



**EAST WEST UNIVERSITY**

**DISSERTATION ON**

**RIGHT TO REST AND REASONABLE PAY FOR MEDICAL  
PRACTITIONERS IN BANGLADESH: A CRITICAL ANALYSIS**

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## CONSENT FORM

The dissertation titled "Right to Rest and Reasonable Pay for Medical Practitioners in Bangladesh: A Critical Analysis" prepared by Labiba Ferdous, ID: 2020-1-66-012, submitted to Adity Rahman Shah, Senior Lecturer, for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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Signature of the Supervisor

Date:

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"All praise to Almighty Allah"

I express my sincere gratitude to my parents. Without their constant and unwavering support, I could not have come this far in life. They believed in me when I could not believe in myself. I was inspired to write this paper for my elder brother and sister-in-law. They are medical practitioners serving in the civil service. Their sufferings in their careers broke my heart and motivated me to author this dissertation paper specifically on medical practitioners.

Additionally, I want to express my sincere gratitude to my supervisor, Adity Rahman Shah, Senior Lecturer of the Department of Law, for guiding me throughout the research process and providing valuable insights. Her expertise and support were instrumental in shaping this research paper. Last but not least, I would like to thank my other faculty members in the Department of Law, who shaped me into the person I am today and motivated me throughout my undergraduate journey.

## DECLARATION

I herewith declare that this dissertation titled "Right to Rest and Reasonable Pay for Medical Practitioners in Bangladesh: A Critical Analysis" is my original work, completed after registering for the Bachelor of Laws degree at East West University and that it has not previously been included in any thesis or dissertation submitted to this or any other institution for a degree, certificate, or other academic credentials. I have accepted and take accountability for following the University's current research ethical standards and for doing the procedures in accordance with the University's rules.

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**LIST OF ABBREVIATIONS**

UDHR	Universal Declaration on Human Rights
ILO	International Labour Organization
UN	United Nations
ICESCR	International Convention on Economic, Social & Cultural Rights
CESCR	Committee of Economic, Social & Cultural Rights
ICCPR	International Convention on Civil & Political Rights
HRC	Human Rights Committee
ISCO-08	International Standard Classification of Occupations- 08
HRW	Human Rights Watch
NGO	Non-Governmental Organization
BM&DC	Bangladesh Medical & Dental Council
WHO	World Health Organization



## ABSTRACT

This paper focuses on adequately incorporating medical practitioners right to rest and reasonable pay o in Bangladesh. The international and national legal framework was explored to determine the legal status of these rights. Under International law, the right to rest and reasonable pay are considered human rights to be enforced by state parties. Various international documents cover these rights explicitly, such as the UDHR, ICCPR, ICESCR, Labour Conventions etc. In national legislation, the Constitution enshrines these rights. However, other domestic legislations, such as labour law, do not incorporate these rights properly. The health system of Bangladesh is flawed. It puts immense pressure on medical practitioners in both the public and private sectors. They are ultimately resulting in detrimental physical and mental conditions. Medical practitioners are suffering to live a life worth their dignity. This paper is done through the qualitative method. Despite shortcomings, current literature has helped to understand this issue better. This paper is aimed at policymakers. The findings of this paper confirm that the right to rest and reasonable pay of medical practitioners are not adequately incorporated into the legal system of Bangladesh. Hence, recommendations for policy changes were given for adequate incorporation of the right to rest and reasonable pay of medical practitioners in Bangladesh.

# CHAPTER I

## INTRODUCTION

### 1.1 THE STATEMENT OF THE PROBLEM

The right to rest refers to the fundamental human right of individuals, including medical practitioners, to have adequate time for relaxation, leisure, and recovery from work. It is an essential aspect of ensuring their physical and mental well-being. The right to reasonable pay refers to an individual's entitlement, including medical practitioners, to receive fair compensation for their work and expertise. Both rights are crucial to promoting a healthy work-life balance and ensuring the overall welfare of medical practitioners. However, there have been concerns and allegations regarding inadequate incorporation of these rights in the legal system of Bangladesh, particularly with medical practitioners.

Now, why the issue of possible deprivation of legal rights needs to be researched can be answered by the recent protest by postgraduate medical practitioners at the Bangabandhu Sheikh Mujib Medical University for the irregular payment of allowances while demanding that the amount be increased from "20,000 BDT to 50,000 BDT".<sup>1</sup> Little pay for such duty hours is an extra blow in today's world, engulfed with inflation. Medical practitioners in the civil service receive a salary of 20370 takas per month as a 9th-grade officer, whereas a family of four needs more than 22,000 takas just for food in Dhaka city.<sup>2</sup> The percentage of medical practitioner posts filled in 2017 was low in the union-level facilities (15%) and district and upazila facilities (53%).<sup>3</sup> Bangladesh's health system is flawed, and the higher-ups in this sector often ignore various malpractices, possibly depriving the abovementioned rights.<sup>4</sup>

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<sup>1</sup> Correspondence Staff, "BSMMU Trainee Medical Practitioners Continue Protest, Refuse Tk5,000 Increase in Allowance" *The Business Standard* (July 18, 2023) <<https://www.tbsnews.net/bangladesh/health/bsmmu-trainee-doctors-stage-protest-near-shahbag-demanding-increase-allowance>> accessed August 25, 2023

<sup>2</sup> Correspondent Staff, "Monthly Expenditure of a Family in Dhaka Stands at Tk 22,664: CPD" (*Prothom alo*, March 27, 2023) <<https://en.prothomalo.com/bangladesh/city/9ehg5kja95>> accessed 10 July 2023

<sup>3</sup> Naher N and others, "Absenteeism among doctors in the Bangladesh Health System: What Are the Structural Drivers?" (2022) 2 SSM - Qualitative Research in Health 100089 p 2

<sup>4</sup> Ibid

Bangladesh has one registered doctor for every 1847 people, combining the private and public sectors.<sup>5</sup> The scarcity of medical practitioners shows how much workload they have to carry.<sup>6</sup> They serve society even after suffering from high levels of anxiety and depression.<sup>7</sup> Why people with so much commitment suffer from burnout syndrome and depression from overworking without any fixed schedule is a grave concern.<sup>8</sup> A doctor's job is very stressful, and high stress affects a professional's physical and mental well-being.<sup>9</sup>

This paper aims at policymakers in the state to help determine whether the right to rest and reasonable pay of medical practitioners are incorporated adequately into the legal system of Bangladesh. This research paper will identify the gap between legal obligations under international and domestic law and whether Bangladesh is upholding such obligations. How medical practitioners are deprived of these rights will be addressed, too. The current literature will allow for finding out the current job situation of medical practitioners and will also give an insight into the legal problem that needs to be resolved.

## **1.2 RESEARCH QUESTION**

Does the legal system of Bangladesh adequately incorporate the right to rest and reasonable pay for medical practitioners in Bangladesh?

## **1.3 RESEARCH OBJECTIVES**

The research will be conducted to fulfill the objectives mentioned below:

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<sup>5</sup> Nuruzzaman M and others, "Adopting Workload-Based Staffing Norms at Public Sector Health Facilities in Bangladesh: Evidence from Two Districts" (2022) 19 Human Resources for Health

<sup>6</sup> Ibid

<sup>7</sup> Hossain MdR and others, "Psychological Distress Among Healthcare Professionals During the Early Stages of the COVID-19 Outbreak in Low Resource Settings: A Cross-Sectional Study in Bangladesh" (2021) 9 Frontiers in Public Health P 6

<sup>8</sup> Ibid

<sup>9</sup> Munir UR, Rahman MF and Nosib MNU, "Job Satisfaction among the Healthcare Professionals of Combined Military Hospitals of Bangladesh" (2020) 14 Journal of Armed Forces Medical College, Bangladesh 164

1. Analyzing the working conditions of medical practitioners in Bangladesh: The research will delve into specific aspects of doctor's working conditions, such as excessive workload, long hours, inadequate rest breaks, or a lack of basic facilities and resources.
2. Assessing the inadequate incorporation of the right to rest and reasonable pay in the legal system: This objective examines instances where medical practitioners are deprived of their right to adequate rest periods and fair payment for their services due to inadequate incorporation of these rights in the domestic laws.
4. Proposing policy changes and interventions: Here, potential solutions will be discussed, such as implementing work-hour regulations, providing better support systems for medical practitioners, etc.
3. Analyzing the consequences of inadequate rest periods and unfair pay for medical practitioners: This can involve discussing the impact on their physical and mental health, patient care quality, and overall healthcare system efficiency.

#### **1.4 RESEARCH METHODOLOGY**

The research method used in this paper is qualitative. Primary sources used are international and domestic laws, case laws etc., to determine the legal rights of medical practitioners. Secondary sources used to write this paper are journal articles, reports, books, news articles, online papers etc., which also helped to get a broader context to support the research findings. By examining the consequences of inadequate rest periods and unfair pay, policymakers and healthcare organizations can better understand doctor's challenges in these areas and develop targeted interventions to address these issues.

#### **1.5 SCOPE**

The paper primarily focuses on whether the right to rest and reasonable pay of medical practitioners are adequately incorporated into the legal system of Bangladesh. It will explore the legal rights of medical practitioners to rest and reasonable pay under international laws, analyzing specific articles or provisions that guarantee these rights. Examine the current state of implementation and enforcement of these legal rights for medical practitioners at a national level. The paper will also discuss and analyze the legal challenges or barriers medical practitioners face. Lastly, the paper will propose recommendations to address these challenges and protect

doctor's legal rights, aiming to create a conducive and sustainable working environment for healthcare professionals in Bangladesh.

## **1.6 LIMITATIONS**

There are limitations to the paper. The qualitative method does not provide Up-to-date information derived from firsthand interviews. So, this paper may not fully represent the perspectives and experiences of medical practitioners. A comparison of these rights in Bangladesh with other countries was not done. International instruments that Bangladesh ratified are discussed. So, the status of these rights under other international instruments was not explored. Despite these limitations, this research paper is expected to provide valuable insights into the legal rights of medical practitioners in Bangladesh and has laid the groundwork for future research and advocacy in this area.

In order to answer the research question, conceptual knowledge, and current literature is necessary apart from exploring international and domestic laws. The next chapter will briefly review the current literature on the right to rest and reasonable pay for medical practitioners.

## CHAPTER II

### CONCEPTUAL BACKGROUND AND THE CURRENT SCENARIO OF RIGHT TO REST AND REASONABLE PAY IN BANGLADESH

The right to rest, leisure, and reasonable pay may seem like labour rights. Still, they are also human rights incorporated under one of the most influential documents, the Universal Declaration of Human Rights (UDHR).<sup>10</sup> These rights are individual rights, also recognized as social and economic rights.<sup>11</sup> The supreme mandate of Bangladesh, the Constitution, is heavily influenced by the UDHR.<sup>12</sup> Therefore, the right to rest and leisure incorporated under Article 24 of the UDHR has been guaranteed by the Constitution under Article 34(1). The Constitution guarantees the right to reasonable limitation of working hours and reasonable pay incorporated in the UDHR under Article 23 under Article 15(b)(c).

#### 2.1 RIGHT TO REST AND LEISURE

To define rest or leisure, the most suitable definition for medical practitioners would be non-obligated time.<sup>13</sup> Medical practitioners are known as the noblest professionals in the world and are often expected to serve society beyond reasonable limits. People often forget how hard medical practitioners work and lash out at them if a patient dies. The International Labour Organization (ILO) has been monitoring the enforcement of labour rights in Bangladesh, including free time rights.<sup>14</sup> The UDHR's right to rest and leisure refers to two types of free time. First is the 'time necessary to rest and recuperate from exertions or work,' and second is 'time over and above this to pursue more purposive leisure activities.' Scholars have different views on these, even though the UN recognizes human rights as 'universal, indivisible and interdependent

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<sup>10</sup> Alston P and Goodman R, *International Human Rights* (Oxford University Press 2013), P 277

<sup>11</sup> Ibid

<sup>12</sup> Muhammad Ekramul Haque, "Current International Legal Issues: Bangladesh" 23 Asian Yearbook of International Law 14-15

<sup>13</sup> Lewis Suzan, "The Integration of Paid Work and the Rest of Life. Is Post-industrial Work the New Leisure?" (2003) 22 Leisure Studies 345

<sup>14</sup> Veal AJ, "Human Rights, Leisure and Leisure Studies" (2015) 57 World Leisure Journal 249

and interrelated.' Nickel argues that 'a distinction must be made between benefits such as holidays with pay which are merely good things and other advantages and freedoms.'<sup>15</sup> Risse observes that 'limitation of working hours is a right but sees holidays with pay as too prescriptive.'<sup>16</sup> Bargarac and Allan consider 'rest and leisure as being among a list of so-called rights that are probably best placed in a wish list.'<sup>17</sup> Reductionist critiques such as Cranston claim that 'rights under ICESCR are not only impractical but also are fundamentally different than rights under ICCPR because they don't pass the three-pronged test of practicability, universality, and paramount importance like civil and political rights.'<sup>18</sup> It is a long-standing view that 'leisure is necessary for a life of dignity and has been tied by a long line of empirical studies to individuals' improved overall well-being.'<sup>19</sup> In Bangladesh, industrialization has hardly begun. So, it cannot afford to provide millions of people with social security and holidays with pay.<sup>20</sup>

## 2.2 RIGHT TO REASONABLE PAY

Reasonable pay may be referred to as 'equal pay for equal work' or payment for work that is enough to live a dignified life with one's family as appropriate according to social status.<sup>21</sup> As medical practitioners are the noblest professionals in the world, it is only reasonable to be able to earn enough to lead a life worthy of a dignified professional. The level of pay and benefits can influence a professional's job satisfaction heavily.<sup>22</sup> But the sad truth is that medical practitioners are not paid enough in many countries. In Bangladesh, medical practitioners do not earn the equivalent of the amount of work they do. Medical practitioners do their best to provide

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<sup>15</sup> Risse Mathias, "A Right to Work? A Right to Leisure? Labor Rights as Human Rights" (2009) 3(1) *Law & Ethics of Human Rights* 31–39

<sup>16</sup> *Ibid*

<sup>17</sup> Bagaric M and Allan J, "The Vacuous Concept of Dignity" (2006) 5 *Journal of Human Rights* 257–270

<sup>18</sup> Richards David L, Carbonetti Benjamin C, "Worth what we decide: a defense of the right to leisure" (2013) 17(3) *The International Journal of Human Rights* 329-349

<sup>19</sup> *Ibid*

<sup>20</sup> Veal (no 14)

<sup>21</sup> Muhammod Shaheen Chowdhury, "Minimum Wages in Bangladesh –Issues and Challenges" (2006) 11 *The Chittagong University Journal of Law* p.1-32

<sup>22</sup> Munir, Rahman and Nosib (no 9)

satisfactory service without adequate health system support<sup>23</sup>, and this issue has been documented in various publications<sup>24</sup>. So, how some medical practitioners are considered rich is a question that must be answered to determine the issue of reasonable pay. The answer is simple. Medical practitioners usually delve into dual practice to earn money. Remuneration from both the private and public sectors alone is not enough.

Medical practitioners see patients in private chambers; earning from such practice is solely theirs. Eighty percent of medical practitioners in the public sector engage in private practice.<sup>25</sup> That is, however, only possible after becoming a specialist. From internship after completing an MBBS degree to postgraduation, medical practitioners are not skilled enough to conduct dual practice in that period. Therefore, they must depend on the remuneration provided by the institution where they are enrolled. Spending the first few years as an honorary medical officer with no income is common.<sup>26</sup> Remuneration received during internship is 15000 taka on average for medical practitioners.<sup>27</sup> Postgraduate medical practitioners will now receive 25000 per month<sup>28</sup>, and the salary of medical practitioners in the public sector is 22000 tk<sup>29</sup>.

### 2.3 CURRENT SCENARIO OF MEDICAL PRACTITIONERS IN BANGLADESH

Despite such views on rest and leisure, what brings the necessity to address the issue of possible deprivation of medical practitioners can be answered by showing the effects of not getting ample rest, enjoyable leisure time, and reasonable salary to lead a dignified life by showing the extent

<sup>23</sup> Joarder T and others, “What Constitutes Responsiveness of Physicians: A Qualitative Study in Rural Bangladesh” (2017) 12 PLOS ONE e0189962.

<sup>24</sup> Ahmed SM, Alam BB, Anwar I, Begum T, Huque R, Khan JAM, “Bangladesh Health System Review” 5 (3) World Health Organization, Regional Office for the Western Pacific (2015)

<sup>25</sup> Hipgrave DB and Hort K, “Dual Practice by Doctors Working in South and East Asia: A Review of Its Origins, Scope and Impact, and the Options for Regulation” (2013) 29 Health Policy and Planning 703-716

<sup>26</sup> Andalib, A and Arafat, S.M. Y., "Practicing Pattern of Physicians in Bangladesh" [2016] 1(1) International Journal of Perceptions in Public Health, 9-13

<sup>27</sup> Nirob NI, “Doctor Salary in Bangladesh 2022 | Medical News BD - Doctors Gang” (Doctors Gang, June 12, 2022) <https://www.doctorsgang.com/doctor-salaries-in-bangladesh2021/#:~:text=MBBS%20doctor%20salary%20in%20Bangladesh%20MBBS%20doctors%20monthly%20Salary%20range,get%202022%2C500.00%20ar%20nine%20grade> accessed September 1, 2023

<sup>28</sup> Correspondence Staff, The Business Standard (n 1)

<sup>29</sup> Employment (Pay and Allowances) Order, 2015



of doctor's sufferings that has become a common phenomenon today. Medical practitioners and other healthcare professionals suffer from burnout syndrome, anxiety, and depression, which, along with organizational stress, eventually degrades their service to patients.<sup>30</sup>

With no standard definition, 'burnout is known as a syndrome of emotional exhaustion, depersonalization, and reduced personal accomplishment. Clinical symptoms include 'tiredness, headache, eating problems, insomnia, irritability, emotional instability, and rigid relationships with others.'<sup>31</sup> According to the WHO, depression or a depressed mood includes sadness, irritability, emptiness, loss of pleasure or interest in activities etc. Anxiety disorders are characterized by excessive fear and worry and related behavioural disturbances.

Medical practitioners who face problems like these get addicted to drugs and alcohol often, with a possible outcome of suicide.<sup>32</sup> It is evident that medical practitioners are overworked, but people tend to seek individual change rather than systematic without questioning unrealistic workloads.<sup>33</sup> Overworking leads to the degradation of quality service to patients, which is one of the core values of professionalism.<sup>34</sup>

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<sup>30</sup> Munir, Rahman and Nosib (no 9)

<sup>31</sup> Saha DK and others, "Frequency of Burnout Syndrome in an Intensive Care Unit of a Tertiary Care Hospital in Dhaka, Bangladesh" (2019) 9 BIRDEM Medical Journal 31-36

<sup>32</sup> "Mental Disorders" (*www.who.int*, June 8, 2022) <<https://www.who.int/news-room/fact-sheets/detail/mental-disorders>> accessed 18 July 2023

<sup>33</sup> Lewis (n 13)

<sup>34</sup> Dr. Syed Golam Samdani, Professor Dr. Tahmina Begum, "Professionalism among Intern Doctors of Different Medical College Hospitals in Bangladesh" (2016) 7(2) Bangladesh Journal of Medical Education 17-22

## Chapter III

### LEGAL STATUS OF THE RIGHT TO REST AND REASONABLE PAY UNDER INTERNATIONAL LAW

The right to rest and reasonable pay are, without any doubt, universal human rights. The existence of these rights needs to be explored further to understand better and to determine the possible deprivation of these rights for medical practitioners in Bangladesh due to inadequate incorporation of international obligations in the domestic legal system. Chapter three of this paper shall discuss various sources ratified by Bangladesh from which these rights are incorporated and their origins to determine their value, as it is crucial to delve deeper into the origins and sources of these rights to gain a comprehensive understanding of their significance. This analysis is done only based on instruments that Bangladesh ratifies as a party and the extent to which these rights are upheld globally.

#### 3.1 BASIC CONCEPT OF HUMAN RIGHTS UNDER INTERNATIONAL LAW

The Charter of the United Nations was intended to respect and observe human rights<sup>35</sup> and allow the UN to intervene in sovereign matters of states. By flexible interpretation throughout the years, human rights are no longer recognized solely between the sovereign jurisdiction states.<sup>36</sup> The right to rest and reasonable pay has been incorporated internationally under various international documents. All those are discussed below to determine the legal status of these rights.

##### 3.1.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The UN General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948. Even though it was not intended to be a legally binding document<sup>37</sup>, it has influenced the

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<sup>35</sup> Charter of The United Nations 1945, Article 55 & 56

<sup>36</sup> Shaw, M.N., *International Law* (6th edn, Cambridge University Press 2008), p 27

<sup>37</sup> Alston P, Goodman R, (n 10) P 142

Constitution of many states and the formulation of human rights treaties and conventions. Over the years, an obligation for the members of the international community was created.<sup>38</sup>

Right to 'work,' 'free choice of employment,' 'just and favourable conditions of work,'<sup>39</sup> and 'equal pay for equal work' without any discrimination<sup>40</sup> have all been guaranteed for everyone. 'Just and favourable remuneration' is a right for anyone who works, and such remuneration must ensure that the worker and his family have a life worthy of human dignity. If necessary, other types of social protection will be given additionally.<sup>41</sup> Everyone has the right to rest and leisure as per Article 24. Working hours should be limited, and everyone should get paid holidays periodically.<sup>42</sup>

### **3.1.2 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)**

The UDHR enshrines the ICESCR. This covenant provides explicitly for the right to rest and reasonable pay. Working is a right<sup>43</sup>, and by this right, everyone should be able to achieve steady economic, social, and cultural development. This right should also safeguard fundamental political and economic freedoms.<sup>44</sup>

'Fair wages' and 'equal remuneration for work of equal value' are ensured by 'just and favourable conditions of work' and 'non-discrimination.'<sup>45</sup> They must provide a decent living for themselves and their families.<sup>46</sup> Safe and healthy working conditions and equal opportunity for promotion<sup>47</sup>,

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<sup>38</sup> Ibid. (n 28), p 278-280

<sup>39</sup> Universal Declaration of Human Rights (UDHR) (adopted 10 December 1948) UNGA Res 217 A(III), Article 23 (1)

<sup>40</sup> Ibid, Article 23(2)

<sup>41</sup> Ibid, Article 23(3)

<sup>42</sup> Ibid. Article 24

<sup>43</sup> International Covenant for Economic, Social and Cultural Rights (ICESCR) (3 January 1976) 993 UNTS 3, Article 6(1)

<sup>44</sup> Ibid, Article 6(2)

<sup>45</sup> Ibid, Article 7(a)(I)

<sup>46</sup> Ibid, Article 7(a)(ii)

rest, leisure, reasonable limitation of working hours and remuneration for public holidays<sup>48</sup> are also rights for everyone.

### 3.1.3 THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

The Committee on Economic, Social and Cultural Rights (CESCR) is a body that monitors and assists with implementing the ICESCR by state parties.<sup>49</sup> State parties are obligated to provide effective remedies for rights under this covenant, including judicial remedy, but not a single complaint procedure exists under the ICESCR.<sup>50</sup> Moreover, its full implementation depends on national laws and remedies of state parties. The ICESCR provides that the state parties are obligated to make reports on measures taken to comply with the convention.<sup>51</sup> The council may also transmit the report to the Commission on Human Rights for study and general recommendation.<sup>52</sup>

Under the ESC committee's report submitted by Bangladesh regarding enforcing this covenant, the committee has shown concern over various matters and made recommendations. Regarding the right to 'just and favourable conditions of work', the committee is concerned about- No declared uniform national minimum wage; existing minimum wages being limited in coverage that is below subsistence level, the gender pay gap reaching 40%, abuse, exploitation, and poor working conditions; limited scope of the Labour law of Bangladesh; lack of labour complaint procedures, etc.<sup>53</sup>

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<sup>47</sup> Ibid, Article 7(b), (c)

<sup>48</sup> Ibid, Article 7(d)

<sup>49</sup> OHCHR, "Fact Sheet No. 16 (Rev. 1): The Committee on Economic, Social and Cultural Rights (Archive)" (01 July 1991) A/CONF. 157/24 <<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet16rev.1en.pdf>>

<sup>50</sup> Ibid

<sup>51</sup> ICESCR, (n 43), Article 16(1)

<sup>52</sup> Ibid, Article 19

<sup>53</sup> Committee on Economic, Social and Cultural Rights, "Concluding Observations on the Initial Report of Bangladesh" (18 April 2018) E/C.12/BGD/CO/1 p 2, p 5-6 <<https://digitallibrary.un.org/record/1484090?ln=en>>

### 3.1.4 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

ICCPR is one of the twin documents enshrined under the UDHR. States parties are obligated to ensure effective remedies for violation of freedom or rights recognized under this covenant<sup>54</sup>, determination of rights by judicial authorities as a remedy<sup>55</sup>, and enforcement of the remedies granted under competent authority<sup>56</sup>. It guarantees the right to life, which is to be protected by law.<sup>57</sup> The right to life entitles a person to a life with dignity; thus, it should not be interpreted narrowly.<sup>58</sup> Forced or compulsory labour is prohibited under this covenant.<sup>59</sup> But there are some exceptions - service during emergencies or calamities threatening life<sup>60</sup> and service that falls under civil obligations<sup>61</sup>. State parties cannot take legislative actions that may prejudice any right under the International Labour Organization Convention 1948.<sup>62</sup>

### 3.1.5 THE HUMAN RIGHTS COMMITTEE (HRC)

The ICCPR provides that there shall be a human rights committee under it.<sup>63</sup> The committee has four functions. The first is to study reports submitted by state parties of ICCPR on measures taken to give effect to the covenant.<sup>64</sup> The second is to elaborate general comments to assist the state parties.<sup>65</sup> The committee may transmit the report to the Economic and Social Council.<sup>66</sup> The

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<sup>54</sup> International Covenant on Civil and Political Rights (ICCPR) (23 March 1976) 999 UNTS 171, Article 2(3)(a)

<sup>55</sup> Ibid, Article 2(3)(b)

<sup>56</sup> Ibid, Article 2(3)(c)

<sup>57</sup> Ibid, Article 6(1)

<sup>58</sup> OHCHR, “General Comment No. 36 - Article 6: Right to Life” (3 September 2019) CCPR/C/GC/36 <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-36-article-6-right-life>> p1

<sup>59</sup> ICCPR (n 54), Article 8(3)(a)

<sup>60</sup> Ibid, Article 8(3)(c)(III)

<sup>61</sup> Ibid, Article 8(3)(c)(IV)

<sup>62</sup> Ibid, Article 22(3)

<sup>63</sup> Ibid, Article 28(1)

<sup>64</sup> Ibid, Article 40(1)

<sup>65</sup> Ibid, Article 40(4)

third is to receive and consider communications regarding any state not fulfilling the obligations under this covenant.<sup>67</sup> This communication is also known as individual complaints.<sup>68</sup> The last function is to deal with complaints made by states against other states regarding not implementing the covenant.<sup>69</sup> The committee may deal with such communications only after exploring all available domestic remedies.<sup>70</sup> The committee can only exercise this power when recognized by a state party to deal with such by a declaration.<sup>71</sup> The HRC committee is concerned that Bangladesh does not have adequate enforcement of rights under the ICCPR and that the cases lack information on which the domestic courts are upholding the rights under this covenant.<sup>72</sup>

### 3.1.6 INTERNATIONAL LABOUR ORGANIZATION (ILO)

The International Labour Organization is an agency of the UN that originates from the Treaty of Versailles.<sup>73</sup> The ILO conventions have the status of treaty-creating obligation on ratifying countries. Bangladesh, being a ratifying country, also has such an obligation.

The ILO has developed a tool for classifying all jobs and duties using the "International Standard Classification of Occupations 08" (ISCO-08) tool.<sup>74</sup> It belongs to the international family of economic and social classifications. Medical practitioners fall under the sub-major group 'health professionals' of the second major group 'Professionals' among ten major groups by the ISCO-08.

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<sup>66</sup> Ibid, Article 40(4)

<sup>67</sup> Ibid, Article 41 (1)

<sup>68</sup> OHCHR, "Fact Sheet No. 15 (Rev. 1): Civil and Political Rights: The Human Rights Committee" (01 May 2005) <<https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-15-rev-1-civil-and-political-rights-human-rights-committee>>

<sup>69</sup> ICCPR (n 54), Article 41(1) (a)

<sup>70</sup> Ibid, Article 41(1) (c)

<sup>71</sup> Ibid, Article 41 (1)

<sup>72</sup> Fact Sheet No. 15(Rev. 1) (n 68)

<sup>73</sup> "History of the ILO" <<https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>> accessed 7 September 2023

<sup>74</sup> ILO, "ISCO International Standard Classification of Occupations" <<https://www.ilo.org/public/english/bureau/stat/isco/index.htm>>

<sup>75</sup> Therefore, Medical practitioners are the subject of ILO conventions unless otherwise provided. Internationally, the ILO works for medical practitioners, although they may initially seem different professionals.

### **3.1.7 EQUAL REMUNERATION CONVENTION, 1951 (NO. 100)**

This convention has defined the term remuneration. Remuneration is defined as basic salary or minimum wage and additional wages payable by employer to worker arising out of employment<sup>76</sup>. Equal remuneration has been defined as rates of pay established without any discrimination based on gender for the amount of equal work.<sup>77</sup> States may apply this principle of equal remuneration by incorporating legally established or recognized machinery into national laws to determine wages and collective agreements between employers and workers.

### **3.1.8 CONVENTION CONCERNING THE ABOLITION OF FORCED LABOUR, 1957(NO. 105)**

It is obligatory for ratifying parties to suppress and not use forced or compulsory labour.<sup>78</sup> Ratifying states also must take effective measures that secure the immediate and complete abolition of such labour.<sup>79</sup> Forced labour still exists in Bangladesh in practice. Although Bangladesh has tried to abolish forced labour, modern slavery is not recognized under any law. Thus, medical practitioners are often forced to work under the mask of modern slavery.

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<sup>75</sup>Ibid

<sup>76</sup> International Labour Organization (ILO), Equal Remuneration Convention, 1951(No. 100) (23 May 1953) 165 UNTS 303, Article 1(a)

<sup>77</sup> Ibid, Article 1(b)

<sup>78</sup> International Labour Organization (ILO), Convention Concerning the Abolition of Forced Labour, 1957 (No. 105) (17 January 1959) 320 UNTS 291, Article 1

<sup>79</sup> Ibid, Article 2

### **3.1.9 DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK**

All Members of ILO have an obligation that arises from the very fact of membership to uphold the fundamental rights that are the subject of labour conventions, and one of them is 'the elimination of all forms of forced or compulsory labour',<sup>80</sup>

### **3.2 RELATION OF FORCED OR COMPULSORY LABOUR TO RIGHT TO REST AND REASONABLE PAY**

Service exacted under the threat of penalty from any person involuntarily falls under the term forced or compulsory labour.<sup>81</sup> Workers are subjected to long work hours without adequate breaks or compensation. This exploitation violates their fundamental human rights and perpetuates a cycle of poverty and inequality. Determining the state's legal obligation can determine whether medical practitioners are subjected to indirect forced labour disguised under long working hours with inadequate pay.

### **3.3 INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS WORKING FOR HUMAN RIGHTS WORLDWIDE**

Apart from the ICESCR and ICCPR committees, Human Rights Watch (HRW) and Amnesty International are two major international non-governmental organizations that work to ensure human rights worldwide, including Bangladesh. Both NGOs publish a yearly report on Bangladesh regarding violations of human rights. HRW investigates and reports on abuses and directs their advocacy to governments, armed groups, businesses etc. So that such are pressured to change or enforce their laws, policies, and practices.<sup>82</sup> Amnesty International has its international statute.<sup>83</sup> As an organization, it researches and campaigns on human rights globally.

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<sup>80</sup> International Labour Organization (ILO), ILO Declaration on Fundamental Principles and Rights at Work, (June 1988), Article 2(b)

<sup>81</sup> International Labour Organization (ILO), Forced Labour Convention, C29 (28 June 1930)

<sup>82</sup> "About Us" (Human Rights Watch, 7 February 2023) <<https://www.hrw.org/about/about-us>> accessed August 23, 2023

<sup>83</sup> Amnesty International, "Statute of Amnesty International" (September 1, 2019) POL 20/1045/2019 <<https://www.amnesty.org/en/documents/pol20/1045/2019/en/>>



The above discussion shows that Bangladesh is obliged to ensure the right to rest and reasonable pay under international law. A covenant-ratifying party must uphold the covenant by incorporating it into its domestic laws. A legal obligation of a state only arises under its domestic laws. Hence, the next chapter of this paper discusses whether Bangladesh has incorporated the right to rest and reasonable pay under its domestic law.

## CHAPTER IV

### NATIONAL LEGISLATION AND POLICIES REGARDING THE RIGHT TO REST AND REASONABLE PAY FOR MEDICAL PRACTITIONERS IN BANGLADESH

This chapter will discuss the incorporation of the right to rest and reasonable pay under the domestic laws of Bangladesh. Bangladesh became a member of the UN on 17 September 1974, after gaining independence in 1971. Bangladesh has made tremendous efforts to uphold human rights and promote social justice globally. As discussed earlier, covenants are not legally binding on states unless they have been incorporated under the domestic law of those states. So, it is necessary to check whether Bangladesh has incorporated the right to rest and reasonable pay under its domestic law, which creates a legal obligation upon Bangladesh to uphold these rights. It is also necessary to determine whether such laws protect medical practitioners.

#### 4.1 THE CONSTITUTION OF THE PEOPLES REPUBLIC OF BANGLADESH

The Constitution is the supreme mandate of the country.<sup>84</sup> The Constitution of Bangladesh is heavily influenced by the UDHR, ICCPR, and the ICESCR.<sup>85</sup> The court may look into these covenants to aid in interpreting part III of the Constitution.<sup>86</sup> Where any law is inconsistent with fundamental rights under the Constitution, it is void.<sup>87</sup> Fundamental rights cannot be taken away by any law when it is guaranteed under the Constitution.<sup>88</sup>

The Constitution's preamble provides that securing fundamental human rights is a fundamental aim of the state that is to be realized through a democratic process.<sup>89</sup> The same has been guaranteed again in Chapter II of the Constitution. Fundamental human rights, and respect for the dignity and worth of a human person have also been guaranteed by the Constitution.<sup>90</sup>

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<sup>84</sup> The Constitution of the people's Republic of Bangladesh 1971, Article 7(2)

<sup>85</sup> Muhammad Ekramul Haque (n 12) p 14-15

<sup>86</sup> Hussain Muhammad Ershad Vs. Bangladesh and Others, Writ Petition No. 3159 of 2000 (AD)

<sup>87</sup> The Constitution of the people's Republic of Bangladesh, (n 84), Article 26 (1)

<sup>88</sup> Jibendra Kishore v Province of East Pakistan 9 DLR 21(SC)

<sup>89</sup> Preamble of the Constitution of the People's Republic of Bangladesh. para 4

<sup>90</sup> The Constitution of the people's Republic of Bangladesh, (n 84), Article 11

However, Chapter II (Articles 15-25) is not judicially enforceable<sup>91</sup>. It creates an excellent bar for properly enforcing these rights. The state commits to promoting international principles that are not contrary to the principles of the UN charter and having respect for international law.<sup>92</sup> When Bangladesh ratifies any international convention, it becomes bound to give effect to it by incorporating it into domestic law under the Constitution. Since laws inconsistent with the Constitution cannot be enacted<sup>93</sup>, the Constitution must recognize the principles of convention that are ratified.<sup>94</sup> The Constitution of Bangladesh recognizes the right to rest and reasonable pay as fundamental principles of state policy, not as fundamental rights. Not recognizing these rights as fundamental rights violates the obligation to uphold international instruments ratified by Bangladesh.

The Constitution has recognized working as a right<sup>95</sup> and has prohibited all forms of forced labour<sup>96</sup>, but compulsory labour required by any law for public purposes<sup>97</sup> is an exception. Being compelled to work overtime is not forced labour if such a rule is within the employment contract.<sup>98</sup> Fundamental principles of state policy under the Constitution include- Ensuring the right to work at a reasonable wage in accordance with the quantity and quality of the work<sup>99</sup>; the right to reasonable rest, recreation, and leisure<sup>100</sup>; Ensuring equal opportunity for all citizens<sup>101</sup>; adopting effective measures to ensure social and economic inequality<sup>102</sup> and to achieve a uniform

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<sup>91</sup> Ibid, Article 8(2)

<sup>92</sup> Ibid, Article 25

<sup>93</sup> Ibid, Article 26 (2)

<sup>94</sup> Vienna Convention on the Law of Treaties (23 May 1969) 1155 UNTS 331, article 27

<sup>95</sup> The Constitution of the people's Republic of Bangladesh, (n 84), Article 20 (1)

<sup>96</sup> Ibid. Article 34(1)

<sup>97</sup> Ibid, Article 34(2)(b)

<sup>98</sup> *Dalmia Cement Ltd v Dalmia Cement Workers Union* AIR (1967) 209 (SC)

<sup>99</sup> The Constitution of the people's Republic of Bangladesh, (n 84), Article 15(b)

<sup>100</sup> Ibid. Article 15(c)

<sup>101</sup> Ibid, Article 19 (1)

<sup>102</sup> Ibid, Article 19 (2)

level of economic development<sup>103</sup>. These principles are related to the right to rest and reasonable pay. The abovementioned rights fall under social and economic rights, which are extensively connected with the right to life guaranteed under the Constitution.<sup>104</sup> The right to life is a fundamental right. It is judicially enforceable but insufficient to ensure the right to rest and reasonable pay for medical practitioners. The right to life is the basic structure of human rights.<sup>105</sup> Courts are widely using the right to life to enforce socio-economic rights.<sup>106</sup> In Bangladesh, the judiciary has done so in many cases.<sup>107</sup> Rights guaranteed under the Constitution are to be protected by law<sup>108</sup>. All citizens have the right to protection by law because all citizens are equal before the law.<sup>109</sup>

#### 4.2 THE LABOUR ACT, 2006

The labour law of Bangladesh applies only to specific professional areas. It does not apply to offices of or under the government of Bangladesh.<sup>110</sup> This Act is relevant for medical practitioners of both the public and private sectors because labour rights are the minimum standard of job conditions. Labour rights are individual human rights, even though they may be conditional upon particular status.<sup>111</sup>

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<sup>103</sup> Ibid, Article 19 (3)

<sup>104</sup> Ibid, Article 32; see also OHCHR, “General Comment No. 36 - Article 6: Right to Life” (3 September 2019) CCPR/C/GC/36 <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-36-article-6-right-life>> p 1

<sup>105</sup> Jashim Ali Chowdhury M, *An Introduction to the Constitutional Law of Bangladesh* (4th edn, Book Zone Publications 2021), p 192

<sup>106</sup> Ibid

<sup>107</sup> Dr. Mohiuddin Farooq v Bangladesh and others 48 DLR (1996) 438, para 20; Ain o Salish Kendro & ors v Government of Bangladesh 4 MLR 358 (HC), para 17; Chairman NBR v Adv Zulhas Uddin Ahmed 15 MLR 457 (AD), para 5

<sup>108</sup> The Constitution of the people’s Republic of Bangladesh, (n 84), Article 31 (1)

<sup>109</sup> Ibid, Article 27

<sup>110</sup> The Labour Act, 2006, Section 1(4)(a)

<sup>111</sup> Mantouvalou Virginia, “ARE LABOUR RIGHTS HUMAN RIGHTS?” (2012) 3(2) European Labour Law Journal 151-172

A person's nature of job decides whether he is a worker.<sup>112</sup> Because mere designation is insufficient to indicate whether a person is a worker or an employer, seeking remedies under the Labour Court requires a person to be a worker under this Act.<sup>113</sup> The labour law does not recognize medical practitioners as workers under the Act. However, the ILO acknowledges medical practitioners as workers identified through the ISCO-08 tool.<sup>114</sup>

In the previous chapter, various labour conventions have been discussed that are ratified by Bangladesh as a party. The Labour Act has its definitions of terms that determine the laws. How the right to rest arises under the labour code can be answered by not fulfilling the requirements of the provisions. Work hours under the labour code exclude any break for lunch or rest.<sup>115</sup> Working hours for adults in an establishment is eight hours per day.<sup>116</sup> Per week, it amounts to forty-eight hours.<sup>117</sup> Total working hours, however, cannot exceed sixty hours per week and yearly an average of fifty-six hours per week.<sup>118</sup> Women cannot work between 10 PM and 6 AM without consent.<sup>119</sup> Where working hours are shifting basis, i.e., periodically,<sup>120</sup> shifts extending beyond midnight allow a worker to have a holiday of twenty-four consecutive hours.<sup>121</sup>

In the case of the right to reasonable pay, the labour code follows the principle of equal wages for work of equal nature or value and without any discrimination regarding the gender of the

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<sup>112</sup> Mujibur Rahman Sarkar v Labour Court, Khulna 31 DLR (1981) 301

<sup>113</sup> Senior manager, Messers Dost textile Mills Ltd. and another vs Sudansu Bikash Nath, 8 BLD 66 (AD); Tozammel Hossain Akonda vs Deputy General Manager, Rupali bank, 5 BLC (2000) 114 (AD); A.K.M. Ehsanul Kabir vs M/s Adamjee Jute Mills and others 6 MLR (2001) 221 (AD)

<sup>114</sup> ISCO (n 69)

<sup>115</sup> The Labour Act 2006, (n 105), Section 2(IV)

<sup>116</sup> Ibid, Section 100

<sup>117</sup> Ibid, Section 102(1)

<sup>118</sup> Ibid, Section 102(2)

<sup>119</sup> Ibid, Section 109

<sup>120</sup> Ibid, Section 2(XXIX)

<sup>121</sup> Ibid, section 106

worker.<sup>122</sup> The definition of wages under this Act includes all remuneration payable to a worker regarding his employment, additional remuneration be so payable<sup>123</sup>, and remuneration payable for overtime *inter alia*<sup>124</sup>. However, no establishment may be any less favourable rule to any worker other than the provisions provided here.<sup>125</sup>

The provisions regarding working hours and wages are the minimum standard. Even though it does not include medical practitioners, the minimum laid down by this code is not ensured for medical practitioners. Medical practitioners work over sixty hours a week and are not paid enough. It is a clear violation of minimum labour standards.

The minimum rate of wages is to be declared by the government through a recommendation by the wages board established under section 139 of the code.<sup>126</sup> The minimum rates of wages declared under this section shall be final and cannot be questioned in any court or before any authority.<sup>127</sup> The wages board will consider the cost and standard of living, the economic and social condition of the country, etc., before making its recommendations.<sup>128</sup> No worker shall be paid wages at a rate lower than the rate declared by the government by any employer.<sup>129</sup> However, Bangladesh does not have a minimum wage standard that applies to all spheres as the law requires. However, the rate declared by the government does not affect the right to receive wages at a higher rate.<sup>130</sup> The provision regarding working hours and rate of wages was once again confirmed in the Bangladesh Labour Rules, 2015, to conform with the fundamental rights

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<sup>122</sup> Ibid, section 345

<sup>123</sup> Ibid, section (XLV)

<sup>124</sup> Ibid, section 120(b)

<sup>125</sup> Ibid, Section 3(1)

<sup>126</sup> Ibid, Section 140(1)

<sup>127</sup> Ibid, Section 140(7)

<sup>128</sup> Ibid, Section 141

<sup>129</sup> Ibid, Section 149(1)

<sup>130</sup> Ibid, section 149(2)

at work as enshrined in the ICESCR, international labour standards in various International Labor conventions.<sup>131</sup>

#### **4.3 BANGLADESH MEDICAL AND DENTAL COUNCIL ACT,2010**

This Act provides that there shall be a council named Bangladesh Medical and Dental Council (BM&DC).<sup>132</sup> This council shall have the power to make policies relating to professional behaviour for acknowledged medical practitioners<sup>133</sup>. However, no such recognized policy exists for ensuring reasonable payment. As a result, medical practitioners are dependent on private practice to earn a livelihood. The government, council, or any council employee is exempted from civil and criminal liability if any person is injured due to any act done in good faith under this Act.<sup>134</sup> This Act also empowers the council to make any rules and regulations to fulfil any purpose of this Act.<sup>135</sup> The right to rest is related to the reasonable limitation of working hours. However, no law or policy exists regarding private practice or medical practitioners employed in private hospitals. Even though private practice is voluntary, medical practitioners would not work long hours without an effective policy.

#### **4.4 CODE OF PROFESSIONAL CONDUCT ETIQUETTE AND ETHICS BY BANGLADESH MEDICAL AND DENTAL COUNCIL**

This code of conduct, etiquette, and ethics is enumerated under the Bangladesh Medical and Dental Council Act, 2010.<sup>136</sup> According to this, maintaining a doctor's professional behaviour includes taking steps to improve his quality of work, and it is essential for good patient care.<sup>137</sup>

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<sup>131</sup> Khair Sumaiya, “State Practice of Asian Countries in International Law: Bangladesh” (2015) 21 Asian Yearbook of International Law 260-275

<sup>132</sup> Bangladesh Medical and dental Council Act,2010, Section 3

<sup>133</sup> Ibid, section 5(22)

<sup>134</sup> Ibid, section 34

<sup>135</sup> Ibid, Section 36 and 37

<sup>136</sup> Ibid, section 5(22)

<sup>137</sup> Bangladesh Medical and Dental Council, “Code of Professional Conduct Etiquette and Ethics” Ch 2, para 2.1

#### 4.5 LAWS REGULATING MEDICAL PRACTITIONERS IN THE PUBLIC SECTOR

In Bangladesh, Medical practitioners in the public sector are appointed through the Bangladesh Civil Service examination.<sup>138</sup> The government declares the pay scale for public servants.<sup>139</sup> Medical practitioners in the health cadre receive a salary of ninth grade. The latest Pay Scale declared by the government was in 2015.<sup>140</sup> According to this, medical practitioners receive a basic salary of 22000 taka from the first appointment.<sup>141</sup> The current pay scale declared by the government is not favourable for medical practitioners. The pay is insufficient and violates the principle of equal remuneration for equal work. It allows the exploitation of medical practitioners.

The government has one uniform law for all public servants, including medical practitioners. In most private and public hospitals, the duty hours of medical practitioners are shift-based. There is no separate law for medical practitioners even though they do not have a nine-to-five job like other public servants. Any issue regarding a public servant's employment conditions lies at the administrative tribunal's disposal. Medical practitioners cannot turn to the court for remedies where the law itself does not provide any provisions for medical practitioners.

#### 4.6 NATIONAL HUMAN RIGHTS COMMISSION BANGLADESH (NHRC)

The National Human Rights Commission in Bangladesh is a commission that works for human rights recognized under the Constitution of Bangladesh.<sup>142</sup> The power of this commission is limited.<sup>143</sup> It has the power to review the safeguard of human rights provided by the Constitution,<sup>144</sup> take complaints and investigate them,<sup>145</sup> give the government recommendations

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<sup>138</sup> Bangladesh Civil Services (Reorganisation) Order, 1980, Section 2

<sup>139</sup> Services (Reorganisation and Conditions) Act, 1975, section 5

<sup>140</sup> Employment (Pay and Allowances) Order, 2015 (n 29)

<sup>141</sup> Ibid

<sup>142</sup> National Human Rights Commissions Act, 2009. Section 3(1)

<sup>143</sup> Committee on Economic, Social and Cultural Rights (n 49)

<sup>144</sup> National Human Rights Commissions Act, 2009, (n 142) Section 12 (d)

<sup>145</sup> Ibid, Section 12 (1) (a), (b)



regarding human rights,<sup>146</sup> and mitigate human rights violations through mediation and negotiation.<sup>147</sup> While investigating any complaint, it wields equal power as a civil court.<sup>148</sup> However, the commission cannot exercise its powers regarding any issue arising under the employment conditions of any public servant if such issues come under the jurisdiction of the Administrative Tribunal.<sup>149</sup> However, the door is open for medical practitioners in the private sector.

It is evident now that Bangladesh has incorporated the right to rest and reasonable pay under domestic law. As the Constitution is the supreme mandate of the country, Bangladesh cannot avert its liability to uphold these rights even though the right to rest is not judicially enforceable.<sup>150</sup> Strict legal liability for these rights does occur under the labour law; however, the labour law excludes medical practitioners in both the private and public sectors. But, as labour law is the minimum requirement, it still applies to medical practitioners, such as setting the standards.

#### **4.7 MEDICAL PRACTITIONERS IN BANGLADESH AND THE CURRENT SCENARIO REGARDING OBSERVATION OF THE RIGHT TO REST AND REASONABLE PAY**

A doctor's job is very stressful, and high stress affects a professional's physical and mental well-being.<sup>151</sup> Medical practitioners in Bangladesh must work to the point of suffering from burnout syndrome<sup>152</sup>, anxiety, and depression<sup>153</sup>, which is common among healthcare workers due to overworking.<sup>154</sup> Bangladesh has one registered doctor for every 1847 people, combining private

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<sup>146</sup> Ibid, Section 12 (1) (m)

<sup>147</sup> Ibid, Section 14

<sup>148</sup> Ibid, Section 16

<sup>149</sup> Ibid, Section 12 (2) (C)

<sup>150</sup> The Constitution of The People's Republic of Bangladesh, (n 84) Article 8(2)

<sup>151</sup> Munir, Rahman and Nosib (no 9)

<sup>152</sup> Saha DK and others, (n 31)

<sup>153</sup> Hossain MdR and others, (n 7)

<sup>154</sup> Prasad Bhairav. Thakur Charu, "Chronic Overworking: Cause Extremely Negative Impact on Health and Quality of Life" (2019) 3(1) International Journal of Advanced Microbiology and Health Research 11-15

and public sectors. A recent study shows 21.3% of medical practitioners suffer from high burnout.<sup>155</sup> Apart from being overworked, underpayment has led to protests. The percentage of sanctioned posts filled by physicians is low in the union-level facilities (15%) and district and upazila facilities (53%).<sup>156</sup> The scarcity of medical practitioners shows how much workload they have to carry.<sup>157</sup>

#### **4.8 BREACH OF INTERNATIONAL OBLIGATIONS FOR THE RIGHT TO REST AND REASONABLE PAY IN BANGLADESH**

Bangladesh has incorporated the right to rest and reasonable pay under the Constitution, but the labour law or any other law concerning these issues has no proper provisions. The labour law does not directly recognize medical practitioners in any sector as workers. The Bangladesh Medical and Dental Council Act has no rules or regulations that may protect the right to rest and reasonable pay for medical practitioners in the private sector. The government has one uniform Act for all public servants, none specifically for medical practitioners. Under international law and in our Constitution, forced labour is prohibited, but the Constitution makes compulsory labour an exception for public purposes. Such an exception is violative of international obligations.

As a third-world country, Bangladesh lacks resources and is far from thoroughly implementing international obligations and domestic legislation. It is common for people to suffer from injustice. The laws are there, but their proper implementation is still miles away. Bangladesh must amend the laws and ensure their proper implementation. The findings of this paper and recommendations based on the findings as to whether the right to rest and reasonable pay of medical practitioners are inadequately incorporated in the legal system of Bangladesh or not shall be discussed in the next chapter.

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<sup>155</sup> Saha DK and others, (n 31)

<sup>156</sup> Naher N and others (n 3)

<sup>157</sup> Nuruzzaman M and others (n 5)

## CHAPTER V

### RECOMMENDATION AND CONCLUSION

The previous two chapters discuss the international and national legal status of the right to rest and reasonable pay for medical practitioners. As this paper focuses on whether the said rights are adequately incorporated into the legal system of Bangladesh, this chapter will discuss the findings of this paper. Apart from the findings, a recommendation shall be made in this chapter. This chapter is the concluding chapter of this paper.

#### 5.1 FINDINGS OF THE STUDY

Medical practitioners are collapsing physically and mentally due to extreme workloads. Protesting for not getting equal pay is worthy of their dignity in society in exchange for equal work.

1. The ESCR and the HRC have shown concern that Bangladesh does not enforce rights adequately under the ICESCR and the ICCPR. The committee should consider violations due to constraints such as lack of resources, internal and external factors etc.<sup>158</sup> However, the liability to uphold the covenants should not be relieved.<sup>159</sup>
2. The Constitution of Bangladesh recognizes the right to rest and reasonable pay as fundamental principles of state policy, not as fundamental rights. As fundamental principles are not judicially enforceable, it creates a great bar for properly enforcing these rights.
3. The ILO recognized medical practitioners as workers and thus included medical practitioners under all labour conventions.
4. The labour law of Bangladesh does not recognize medical practitioners as workers. Bangladesh does not have a minimum wage standard that applies to all spheres as the labour law requires.
5. Medical practitioners work over sixty hours a week and are not paid enough. It is a clear violation of minimum labour standards.

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<sup>158</sup> De Schutter O, *International Human Rights Law* (Cambridge University Press 2019) p 570

<sup>159</sup> Ibid

6. Forced labour still exists in Bangladesh under the mask of modern slavery. Modern slavery is not recognized under any law.
7. The BM&DC council has no recognized policy for ensuring reasonable payment or private practice.
8. The government has one uniform law for all public servants, including medical practitioners in the public sector.
9. The pay scale declared by the government is not favourable for medical practitioners.
10. The pay is insufficient and violates the principle of equal remuneration for equal work.

The non-conformity of international and national obligations shows that Bangladesh's legal system does not adequately incorporate doctor's right to rest and reasonable pay.

## **5.2 RECOMMENDATIONS BASED ON FINDINGS**

Medical practitioners are valuable assets to the country and noble professionals. Adequate incorporation of the right to rest and reasonable pay in the legal system of Bangladesh may be ensured by following these recommendations-

1. **Amendment of the Constitution:** Rights constituting the right to rest, and reasonable pay enshrined as fundamental principles of state policy must be recognized as fundamental rights under the Constitution. It will allow these rights to be judicially enforceable and increase the state's liability to ensure such rights.
2. **Amendment of the Labour law:** The labour law needs to be amended and incorporate the following-
  - i) Recognize medical practitioners as workers.
  - ii) Establish uniform minimum wage standards. The pay rate must ensure a life worth of dignity for workers and their families.
  - iii) Reduce the gender pay gap and incorporate the 'equal pay for work of equal value' principle.

- iv) Expand the scope of labour law to recognize all workplaces, including the informal economy.<sup>160</sup>
  - v) Set up independent and effective complaint procedures accessible to all.<sup>161</sup>
3. **Adoption of Policies by the BM&DC Council:** The BM&DC Council must enact policies and ensure proper enforcement. The policy should include the following-
- i) Rules regarding the private practice of medical practitioners ensure the limitation of working hours considering all employment, whether part-time or whole.
  - ii) Ensure the restriction of employment contracts that require working on weekends or holidays.
  - iii) To ensure that medical practitioners enjoy a day off in a week.
  - iv) Ensure the application of policy by hospitals.
4. **Enactment of a separate law for medical practitioners in the public sector:** The government should either enact a new law or amend the existing one with separate provisions for medical practitioners. The employment terms and conditions, determination of wages, working hours, and holidays should be specified consistent with the Constitution.
5. **Legal recognition of modern slavery:** Bangladesh is one of the top ten countries in the world in terms of people living under modern slavery.<sup>162</sup> Forced labour is a form of modern slavery.<sup>163</sup> Bangladesh's laws have loopholes that result in people being victimized by modern slavery. Medical practitioners are no exception. The laws must incorporate provisions that prevent the victimization of modern slavery.

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<sup>160</sup>Committee on Economic, Social and Cultural Rights (n 49)

<sup>161</sup> Ibid

<sup>162</sup> “Modern Slavery in Bangladesh | Walk Free” (Walk Free) <<https://www.walkfree.org/global-slavery-index/country%20studies/bangladesh/#:~:text=Bangladesh%20is%20among%20countries%20with,the%20top%2010%20countries%20globally>> accessed September 1, 2023

<sup>163</sup> Ibid

6. **Bring private practice of medical practitioners within the jurisdiction of law:** As there is no separate law for medical practitioners working in the private sector, it is necessary to bring them under the law to ensure their right to rest and reasonable pay. Labour law includes other professions, which may result in grey areas of law despite amending it. Hence, a separate law is recommended for medical practitioners engaged in private practice.
7. **Recognize the Human Rights Committee's (HRC) power to take individual complaints:** Bangladesh should recognize the right of the HRC committee to oversee individual complaints regarding human rights violations. It will allow the citizens to seek remedy in case of violation, as the national system often fails to do so.
8. **Ensure submitting reports to the Human Rights Committee (HRC) and Economic and Social Committee (ESC committee) regularly:** The state parties to the ICCPR and the ICESCR are obligated to send reports to the committees established under respective covenants. However, Bangladesh has always delayed sending reports. Regular and proper reports will help these committees assess the situation in Bangladesh and make appropriate recommendations to the state that will help ensure and prevent human rights violations.
9. **Empowering the National Human Rights Commission (NHRC):** The government should support the NHRC with enough budget, human resources, and technical support. The NHRC's power should be enhanced so that it can have more authority and scope to solve issues of violation of human rights.
10. **Create awareness:** Finally, creating social awareness to protect human rights is necessary. Awareness may be created by intensifying the effort to obliterate abuse and exploitation in the workplace. It can also be spread by ensuring favourable working conditions in workplaces. The government should increase the transparency of labour inspection mechanisms and strengthen them with enhanced accountability.
11. **Ensure proper enforcement of Laws and policies:** In Bangladesh, laws exist, but the adequate enforcement of such laws results in violation of legal rights. Therefore, enacting or amending laws is not enough to ensure doctor's right to rest and reasonable pay. Ensuring the proper enforcement of such laws is necessary to prevent the violation of said rights.

### 5.3 CONCLUSION

People in Bangladesh often misunderstand Medical Practitioners.<sup>164</sup> Hence, lack of awareness and such negative views lead to the deprivation of the right to rest and reasonable pay. The right to rest and reasonable pay are as crucial as the right to life as fundamental human rights. Specialist medical practitioners are known to earn more, but the path from internship to becoming a specialist is quite rough for such deprivation. Such negligence has resulted in the exploitation of medical practitioners under the mask of modern slavery. Bangladesh has an international obligation to uphold these rights. But the Constitution itself recognizes these rights as fundamental state policies that are not judicially enforceable. The labour law is lacking, and the uniform laws for public servants, including medical practitioners in the public sector, are not favourable for medical practitioners at all. The pay is low for the amount of work and effort put in. The lack of laws allows hospitals and other institutions to exert more labour without adequate pay. The state is obligated to protect medical practitioners from this. If medical practitioners are not appropriately paid and not given the chance to rest, their collapse may eventually lead to the fall of the state's citizens. The state must fret about making the legislation favourable for medical practitioners. Therefore, the state must protect the right to rest and reasonable pay of medical practitioners by adequately incorporating these rights under domestic laws.

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<sup>164</sup> Yasir Arafat S M, "Doctor Patient Relationship: An Untouched Issue in Bangladesh" (2016) 1(1) International Journal of Psychiatry 1-2

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