid* Articles 5, 7.

²¹⁷ *ibid* Article 8.

this article has provided a detailed insight into autocratic power accumulation, its dangers, and how they can undermine democratic systems in a manner offensive to Article 25, as in the case of Bangladesh.