



Sonargaon University

Research Monograph on

“A Critical Analysis on Fundamental Rights of Bangladesh”

This research paper is submitted in partial fulfillment of the requirements of the degree of LLB (Honors) under Sonargaon University.

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Preface

I am grateful to benevolent almighty, who has been given me enough ability to let me complete this Research Monograph successfully. I would like to acknowledge my gratitude to Sharmin Jahan Runa, Honorable Research Supervisor, for permitting me to take my Research Monograph under her. I also like to express my gratitude to her for her constructive suggestion regarding this Research Monograph. Lastly I express my thanks to authors, whose writing I have quoted in this Research Monograph.

Signature

Certification by the Research Advisor

This is to certify that the thesis titled “**A Critical Analysis on Fundamental Rights of Bangladesh**” prepared and submitted by Sharmin Akther keya (ID No: LLB1801013033) in fulfillment of the requirements for the award of the Graduate Degree in Law from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted anywhere earlier, to the best of my knowledge.

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Declaration

This is **Sharmin Akther keya**, a student of LLB program of Department of Law of Sonargaon University, holding ID No: LLB1801013033 do hereby declare that the research monograph titled,

“A Critical Analysis on Fundamental Rights of Bangladesh”

is a original work. The assigned work has done by me for partial requirement of my LLB degree, as a part of academic curriculum .I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text. I also declare that the presented work do not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

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Letter of Transmittal

To,

Sharmin Jahan Runa

Assistant Professor,

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Subject: Submission of research Monograph titled “**A Critical Analysis on Fundamental Rights of Bangladesh.**”

Dear Madam,

It is really a great pleasure for me to submit the research monograph on the topic “**A Critical Analysis on Fundamental Rights of Bangladesh.**”

In accomplishing this Dissertation, I have tried my level best to keep the required standard. I hope, this dissertation will fulfill your expectation and make you happy. I hope that you would be kind enough to go through this dissertation for evaluation.

I am always available for any clarification of any part of this dissertation at your convenience.

Thanking you

Sharmin Akther keya

ID No: LLB1801013033

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CHAPTER 1

INTRODUCTORY

1.1 Abstract:

Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Bangladesh. The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace. To prevent abuses that threaten the entire civilization, to create happiness for all people, and to prevent great unjustified suffering, all fundamental rights are granted to all people in every civilized society. Modern judiciary is regarded as an excellent product of civilization to put the concept of justice to work in the midst of divergent forces with conflicting class or individual interests. Such conflicts make it difficult to bring about equilibrium in the society for a peaceful and orderly association of citizens for their common good.

1.2 Introduction

A point to be noted is that the process of deciding what rights and liberties are fundamental, indispensable, which ones may be important but not imperative was not begun by the Supreme Court. The process has a long history that can be traced back to the early years of American colonies.¹ Like all the other countries, fundamental rights in Bangladesh is not new, it's existed in the Bangladesh Constitution from the beginning.

1.3 Statements of problems

In Bangladesh The fundamental rights of the people of Bangladesh have been guaranteed in Part III (Article 26-47) of the constitution of Bangladesh. Right to life and personal liberty are the most cherished and pivotal fundamental human rights around which other rights of the individual revolve. Article 31 is the celebrated provision of the Constitution of Bangladesh and occupies a unique place as a fundamental right. It guarantees right to life and personal liberty to citizens and aliens and is enforceable against the State.

¹ Milton R Konvitz, A point to be noted is that the proce Fundamental Rights: History of a Constitutional Doctrines, Transaction Publishers, New Jersey, 2001, P. 8

1.4 Objectives of the study

1. To Analysis amendment possibility of fundamental rights enshrined in the Bangladesh constitution.
2. To evaluate how fundamental rights are effective to ensure citizen's dignity.
3. To go through all the fundamental rights mentioned in the Bangladesh Constitution.
4. To look into the judicial enforcement of fundamental rights.
5. To detect where the problem exist in enforcing fundamental rights.

1.5 Importance of the study

Fundamental Right is called Fundamental because it is most important pride for and wholistic development of personality of the individual. Fundamental Rights protect the liberties and freedom of the citizens against any invasion by the state, and prevent the establishment of authoritarian and dictatorial rule in the country. They are very essential for the all-around development of individuals and the country.

1.6 Limitations of the study

Although the study has reached its aims, there were some unavoidable limitations and shortcomings. First of all, I am an amateur researcher who is not even expert on the field of study; therefore, it was a tough task to assess the objectives perfectly within short time-limit. Secondly, all the data I used in this study is mostly self-reported that is limited by the fact that it rarely can be independently verified. Besides these, I had only a few months for conducting the research. So, such time limitation was also a factor. It is true the study has reached its aims, but there were some unavoidable limitations and shortcomings.

1.7 Conclusion

Fundamental rights are enforceable in a court of law and they create justiciable rights in favour of individuals. And the courts can enforce them against the government. Again, the courts are competent to declare as void any law that is inconsistent with any of the fundamental rights. The directives, on the other hand, are not enforceable in a court of law and they do not create any justiciable rights in favour of individuals. The court cannot compel the government to carry out any of the directives. Again, the courts cannot declare any void, which is otherwise valid, on the ground that it contravenes any of directives principles.

CHAPTER 2

DEFINITION, BEGINNING, AND DEVELOPMENT

2.1 Introduction

“Rights” occupy a significant place in books of Jurisprudence, having many facets and connotations. Briefly speaking, a right is an advantage, benefit or interest conferred upon a person by law, including the common law, statute or the Constitution of the land.² Many have argued that human rights exist in order to protect the basic dignity of human life. Indeed, the United Nations Declaration on Human Rights embodies this goal by declaring that human rights flow from "the inherent dignity of the human person". Strong arguments have been made, especially by western liberals, that human rights must be directed to protecting and promoting human dignity. As Jack Donnelly has written, "We have human rights not to the requisites for health but to those things `needed' for a life of dignity, for a life worthy of a human being, a life that cannot be enjoyed without these rights."³ Before understanding fundamental rights one should have idea about rights and human rights. Rights mean a claim of some interests adverted by an individual or a group of individual which has either moral or legal basis and which is essential for his development in the society. In a sense right not created by law it originates itself as an obvious result of mutual interaction between man and society. Rights are primarily divided in to two categories-moral rights and legal rights. The immutability and permanence of the Fundamental Rights were sought to be established first on the reasoning that these rights are rooted in the doctrine of natural law and were, therefore, natural rights as expressed in the traditional parlance and secondly, on the ground that they have been given a place of permanence by the constitution within its scheme.

² Durga Das Basu, Constitutional Remedies and Writs, Second Edition, Kamal Law House; 2nd edition, 1999, p,3

³ Jack Donnelly, Universal Human Rights in Theory and Practice, Ithaca: Cornell University Press, 1989, p.17.

2.2 Definition of Fundamental Rights

Fundamental rights are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment. These rights are specifically identified in the Constitution, or have been found under Due Process. Laws encroaching on a fundamental right generally must pass strict scrutiny to be upheld as constitutional.⁴ These rights are specifically identified in the Constitution (especially in the Bill of Rights), or have been found under Due Process. Laws encroaching on a fundamental right generally must pass strict scrutiny to be upheld as constitutional.

Even when the Supreme Court finds that something is a fundamental right, the Court may later revoke its standing as a fundamental right. The Court did this with the right to contract. In *Lochner v New York*⁵, the Supreme Court found that the right to make a private contract is a fundamental right. The Court focused on the importance of economic contracts in the context of individual liberty. In *West Coast Hotel v. Parrish*⁶, however, the Court found that there is not a fundamental right to contract: "There is no absolute freedom to do as one wills or to contract as one chooses."

2.3 Origin of fundamental rights: Indian perspective

The first demand for fundamental rights came in the form of the "Constitution of India Bill, in 1895. Also popularly known as the Swaraj Bill 1895, it was written during the emergence of Indian nationalism and increasingly vocal demands by Indians for self-government. It talked about freedom of speech, right to privacy, right to franchise, etc.

The development of such constitutionally guaranteed fundamental human rights in India was inspired by historical examples such as England Bill of Rights (1689), the United States Bill of Rights (approved on 17 September 1787, final ratification on 15 December 1791) and France's Declaration of the Rights of Man (created during the revolution of 1789, and ratified on 26 August 1789).⁷

In 1928, the Nehru Commission composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities, and limit the powers of the government. In

⁴ WEX Legal Dictionary

⁵ 198 U.S. 45 (1905)

⁶ 300 U.S. 379 (1937)

⁷ Tayal, B.B. & Jacob, A. (2005), Indian , World Developments and Civics, Avichal Publishing Company, pg. A-23

1931, the Indian National Congress (the largest Indian political party of the time) adopted resolutions committing itself to the defence of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom.⁸ Committing themselves to socialism in 1936, the Congress leaders took examples from the Constitution of the Soviet Union, which inspired the fundamental duties of citizens as a means of collective patriotic responsibility for national interests and challenges.

2.4 Origin and development: International Perspective

The doctrine of fundamental rights is feature of United States law under which certain human rights that enshrined in the US constitution are given a high degree of judicial deference in conflicts between individual liberty and governmental intrusion. Although many fundamental rights are also more widely considered to be human rights. The classification of a right as fundamental invokes specific legal tests used by courts to determine the carefully contained conditions under which the United States Government and the various state governments may impose limitations on this right. Fundamental rights give the citizens dignity of life in an atmosphere of freedom and justice beyond the man made fetters that had constricted their physical and mental horizons.⁹

The universal Declaration of Human Rights 1948, which states – Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law. Rights and freedoms from the bedrock of democracy. No democracy can function successfully in the absence of some basic freedoms. Again, modern democratic government is a party government. The party winning majority in the election form the government. But coming in to power the government may turn itself into a one violating the basic rights of people and oppressing the opposition.

The aim of having a declaration of fundamental rights in the constitution is to prevent such a possible danger. In order words, they provide a restraint on the power of the government so that it cannot interface with the people's basic rights according to its whims. When rights and freedom are placed the part of the supreme law and the government cannot take them away except by constitution amending process which is always a right one. This is why insertion of a Bill of right in a written constitution is considered to be one of the safeguards of democracy. Bangladesh accepted fundamental rights and incorporated the same in their constitution.

⁸ Rajmohan Gandhi, Patel: A Life, Navajivan Pub. House, 1990, p. 206

⁹ Dr. Arby Aman, Writ Jurisdiction: Enforcement of Fundamental Rights in Bangladesh, IJARIIIE-ISSN(O)-2395-4396, Vol-6 Issue-5, 2020, P-1686
(http://ijariie.com/AdminUploadPdf/Writ_Jurisdiction__Enforcement_of_Fundamental_Rights_in_Bangladesh_ijar_iie12900.pdf)

CHAPTER 3

FUNDAMENTAL RIGHTS & BANGLADESH CONSTITUTION

3.1 Fundamental rights in Bangladesh

The fundamental rights, which every citizen is entitled to enjoy, are enshrined in part III of the constitution of Bangladesh. But in some cases it fails to follow International Charter of Human Rights lack of enforcement and monitoring mechanisms also neglected the implementation of Human Rights in Bangladesh. The rights guaranteed by the constitution under following sub-headings:

- 1) Right to equality (arts. 27-30)
- 2) Right to protection of law(arts.31-32)
- 3) Safeguard as to arrest and detention(art.33)
- 4) Protection against forced labour(art.34)
- 5) Protection in respect of trial and punishment(art.35)
- 6) Right to freedom(art.36-41)
- 7) Right to property(art.42)
- 8) Right to enforce fundamental rights(art.44)
- 9) Saving for certain laws(art.47)

3.2 Laws inconsistent with the fundamental rights

Article, 26¹⁰ Provides that all existing laws inconsistent with the fundamental rights as provided in part III shall to the extent of the inconsistency become void on the commencement of the constitution and the state shall not make any law inconsistent with those rights. In our jurisdiction, the case of Anwar Hossain vs. Bangladesh¹¹, popularly known as the constitution (Eight Amendment) case has also expressed the same view. In that decision, Shahabuddin

¹⁰ The Constitution of Bangladesh.

¹¹ Civil Appeal No. 43 of 1988.

Ahmed, j. held at paragraph 381, as under: “As to the constituent power, that is power to make a constitution, it belongs to the people along. It is the original power.

3.3 Reasonable restriction on Fundamental Rights

As soon as emergency is declared fundamental rights mentioned in articles 36, 37,38,39,40 and 42 shall automatically remain suspended and they will remain suspended so long emergency will be in operation. As a result, the executive may take any measure against these rights and parliament may make any law inconsistent with these rights. As soon as emergency is withdrawn these rights will get their full constitutional status. While a proclamation of emergency is in operation, the president may by an order declare the suspension of enforcement of any of the fundamental rights conferred by Part III of the Constitution.

3.4 Fundamental Rights and Article 70

Article 70 was written as a result of the Bangladesh Constituent Assembly (Cessation of Membership) Order 1972, promulgated by President Justice Abu Sayeed Chowdhury. The president acted on the advice of Prime Minister Sheikh Mujibur Rahman. The prime minister was upset when a lawmaker from his own party, K. M. Obaidur Rahman, raised a question in the Constituent Assembly of Bangladesh, as to why the assembly had no law making powers. Under the interim constitution in 1972, law making powers resided with the executive branch.

The constitutional experts and civil society members who ask for amendment of Article 70 argue that it contradicts the fundamental rights as enunciated in Part 3 of the Constitution, thereby curbing the rights of the MPs as far as freedom of thought and expression is concerned. The article has usurped the powers of the MPs to defend the cause of the people who voted them to power.

It is further argued that parliamentary democracies having no such thing as Article 70 in their constitutions have not suffered from political instability. They have suggested suitable amendments to Article 70, incorporating the option of an MP to vote according to his conscience except on three fundamental and vital issues: (a) when a no-confidence motion is brought against a particular government, (b) regarding the passing of the finance bill; and (c) on sensitive defence matters which may be held in camera, if needed. Newspaper reports suggest that some MPs of the ruling party support this view.¹²

¹² M. Abdul Latif Mondal, Amending Article 70, The Daily Star, Jul 12, 2009 (<https://www.thedailystar.net/news-detail-96590>)

CHAPTER 4

SOME IMPORTANT FUNDAMENTAL RIGHTS

4.1 Right to equality in broad spectrum (art.27):

The right to equality in broad-spectrum signifies the general application of the principles of equality instead of concentrating on any particular aspect of rights. This right is widely recognized by international and regional human rights instruments. Article 7 of UDHR states that, “all are equal before the law and are entitled without any discrimination to equal protection of the law.” Likewise, art.26 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) also states the similar provision. The African charter on Human and Peoples’ Rights,1981 , a regional instrument , in its art.3 also declares that every individual shall be “equal before law” and “entitled to equal protection of law” .In the same way, the American Declaration of the Rights and Duties of Man,1948 (art.1) and American convention on Human Rights,1969 arts. 4 & 24 provide the right to equality & right to equal protection of law.

Art.27 of the Constitution of Bangladesh guarantees that “all citizens are equal before law and are entitled to equal protection of law.” This right and protection also guaranteed by the constitution of different countries. In this respect art.14 of the constitution of India declares that the “state shall not deny to any person equality before the law and the equal protection of laws within the territory of India.” Art.25 of the Constitution of Pakistan is very much similar to that of the Constitution of Bangladesh. ‘Equality before law’ means that among equals law shall be equal and shall be equally administered. There shall not be any privilege by reason of birth, creed etc. ‘Equal protection of law’ means that all persons in like circumstances shall be treated alike and no discrimination shall be made in conferment of privileges or imposition of liabilities.

Despite this constitutional guarantee of the right to equality, fair and impartial application of this fundamental right is sometimes found to be absent and a great number of people in Bangladesh deprived of their constitutional right as well as human right. While prominent human rights defender Adilur Rahman Khan was jailed on politically motivated charges and was denied bail several times and kept in prison. Sometimes some accused are granted bail while others are not granted in the similar circumstances.

The High Court Division observed that “Had they not taken the decision and decided to proceed with appeals, it would have been perpetuating a discriminatory treatment towards the petitioners in clear violation of their fundamental rights of equality before law, as per Govt. of Bangladesh vs. Hamento Kumar Barmon.¹³

4.2 Right to equal opportunity in public employment

Art. 21 of UDHR states that everyone “has the right of equal access to public service in his country” which is approved by the art.29 of our constitution. This provision guarantees that there “shall be equality of opportunity for all citizens in respect of employment or office in the service of the republic.” The main object of this Article is to create constitutional right to equality of opportunity and employment in public offices. These equality clauses are at least theoretically sounds better. Though in reality hardly the minorities in Bangladesh are get the benefits of these constitutional guarantees. May be the constitution placed the minorities in a position equal to all other citizens of the state, but that does not necessarily ensure them equal benefits of law and necessary protection and assistance in their development. Rather the highly discriminatory government policy makes the equality clauses into bogus lines.

The members of the administrative service and the members of other services of the Republic have been appointed on the basis of the same competitive examination and there has not been any different procedure in appointing them and the members of the other services cannot be treated differently from the members of the administrative service without violating the guarantee of article 29 of the constitution.¹⁴

4.3 Right to protection of law (Article 31-32)

Article 31 deals with the protection of law to be enjoyed by the citizens and persons residing in Bangladesh and in particular in respect of life, liberty, body, reputation and property. According to article 32, no person shall be deprived of life or personal liberty. The International Covenant on Civil and Political rights states vividly the right to life. According to art.6 of the ICCPR “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Article 3 of UDHR states, ‘Everyone has the right to life, liberty and security of person.’ Article 2 of Convention for protection of Human Rights and Fundamental Freedoms states that everyone’s right to life shall be protected by law. Likewise, art.21 of the Constitution of India provides that there shall not be any deprivation of life or

¹³ 65 DLR (HD)152

¹⁴ Abdul Mannan vs. Bangladesh 55 DLR 537

personal liberty except according to procedure established by law. American Constitution also mentioned prohibition on all deprivation of life, liberty or property.”

The Court interprets art.31 of the constitution.... “Protection of life means that one’s life cannot be endangered by any action which is illegal, but it does not mean protection of an illegal action of any person.¹⁵

4.4 Safeguard as to arrest and detention (art.33)

The Universal Declaration of Human Rights provides safeguard as to arrest and detention in art.9 which states that no person “shall be subjected to arbitrary arrest, detention or exile.” Art.9 of the ICCPR also states about the safeguard as to arrest and detention. In this regard, art. 33 of the constitution of Bangladesh provides four constitutional safeguards to a person who has been arrested .However the said constitutional protections are not to be applicable to any person who is arrested or detained under any law providing for preventive detention. It is to be noted that the original constitution, enacted in 1972 is silent in the matter of preventive detention. The framers of the constitution carefully avoided such type of black provision & the original art.33 did not leave any scope for preventive detention. Afterwards, by the constitution (2nd amendment)Act 1973 the provision of preventive detention is inserted by art.33 which provides that the safeguards as to arrest and detention will not be applicable to persons arrested or detained under any law providing preventive detention. Thereafter, Special power Act, 1974 was enacted. It is true that most of the developing countries used the preventive detention as a weapon to dominate, crush the opposition and to perpetuate rule. When a person comes within the satisfaction of the government authority that a person is going to commit prejudicial acts , he may be detained by preventive detention to defend him from doing that act.¹⁶ The court presumed that many times detaining authority violates fundamental rights to satisfy the government by the following ways:-

¹⁵ Giasuddin vs. Dhaka Municipal Corporation & others, 49 DLR

¹⁶ Faizunnessa Taru, Application of Fundamental Rights of Bangladesh Constitution: An Analysis on the Light of International Human Rights Instruments, Journal of Law, Policy and Globalization, 2016, p. 43
(<https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/29003/29767>)

Firstly, in Bangladesh without trial six months detention can confer to the detainee. This is a bad process because now here in the world such a long period is not found anywhere. In India, this time is three months⁴ and in Pakistan the initial period of detention is three months.

Secondly, in democratic countries preventive detention is a method resorted to emergencies like war. But there is no specification in our constitution and can be resorted to in times of both peace and emergency.

Thirdly, we have not a fixed maximum period of detention not in our constitution or in any other statutory act like Special Powers Act, 1974.

4.5 Protection of Home and correspondence (art.43):

Article 12 states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ...Everyone has the right to the protection of the law against such interference or attacks. Likewise same provision has been incorporated in the art.17 of the ICCPR. The Fourth amendment of the American Constitution provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.....” The amendment recognizes “the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”¹⁷

Article 43 of the Bangladesh Constitution guarantees the privacy of home and correspondence and communications. It provides that every citizen shall have the right to be secure in his home against entry, search and seizure and to the privacy of his correspondence and other means of communications. In *Malone vs. Metropolitan Police Commissioner*, Megurru vc turned down a complaint against telephone tapping on the ground of absence of any common law right of privacy, but in Bangladesh such telephone tapping will be unconstitutional for violation of the privacy unless a law permits it in any of the grounds of restriction mentioned in article 43.¹⁸

¹⁷ *Silvermen vs. U.S.*, 365US 505,511

¹⁸ Mahmudul Islam, *Constitutional law of Bangladesh*, 2nd Edition, Mullick Brothers, Dhaka,2003, p-279

4.6 Enforcement of fundamental rights (art.44):

Most of the written constitutions provide for the right to constitutional remedies in case of violation of fundamental rights. This right to constitutional remedy has two dimensions—judicial review and judicial enforcement. Judicial review in relation to fundamental rights is provided for with view to enforcing fundamental rights is against the legislature.

The supreme court of Bangladesh can exercise this jurisdiction under article 26 & 102 of the constitution. Judicial enforcement is provided for with a view to enforcing fundamental rights against the executive. This right is guaranteed in article 44 and the High Court Division of the Supreme Court is empowered to enforce fundamental rights under article 102 of the constitution. Though our constitution specifically mentioned the enforcement mechanism of fundamental rights but most of the cases it is not implemented by the executive.

It is important to mention here that an unprecedented constitutional violation in respect of fundamental rights of the citizens had been done by the Government. In the case of BLAST & others vs. Bangladesh, directed the Government to amend s.54 & s. 167 of The Code of Criminal Procedure and made it obligatory to compensate the victims of torture by the perpetrators. Government has not yet implemented those directions instead filed appeal. In Madan Mohan VS. Government,¹⁹ Madan Mohan was arrested on 5.7.77. The High Court Division declared detention illegal and ordered his release.

Madan Mohan was released but at the jail gate he was again arrested by serving a fresh order of detention. This was done just to frustrate the High Court Division's order. Thus purely for political purpose every Government does not implement the decision of the court and violating the constitutional mandate as enshrined in part III of the Bangladesh Constitution.

¹⁹ writ petition no.879 of 1977

CHAPTER 5

SOME CASES RELATING TO FUNDAMENTAL RIGHTS

5.1 Dewan Abdul Kader others Vs. Government of Bangladesh²⁰

While examining the constitutionality of a statute a well-known principle that there is always a presumption in favour of the constitutionality of an enactment has to be borne in mind. In ascertaining the constitutionality or otherwise of a questioned enactment, the background of the enactment and the surrounding circumstances in which it was brought about shall have to be taken into consideration. A note-book has been found to be not an expression of ideas or opinion or comment with regard to the contents of text-books but it is merely a presentation of the same textbook in a different manner and form. The impugned Act by putting the restriction on printing, publishing etc. of note-books may well be construed as imposing reasonable restrictions against the possibility of the copy. Right of the Text Book Board being infringed as would be permissible under Article 39(2) of the Constitution.

Viewed in this perspective it is held that the impugned Act is not unconstitutional. A note-book is in effect and substance merely degenerated presentation of the text book the maintenance of the quality of which is statutorily vested in the Text Book Board. In the name of freedom of speech and expression one cannot be allowed to frustrate the purpose of the law in regulating the quality of the text-books by the Text Book Board. The claim of right of freedom of speech and expressions by the defendants in the circumstances will directly offend the statutory provision and as such there cannot be any right much less any fundamental right which will encourage violation of the law.

²⁰ 14 BLD (HCD) 418.

5.2 Khodeja Begum and others Vs. Md. Sadeq Sarkar²¹

The offer of the Government to sell the case property to petitioner was attendant with the condition that the petitioner must not have a residential house in Dhaka. This restriction in effect negates/abridges the petitioner's right as a citizen in pursuing his lawful profession as a businessman and as such this is inconsistent with the concept of equality before law as enshrined in Articles 27 and 40 of the Constitution. Persons performing any function in connection with any affair of the Republic, especially those dealing with public right or interest must maintain a high degree of vigilance so that fundamental rights as guaranteed by the Constitution are preserved, protected and safe-guarded.

5.3 Hamidul Huq Chowdhury Vs Bangladesh²²

In the case it was held that the Government owned Newspaper (Management) Ordinance 1975 was violate of Article 39(2)(b) of the Constitution. The dissolution, taking over and vesting of the assets of the two companies of the petitioners, purported to have been done under Section 6 of the said Act, and specifying them in the schedule of the enactments therefore so far as they relate to dissolution of the petitioner companies and the vesting of their assets etc as had been provided under Section 6 of the aforementioned Ordinance and Act are liable to be struck down. The Government Rules 1979 divided persons in the service of the Republic between freedom fighters and non-freedom fighters and granted two years antedated national seniority by legal fiction to freedom fighters. These Rule were held to be violate of the equality clauses of Articles 27 and 29 of the Constitution.

²¹ 18 BLD (HCD) 32.

²² 34 DLR 190

5.4 Dr. Nurul Islam v. Bangladesh²³

The appellant Dr. Nurul Islam was appointed an assistant surgeon in 1952 and by successive promotions he became the Director and professor of medicine of the Institute of post-graduate and Research in 1971(in Bangladesh).In November, 1978 the Govt. issued a notice where by the appellant was relieved of his duties as professor of Medicine; he was to continue as Director of the institute which was made a non-practicing post. The appellant again challenged this order in a fresh write petition to the High Court Division on the ground, amongst others, that the retirement order is just a measure of punishment on him for his successful challenge of the Governments previous notice declared to have been issued without lawful authority. The High Court Division in the present instance refused with the Govt.'s decision in retiring the appellant 4/s 9(2) of the public service retirement Act and gave him no relief where upon the appellant move the Appellate Division as against the aforesaid decision of the High Court Division alleging, inter alia,malafide in the Government in causing his premature retirement; he further stated that there are in the cadre as many as 34 doctors who have completed 25 years service and many of whom were senior to the appellant in service but none of them had been retired . It was therefore contended that the impugned notification issued on June 5, 1980 was issued for collateral purposes the provisions of Article 27 and 29 of the constitution appellant was not given any opportunity of being heard before the impugned notification was issued it was violated of Article 135 of the constitution.

5.5 Sheikh Abdus Sabur v. Returning officer²⁴

In this famous case, Appellate Division has given a wider meaning of the Term 'equality before law' while interpreting article 27 of the constitution. It was held by the court that, "all citizens are equal before law and are entitled to equal protection of law. Equality before law does not mean absolute equality and is not be interpreted in its absolute sense, to hold that all people are equal in all respects disregarding different conditions and circumstances or special qualities and characteristics, which some of them may possess but which are lacking in others," So, in this case the court has shown an originalist approach in interpretation of the constitution. As the court tried to enunciate the original and actual meaning of Equality before law as the framers of the constitution did not intend to treat the people of all classes in the same manner and in the same style disregarding their differences. This interpretation also can be enrolled in the category of equitable interpretation, which is based on innate sense of justice, balancing the interest of the parties and what is right and what is wrong.

²³ 52 DLR (2000) 413

²⁴ 41 DLR (AD) 1989 (30)

5.6 M. Saleem Ullah Vs. Bangladesh and another²⁵

High Court Division observed that the people of Bangladesh, under Art.31 of the Constitution are entitled to enjoy the protection of laws enacted in Bangladesh. Under Art.21 every person in the service of the Republic has a duty to ensure the observance of the Constitutional mandates and the laws of the land, to strive at all times to serve the people to whom all powers in the Republic belong. It is also the constitutional obligation of the Government to ensure that the rights of the people, envisaged in under Art.18 and Art.32 of the Constitution are vindicated and defended. In case of any breach in this respect, such constitutional obligations can be enforced against the Government under Article 102 of the Constitution.

²⁵ 15 BLD (HCD) 108

CHAPTER 6

FINDINGS, RECOMMENDATIONS, AND CONCLUSION

6.1 Findings

1. In many cases our judiciary has referred to international law, both customary and treaty, but failed to base their decisions on international law, although they had immense opportunity to do so.

2. Bangladesh has ratified important international instruments on human rights. Government should therefore be more serious as regards the implementation of those instruments.

2. No doubt Bangladesh Constitution contains all the good principles of human rights, these are all fundamental to the development of a human being, but unless the constitutional provisions are properly enforced and if the violators are not properly brought to book no relief will give to the common people of Bangladesh.

3. The ongoing confrontational politics based on diametrically opposing stands and approaches of the two major political parties, has created a serious stalemate causing threats to democracy and human rights. The political parties are apparently investing their total efforts and time for devising ways and means mainly to go to power. All the political parties, while in power, hardly make any attempt voluntarily to strengthen the bases of democracy and human rights.

4. Human rights have emerged to be one of the core fundamental rights since it gives positive rights to citizens of a state as individuals. Individual rights have to be attended as they provide concrete human rights such as right to freedom from torture and inhuman treatment, right to liberty, right to freedom of movement, freedom of speech and more. Most importantly it provides the right to life.

5. Our judiciary is enthusiastic, at times, in giving effects to civil and political rights by interpreting the fundamental rights within the ambit of international human rights instrument.

6.2 Recommendations

1. Though Bangladesh is a state party to this convention , but it has yet to give separate declaration recognizing the competence of the committee which is mentioned in art.14 of the International Convention on the Elimination of all forms of Racial Discrimination, 21 December,1965 to receive and consider individual complaints.
2. The most important recommendation for the protection and promotion of human rights is the creation of a sense of accountability in the executives working under Government; they should culture this accountability not only in their works but also in their conscience.
3. Bangladesh should also amend the emergency provisions and preventive detention provisions in order to strike a balance between the needs of state security and those of protecting human rights. It should consider amending Article 46 of the Constitution in order to delimit the power of the parliament by excluding acts of torture and other cruel treatment or punishment from the scope of acts for which public officials can be indemnified.
4. Freedom of expression is one of the corner stone of democracy. The media should be able to act as watchdogs. Indeed a healthy government will encourage the media to provide legitimate criticism and that will raise the country's reputation abroad. Moreover, open criticism will reduce corruption and mismanagement, which are far more harmful to the economy.
5. To maintain and establish the basic democratic fabric and of course freedom of thought and conscience, Article 70 should be amended in such a way that the members of parliament have the right to oppose / support abstain from voting any bill brought before the parliament.
6. The Constitution of Bangladesh has no provision for forbidding the arbitrary expulsion of residents and aliens (ICCPR-13) that should be included.
7. The constitution of Bangladesh did not include the provision for the right to be treated with dignity and humanity of the convicted person until being proved criminals which should be inserted in our constitution.

8. There is no direction in the constitutional provision regarding to the workers to join international trade union organizations (ICCPR-8) which may be included in our constitution.

9. Article 33(4)(5) which was inserted by the 2nd amendment must be removed.

10. Since Special Power Act, 1974 is a black law, which was constituted on the basis of art. 33(4)(5) deprives a man of his fundamental rights and puts a person into prison for not fault at all , it should remain in force any more. In the whole of this sub-continent repressive law like this or in any other form is extremely detrimental to the growth and maintenance of human rights. For this reason, Special Power Act,1974 must be repealed.

11. In most of the cases it is found that the police as well as law enforcing agencies directly or indirectly responsible for violation of human rights in Bangladesh. So police must be made accountable for the commission of such violation.

12. Penal laws and Code of criminal procedure may be amended, if necessary to award speedy and exemplary punishment for commission of offence against women and children.

13. Bangladesh constitution prohibits a person to be a witness against himself [see art. 35(4)] but under section. 167 of the Code of Criminal Procedure an accused sometimes is forced to do so. Hence forced confession should be prohibited.

14. Torture, cruel, inhuman degrading treatment is a heinous crime which very often practiced by police, jail authority and other perpetrators. These are prohibited by both international convention and Bangladesh constitution.

15. Government has taken step in these respect women and children offenders should be sent to correction centers and not to jail, because there are allegations that women prisoners are sometimes violated in the jails. Human rights of women and children would thereby be protected.

6.3 Conclusion

The power of the High Courts to enforce fundamental rights remained a discretionary power as the right to move for enforcement of fundamental right was no longer a fundamental right. Under the Constitution of Bangladesh, the High Court Division has power under article 102(1) to pass necessary orders to enforce fundamental rights and under article 44(1) the right to move the High Court Division under article 102 (1) is itself a fundamental right. The position of the High Court Division in respect of enforcement of fundamental rights is the same as that of the Indian Supreme Court with the difference that its decision is not final and is Subject to appeal under article 103. Thus it is not discretionary with the High Court Division to grant relief under article 102 (1). Once it finds that a fundamental right has been violated, it is under constitutional obligation to grant the necessary relief.

The insertion of fundamental rights in a constitution in a constitution becomes meaningless rights if it is not provided by the constitution for easy and effective procedure for their enforcement. And this easy and effective enforcement should be available not only against the executive but also against the legislative. If the executive does anything in violation of fundamental rights, the citizens must have a remedy. Similar if the legislature enacts any law which is inconsistent with any of the fundamental rights, there must be procedure to declare that law unconstitutional.

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