Research Monograph
On
The constitutional Enforcement of the Fundamental Principle of State Policy: Bangladesh Perspective.

A Research Monograph submitted for the partial fulfillment of LL.M.

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Signature

Certification by the Research Advisor

This is hereby certified that the Research Monograph on "**The constitutional Enforcement of the Fundamental Principles of State Policy: Bangladesh Perspective.**" submitted by Mohammad Rasel Hosen [ID:-LLM2201025023] in fulfillment of the requirements for the Post Graduate Degree in Law from Sonargaon University, was under my active supervision and guidance. It is also asserted that no part of this Research Monograph has been submitted or published anywhere earlier.

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Declaration

I am Mohammad Rasel Hosen [ID:-LLM2201025023] a student of Sonargaon University Department of Law, hereby solemnly declare that, this Research Monograph on "**The constitutional Enforcement of the Fundamental Principles of State Policy: Bangladesh Perspective**". has been prepared by me and it has not been submitted or published anywhere earlier. I also solemnly declare that this Research Monograph has been prepared by me obeying all relevant copyright provision, and all information mentioned here is true to the best of my knowledge.

Signature: -

Date: -

Letter of Transmittal

To
Md. Sagor Hossain
Lecturer, Department of Law
Sonargaon University [SU], Dhaka.

Subject: Submission of Research Monograph on "**The constitutional Enforcement of the Fundamental Principles of State Policy: Bangladesh Perspective"**.

Dear Sir,
It is a matter of great joy for me to submit the Research Monograph on "**The constitutional Enforcement of the Fundamental Principles of State Policy: Bangladesh Perspective**".

While doing this Research Monograph, I have tried my level best to maintain necessary requirements. I earnestly hope that it will fulfill your expectation, and accordingly you would be kind enough to go through this dissertation for evaluation
I am always available for any clarification of any part of this Research Monograph at your convenience.

Sincerely Yours
Mohammad Rasel Hosen
ID: - LLM2201025023

This thesis is dedicated

TO

My Loving Parents and all my Teachers.

Abstract

There is a struggle throughout the world on the issue of justifiability of socio-economic rights. It is forcefully argued that socio-economic rights should be given the same status as that of civil political rights. Ensuring the judicial enforcement of socio-economic rights has been considered a prime issue in this regard. In Bangladesh, Part II of the Constitution embodies the socio-economic rights as "Fundamental Principles of State Policy" whereas "Fundamental Rights" consisting of Civil Political rights find place in Part III. Article 8(2) of the Constitution makes the Principles and thereby the socio-economic rights judicially non-enforceable. This provision came under judicial consideration in *Kudrat-e-Elahi* v. *Bangladesh* case. The Appellate Division relied on non-enforceability criteria (in article 8(2)) to hold that a law cannot be repealed only on the ground of inconsistency with fundamental principles. This research paper attempts to submit the opposite.

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CHAPTER-I

General Introduction

1.1 Introduction:

The Constitution of Bangladesh embodies in its part II certain directions to the state terming them as 'Fundamental Principles of State Policy'. The constitution itself terms these as 'Principles', not 'laws'. Apart from setting certain ideological objectives, interestingly, this part II contains also provisions regarding basic necessities which says that 'It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady people, with a view securing to its citizens the basic necessities and rights, like food, clothing, shelter, education, medical care, right to work etc. This part in fact contains certain basic duties of the State and certain basic necessities of the type of economic human rights of the people are dependant on the performance of the above duties properly by the state.[1]

With the development off the concept of 'welfare state in this trend has been developed on political grounds to impose more duties on the state without assessing the fact whether the state has the actual ability to perform it or not based on its economic strength. The prime characteristic of these principles is that these are not judicially enforceable and act as guidelines to the State; and many Constitution of the modern world also contain such principles. An attempt has been made in this article to assess the nature, importance and the enforceability of the Fundamental Principles of State Policy as provided in the Constitution of Bangladesh in the light of different juristic interpretations given by the judiciary.[2]

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[1] Muhammad Ekramul Haque, Legal and Constitutional Status of the Fundamental Principles of State Policy as Embodied in the Constitution of Bangladesh, (2005), part f , vol. xvi (1), the Dhaka University Studies, Journal of the Law, p.45.

[2] Muhammad Ekramul Haque, Legal and Constitutional Status of the Fundamental Principles of State Policy as Embodied in the Constitution of Bangladesh, (2005), part f , vol. xvi (1), the Dhaka University Studies, Journal of the Law, p.45.

1.2 Statement of the problem:

The main purposes of this research paper are to examine the situation of fundamental principles of state policy in Bangladesh.

The objectives are as follows—

1. To analyze the existing fundamental principles of state policy under the Constitution of Bangladesh.
2. To establish how the state can implement the principles of nationalism, socialism, democracy, and secularism, etc.
3. To find out the reason why it is not judicially enforceable.
4. To suggest the government of Bangladesh for taking necessary steps to ensure the enjoyment of fundamental principles by the people of Bangladesh.
5. To find out the possible solutions for overcoming problems.

1.3 Methodology:

As the Research paper is that the Constitutional Enforcement of Fundamental Principles of State Policy: Bangladesh Perspective; I have submitted a critical review of the problems and the study intends to cover almost all the circumstances that have an influence on defining the standards. To make this research paper I have to collect secondary data. The secondary data has been collected from various books written by various experienced scholars from some Public Universities. I'll approaches both qualitative and quantitative methods. These types of data have been combined to complete my research paper. In my research paper I also have shared the observations, comments and recommendations of various authors.

1.4 Rational of the study:

The rational of study is to focus on the enforcement of present rules, laws, and regulations and critical analysis of this enforcement through Acts rules, and regulation through Courts in light of fundamental principles of state policy.

The study will include the view of the fundamental principles which is under the Constitution of Bangladesh regarding the violation of fundamental principles although it is not judicially enforceable. It will explain why the fundamental principles of state policy are to be enforced. It has a great similarity with the human right because it contains some human rights also, so it is more important to know how these rights can be enforced and it also explained.

1.5 Limitation of the study:

1. There are not available sources for collecting data.
2. Lack of sufficient materials, i.e. articles, reference paper, books, journals etc.

1.6 Literature Review:

The Article, "Legal and Constitutional Status Of The Fundamental Principles Of State Policy As Embodied In The Constitution Of Bangladesh" prepared by Muhammad Ekramul Haque, where the article analysis about the fundamental principles of state policy.

A recent study of the book "Understanding the Constitution of Bangladesh" written by Mahbubul Islam, this studies also analyses about the fundamental principles of state policy.

Also study another book "An Introduction to the Constitutional Law of Bangladesh" written by M. Jashim Ali Chowdhury, which also analyses the fundamental principle of state policy.

1.7 Chapterisation of study:

Chapter 1: Introduction.

Chapter 2: Fundamental Principles of State Policy Under the Original Constitution 1972.

Chapter 3: Fundamental Principles of State Policy under the Present Constitution.

Chapter 4: Implementation of Fundamental Principles of State Policy.

Chapter 5: To be Implemented of the Fundamental Principle of State Policy.

Chapter 6: Conclusion.

1.8 Conclusion: As a conclusion it may be said that the doctrine of implementation of Fundamental Principle of State Policy is a great constitutional concept and it can not be judicially enforceable under the Constitution. The judiciary is directed to take resort to Fundamental Principles of State Policy while interpreting laws. The doctrine of Fundamental Principles of State Policy shall be applied by the State but shall not be judicially enforceable and that's why it can not be implemented. Only State can take necessary steps for implementation of Fundamental Principle of State Policy in Bangladesh.

CHAPTER-II

Fundamental principles of state policy under original Constitution 1972

2.1 Introduction: The fundamental principles of state policy are fundamental in the sense that they oblige all actors within the state – executive, legislative and judiciary – as well as the citizens. The Legislature is directed to apply these in making laws. The Judiciary is directed to take resort to fundamental principles of state policy while interpreting laws. Being fundamental to the governance of the country, the Executive is bound to follow the spirit of these Principles. They shall form the basis of the code of conduct for all the citizens working in social, political, cultural, and economical or any other arena.[3]

2.2 Articles: which is about the fundamental principle of state policy under the original Constitution 1972 are given billow—

1. Fundamental principles: (1) the principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this part, shall constitute the fundamental principles of state policy.
(2) The principles set out in this part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and the other laws of Bangladesh, and shall from the basis of the work of the State and of its citizens, but shall not be judicially enforceable.[4]

2.Nationalism: The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh though a united and determined struggle in the war of independence, shall be basis of Bangalee nationalism.[5]

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[3]. M. Jashim Ali Chowdhury, An Introduction to the Constitutional Law of Bangladesh, Northern University of Bangladesh, First Edition-September 2010 , page-130.
[4] Article 8 of the Constitution of Bangladesh
[5]. Article 8 of the Constitution of Bangladesh

3. Socialism and freedom from exploitation: A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man.[6]

4. Democracy and human rights: The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.[7]

5. Secularism and freedom of religion: The principle of secularism shall be realized by the elimination of—

(a) Communalism in all its forms;

(b) the granting by the State of political status in favour of any religion;

(c) the abuse of religion for political purposes;

(d) any discrimination against, or persecution of, persons practicing a particular religion.[8]

6. Principles of ownership: The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms—

(a) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalized public sector embracing the key sectors of the economy;

(b) co operative ownership, that is ownership by co operatives on behalf of their members within such limits as may be prescribed by law; and

(c) private ownership, that is ownership by individuals within such limits as may be prescribed by law.[9]

[6]. Article 10 of the Constitution of Bangladesh
[7].Article 11 of the Constitution of Bangladesh
[8]. Article 12 of the Constitution of Bangladesh
[9]. Article 13 of the Constitution of Bangladesh

7. Emancipation of peasants and workers: It shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms of exploitation.[10]

8. Provision of basic necessities: It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens—

(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;

(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;

(c) the right to reasonable rest, recreation and leisure; and

(d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age other such cases. [11]

9. Rural development and agricultural revolution: The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas so as progressively to remove the disparity in the standards of living between the urban and rural areas.[12]

10.Free and compulsory education: The State shall adopt effective measures for the purpose of –

(a) establishing a uniform, mass oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;

[10]. Article 14 of the Constitution of Bangladesh
[11]. Article 15 of the Constitution of Bangladesh
[12]. Article 16 of the Constitution of Bangladesh

(b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs;

(c) removing illiteracy within such times as may be determined by law. [13]

11.Public health and morality: 1) The State shall regard of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, or alcoholic and other intoxicating drinks and of drugs which are injurious to health.

2) The State shall adopt effective measures to prevent prostitution and gambling. [14]

12.Equality of opportunity: The State shall endeavour to ensure of opportunity to all citizens.

2) The State shall adopt effective measures to remove social and economical inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.[15]

13.Work as a right and duty: and 1) Work is a right, a duty a matter of honor for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle " from each according to his abilities, to each according to his work''.

2) The State shall endeavor to create conditions in which, as a general principle, persons shall not be able to unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavor and of the human personality. [16]

[13]. Article 17 of the Constitution of Bangladesh
[14]. Article 18 of the Constitution of Bangladesh
[15].Article 19 of the Constitution of Bangladesh
[16]. Article 20 of the Constitution of Bangladesh

14.Duties of citizens and of pubic servants: 1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and protect public property.

2) Every person in the service of Republic has duty to strive at all times to serve the people. [17]

14.Separation of Judiciary from the executive: The State shall ensure the separation of the judiciary from the executive organs of the State.[18]

15.National culture: The State shall adopt measures to conserve the culture traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participated in the enrichment of the national culture.[19]

16.National monuments, etc.: The State shall adopt measures for the protection against disfigurement, damage or remove of all monuments, object or places of special artistic or historic importance or interest. [20]

17.Promotion of international peace, security and solidarity: The State shall base its international relations on the principles of respect for national sovereignty and equality, non interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and principles enunciated in the United Nations Chapter, and on the basis of those principles shall—

(a) strive for the renunciation of the use of force in international relations and for general and complete disarmament;

(b) upload the right of every people freely to determined and build up its own social, economic and political system by ways and means of its own free choice; and

(c) support oppressed peoples throughout the world waging a just struggle against imperialism colonialism or racialism. [21]

[17]. Article 21 of the Constitution of Bangladesh
[18]. Article 22 of the Constitution of Bangladesh
[19]. Article 23 of the Constitution of Bangladesh
[20]. Article 24 of the Constitution of Bangladesh

2.3 Conclusion: Under the original Constitution 1972 the fundamental principle of state policy shall constitute the principles of nationalism, socialism, democracy and human rights; secularism; ownership; emancipation of peasants and workers; rural development and agricultural revolution; provision of basic necessities; public health and morality; equality of opportunity; duties of citizens and public servants; national culture; national monuments; separation from executive from judiciary; promotion of international peace, security, and solidarity but shall not judicially enforceable. All the fundamental principles of state policy based on the demands on the citizens

[21]. Article 25 of the Constitution of Bangladesh

CHAPTER-III

Fundamental principles of state policy under present Constitution.

3.1 Introduction: The insertion of fundamental principles of state policy bears great educative value, through these is not judicially enforceable and it is not less important. With some amendment these fundamental principles were changed. Fundamental principle of state policy includes many other fundamental rights by amendments. Its object to give some instructions to the state for achieving socio-economic development. And also to established a welfare state by securing social-economic justice. These fundamental principles have great moral value also.

3.2 Articles: under the present Constitution of fundamental principle of state policy are as follows—

1.Fundamental principles: (1) The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this part, shall constitute the fundamental principles of state policy.

(2) The principles set out in this part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws , shall be a guide to the interpretation of the Constitution and the other laws of Bangladesh, and shall from the basis of the work of the State and of its citizens, but shall not be judicially enforceable.[22]

2.Nationalism: The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh though a united and determined struggle in the war of independence, shall be basis of Bangalee nationalism.[23]

[22] Article 8 of the Constitution of Bangladesh.
[23] Article 9 of the Constitution of Bangladesh

3.Socialism and freedom from exploitation: A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man.[24]

4.Democracy and human rights: The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.[25]

5.Secularism and freedom of religion: The principle of secularism shall be realized by the elimination of—

(a) communalism in all its forms;

(b) the granting by the State of political status in favour of any religion;

(c) the abuse of religion for political purposes;

(d) any discrimination against, or persecution of, persons practicing a particular religion.[26]

6.Principles of ownership: The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms—

(d) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalized public sector embracing the key sectors of the economy;

(e) co operative ownership, that is ownership by co operatives on behalf of their members within such limits as may be prescribed by law; and

(f) private ownership, that is ownership by individuals within such limits as may be prescribed by law.[27]

[24] Article 10 of the Constitution of Bangladesh
[25] Article 11 of the Constitution of Bangladesh
[26] Article 12 of the Constitution of Bangladesh
[27] Article 13 of the Constitution of Bangladesh

7. Emancipation of peasants and workers: It shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms of exploitation.[28]

8. Provision of basic necessities: It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens—

(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;

(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;

(c) the right to reasonable rest, recreation and leisure; and

(d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age other such cases.[29]

9. Rural development and agricultural revolution: The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas so as progressively to remove the disparity in the standards of living between the urban and rural areas.[30]

10.Free and compulsory education: The State shall adopt effective measures for the purpose of –

(a) establishing a uniform, mass oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;

[28] Article 14 of the Constitution of Bangladesh
[29] Article 15 of the Constitution of Bangladesh
[30] Article 16 of the Constitution of Bangladesh

(b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs;
(c) removing illiteracy within such times as may be determined by law.[31]

11.Public health and morality: 1) The State shall regard of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, or alcoholic and other intoxicating drinks and of drugs which are injurious to health.
2) The State shall adopt effective measures to prevent prostitution and gambling.[32]

12.Protection and improvement of environment and biodiversity: The State shall endeavor to protect and improve the environment and to preserve and safeguard the nature resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.[33]

13.Equality of opportunity: The State shall endeavour to ensure of opportunity to all citizens.
2) The State shall adopt effective measures to remove social and economical inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.
3) The State shall endeavor to ensure equality of opportunity and participation of women in all spheres of national life.[34]

14.Work as a right and duty: and 1) Work is a right, a duty a matter of honor for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle " from each according to his abilities, to each according to his work''.

[31]Article 17 of the Constitution of Bangladesh
[32] Article 18 of the Constitution of Bangladesh
[33] Article 18A of the Constitution of Bangladesh
[34] Article 19 of the Constitution of Bangladesh

2) The State shall endeavor to create conditions in which, as a general principle, persons shall not be able to unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavor and of the human personality.[35]

15.Duties of citizens and of pubic servants: 1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and protect public property.
2) Every person in the service of Republic has duty to strive at all times to serve the people.[36]

16.Separation of Judiciary from the executive: The State shall ensure the separation of the judiciary from the executive organs of the State.[37]

17.National culture: The State shall adopt measures to conserve the culture traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participated in the enrichment of the national culture.[38]

18.The culture of tribes, minor races, ethnic sects and communities: The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.[39]

19.National monuments, etc.: The State shall adopt measures for the protection against disfigurement, damage or remove of all monuments, object or places of special artistic or historic importance or interest.
security and solidarity:[40]

[35] Article 20 of the Constitution of Bangladesh
[36] Article 21 of the Constitution of Bangladesh
[37] Article 22 of the Constitution of Bangladesh
[38] Article 23 of the Constitution of Bangladesh
[39] Article 23A of the Constitution of Bangladesh
[40] Article 24 of the Constitution of Bangladesh

20.Promotion of international peace, security and solidarity: The State shall base its international relations on the principles of respect for national sovereignty and equality, non interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and principles enunciated in the United Nations Chapter, and on the basis of those principles shall—

(a) strive for the renunciation of the use of force in international relations and for general and complete disarmament;

(b) upload the right of every people freely to determined and build up its own social, economic and political system by ways and means of its own free choice; and

(c) support oppressed peoples throughout the world waging a just struggle against imperialism colonialism or racialism.[41]

3.3 Conclusion: Articles under the present Constitution of Bangladesh regarding fundamental principles of state policy which includes new articles as fundamental principle of state policy that is protection and improvement of environment and biodiversity; the culture of tribes, minor races, ethnic sects and communities.

[41] Article 25 of the Constitution of Bangladesh

CHAPTER-IV

Implementation under Fundamental Principles of State Policy

4.1 Dr. Ambedkar's view: When question of the enforceability arises on face, then primarily a rough answer thrown very harshly that the fundamental principle of state policy are not judicially enforceable but does it mean that are not enforceable at all even by any other means? Does it necessarily imply that the state will not answerable to any authority for the non implementation of these fundamental principles?

Dr. Ambedkar, the chairman of the Drafting Committee of the Constitution of India, while introduce the draft Constitution, wonderfully settled such a point in the following words: [42]

"If it is said that the directive principles have no legal force…….

I am prepared to admit it. But I am not prepared to admit it that they have no short of binding force at all. Nor am I prepared to conceive that they are useless because they have no binding force in law…… the Draft Constitution as framed only provides a machinery for the government of the Country. It is not a contrivance to install any particular part in power as has been done in some countries. Who should be power is left to be determined by the people, as it must be, if the system is to satisfy the test of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He can not ignore them. He may not have to answer for their branch in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value this directive principles posses will be realized better when the force of right contrive to capture power." [43]

Thus it had been made absolutely clear that the judicial enforcement is not the only way to enforce particular rule, rather particular public opinion is also an effective mechanism for the enforcement of certain principles and certainly this is conformity with the idea of

[42] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publications; Titu Publications, First published-january 2015, p.57.
[43] Indian Constituent Assembly Debate, vol-7, p.41.

popular sovereignty as opposed to Austin's concept of sovereignty. Thus the accountability to enforce the principles was left to the political passage of time however greater emphasis has come to be laid on the fulfillment of the great sent out in these principles. [44]

4.2 Granville Austin's view: It appears that Granville Austin rightly termed fundamental principles of state policy as 'the Conscience of the Constitution'.[45] To breach a constitutional convention is to as unconstitutionally but not unlawfully, since these are non-legal rules.[46] Such breach attracts no legal sanction but instead risk political repercussions.[47]

4.3 Justice Mustafa Kamal's view: Thus Justice Mustafa Kamal rightly observed in the context of the constitutional law of Bangladesh that since the fundamental principles of state policy are not laws to be enforceable by the judiciary, so even if any law is passed by the Parliament violating any of these principles, judiciary is not only light at the tunnel of enforcement except judicial enforcement like public opinion, political party and election.[48]

To give the reply to the objection raised by Suranjit Sen Gupta against judicial non-enforceability of the 'principles', in the Constitutional Assembly, Dr. Kamal Hossain, the Law Minister and the Constitution Drafting Committee said that 'these are not enforceable by the Court-rather through the convention'.[49]

Though these principles are not enforceable by any court, 'neverthless fundamental to the governance of Bangladesh'[50] which should form 'the basis of the work of the state and of its citizens'[51]and 'the endeavor of the government must to realize these aims and not to

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[44] M. P Jain, Indian Constitutional Law, 4th ed. (India: Wadhwa and Company Law Publishers, 2002), p.736

[45] V. D. Mahajan, Constitutional Law of India, 7th ed. (Lacknow: Eastern Book Company, 1998), p.366.

[46] Hilaire Barnett Marinos Diamantides, Public Law, 2003, p.33.

[47] Ibid., p.34.

[48] Kudrat-E-Khuda vs. Bangladesh (1992) pp. 188 190-192.

[49] Bangladesh Gono Parishad Bitarka, Sarkar Biboroni, 1972 vol.2 p.455.

[50] Article 8 of the Constitution of Bangladesh.

[51] Ibid.

whittle them down'.[52] However, the question of judicial enforceability arises specially only when there is a violation of these principles or if the state does not perform its constitutional obligations following the guidelines provided by the Constitution? It must be remembered that the Constitution though says that these 'principles', from the positive approach obligations remain the same whether that is judicially enforceable or not.[53]

4.4 Why FPSP is Important: Every right of human being connected with right to life. There should be no priority division among rights. In spite of that some needs more than rights which constitute the human existence should be considered first while enforcement of rights? It does not necessarily mean that there is concerning only with the right to food, shelter, health, clothing, rather this is also concerned with other kinds of right. Without enforcing these basic necessities, the enforcement of right which is mostly civil and political would be meaningless and fruitless. However all rights should be judicial enforceability. There is no particular and technical limitation.

4.5 India and Bangladesh's view: In India, they use 'Directive' but we use 'fundamental' which is much stronger than that of 'Directive'. 'Directive' word- the interpretation of it can only be with in the purview of guideline but the word- 'fundamental' denotes something which must necessary and so fundamental that it's significant can not be denied up. It is our liberation sprit that to ensure a society to ensure a hunger and ensure a better or standard society without any expectation and free from discrimination. This is a state of general principles' "we the people enact, adopt this Constitution."[54] "All power of the People's Republic of Bangladesh belongs to people."[55] Peoples are demanding for a standard life with nutrition, hygienic environment along with democracy, liberty and right to self determination. If state fails, then judiciary should take necessary steps for the safeguard the Constitutional mandate. But this does not done the responsibility of the source of the greater power of our Constitution i.e., people also. Hoping; judiciary has already attempted some successful events which open the floodgate of judicial enforcement of fundamental principles of state policy like:

[52] B. H. Chowdhury, J. in Anwar Hossain Chowdhory vs. Bangladesh, 1989 BLD Spl 1, p. 61 para 53.
[53] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p. 59.
[54] Preamble of the Constitution of People's Republic of Bangladesh.
[55] Article 7, Ibid.

Separation of judiciary, protection of environment, direction for using consciousness in marketing smoke.[56]

4.6 Significance of FPSP: The fundamental principles have great constitutional significance. They have been declared to be fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws (Article-8). Though these principles are not enforceable in the courts, yet no government would dare to ignore them. Every government should take steps for implementing Directive principles of state policy as far as possible or else it would be criticized on the ground of non fulfillment of the directives. These principles represent the deliberate wisdom of the nation and will act as a constant reminder to the state for its implementation. Inclusion of fundamental principles in the constitution always gives a constitutional recognition of the responsibility of the state to promote the social and economic welfare of the people.[57]

[56] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.61.
[57] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.55.

Chapter V

Relevant Cases under the Constitution of Bangladesh

5.1 Aftabuddin vs. Bangladesh and others, 48 DLR 1

In Aftubuddin vs. Banglaladesh and others,[58] the High Court Division has discussed the following two points regarding fundamental principles of state policy:

1.Fundamental principles state policy are not judicially enforceable:

Naimuddin Ahmed J. observed that— [59]

" Its true that the preamble to the Constitution is not enforceable. Nor is Article 22, which is enshrined in part II of the Constitution as Principles of the State Policy, in view of Article 8 of the Constitution."[60]

Thus, it shows that Naimuddin Ahmed J. deviated from his earlier opinion[61] regarding enforceability of the Fundamental Principles of State Policy.

2. Interpretive value of the Fundamental Principles of State Policy:

Naimuddin Ahmed J. in the High Court Division observed that—

"But there is no doubt that the fundamental principles of state policy act as guide to the interpretation of the Constitution and other laws of Bangladesh in view of clause (2) of Article 8 of the Constitution… Article 22 of the Constitution enjoys the State to ensure the separation of the judiciary from the executive organs of the State. Article 166 has, therefore, to be interpreted in the light of the above provisions. There is no dispute that the pledge contained in the third paragraph of the preamble presupposes an independent judiciary and unless independence of the judiciary is ensured the third paragraph of the preamble cannot be secured. Similarly, although the directive to ensure separation of the judiciary from the executive by the state cannot be implemented and enforced through Court, Article 116 has to be interpreted in the light of this directive. In this connection, Article 166A is relevant.

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[58] 48 DLR 1

[59] Muhammad Ekramul Haque, Legal and Constitutional Status of the Fundamental Principles of State Policy as Embodied in the Constitution of Bangladesh, (2005), part f , vol. xvi (1), the Dhaka University Studies, Journal of the Law, p.73

[60] ibid, p.11, para.45.

[61] Supra note 58.

It runs as follows—

"Subject to the provisions of the Constitution all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions."

Article 116A is, therefore, a step to realize the principle enshrined in Article 22.[62] [63]

5.2 Kudrat E-Elahi vs. Bangladesh, 44 DLR (AD) 319

The status of the fundamental principles of state policy (FPSP) within the fabric of the Constitution has come under judicial security in Kudrat E-Elahi Panir and Others vs. Bangladesh[64]where the appellants relying on article 7 of the Constitution tried to convince the Court that a law inconsistent with any of the FPSP is void. Article 7 deals with the supremacy of the Constitution, and sub-section 2 provides that if any other law is inconsistent with this Constitution that other law shall, to extent of the inconsistency, be void. To negative the contention, the Court interpreted Article 7(2) along with Article 8(2) in a pessimistic approach.[65]

5.3 Saleemullah vs. Bangladesh, 47 DLR 218.

In the case of Saleemullah vs Bangladesh it was contended that the decision of then Government to send troops to Hait to join UN Force in Haiti was in violation of Article - 25 of the Constitution. But the High Court Division held this decision of the government not to be contrary to the Fundamental principle of State Policy. Bangladesh government took the decision to participate in the UN Multinational Force to Haiti to help maintain public safety and basic civil order after restoration no. 94 Petitioners also status that Haiti military announced that Haiti leaders have announced that they would counteract the foreign aggression. Petitioner further state that, the decisional taken during the Autumn session of the jatiya Sangsad to join "US led invasion" without the assent of the

[62] 48 DLR pp. 11-12 paragraphs 45,46.
[63] Muhammad Ekramul Haque, Legal and Constitutional Status of the Fundamental Principles of State Policy as Embodied in the Constitution of Bangladesh, (2005), part f , vol. xvi (1), the Dhaka University Studies, Journal of the Law, p.74.
[64] 44 dlr (ad) 319
[65] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.62

parliament and during the boycott of the parliament by the leaders of the parliament by the leaders of the opposition parties. Also violates the Articles 25 of fundamental principles of state policy. In this sense, the decision is against the fundamental principles of state policy and it also like a war or external aggression or internal disturbance .But Bangladesh government was sending a troops to participate in the UN sponsored multinational force to Haiti to help maintain public safety and basic civil order after restoration of the legitimately elected government there. The petitioner claimed that the Bangladesh government involve themselves in a war but it is not a war. Bangladesh Government sending troopds only for maintaining public safety and basic civil order. Not only Bangladesh but also other member states of United Nations were sending troops in the United Nations sponsored multinational force to Haiti following the initiative of the US president to restore the legitimate and democratically elected Haiti Government in 1991. The petitioner also claimed that us president directly requested Bangladesh Prime minister for sending troops. But the multinational force would take part in the operations under the United Nations Security Council Resolution Number 940.US president just took the proper step according to the Resolution .The decision of Bangladesh Government was based on its abiding Commitment to fully support the UN and to uphold the cause of democracy and peace around the world which is established in Article-25 of Bangladesh Constitution" The State shall base its international relational relations on the principles of respect for national sovereignty and equality, on-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter" According to Chapter –

VII of the UN charter "AUTHORIZES MEMBER STATES TO FORM A MULTINATIONAL FORCE UNDER UNITED COMMAND AND CONTROL". By the above direction sending Multinational troops to facilitate the departure from Haiti of the military leadership .The petitioner also claimed that, the decision to dent troops to Haiti is volatile of Article-63 of Bangladesh Constitution "War shall not be declared and the Republic shall not participate in any war except with the assent of Parliament" But there is no expression like "war" which is employed in the language of Article-63 of our constitution.

It may observe that, Bangladesh government send troops as a signatory state of International Law and the UN Charter for the purpose of help the civilian of Haiti. Though Fundamental Principles of State Policy can not be judicially enforceable but it serves as a guide of the interpretation of the constitution of the Constitution for the UN Court. The decision of the Government was not contrary to the Fundamental Principles of State Policy.

5.4 Sheikh Abdus Sabur vs. Bangladesh, 41 DLR (AD) 1989 (30).

Sheikh Abdus Sabur vs. Bangladesh Fundamental Principles of State Policy cannot be judicially enforced despite the supremacy of the Constitution recognized by our Constitution. While our Constitution recognizes the supremacy of the Constitution, it lays fundamental principles of the state policy in part-II although the Principles cannot be judicially enforced. In the constitution the framers had in view the well-defined separation of powers between the executive, legislative and the judiciary. Since it is the written Constitution the judiciary has been conferred the jurisdiction to settle the disputes between citizen and citizen and between state and the citizens of necessity, it is judiciary that has to say the last word even in matters of propriety of legislation .The concept of propriety of legislative supremacy important from the sail of a developed country cannot be removed into the sail of a developing nation .Article -9 of the Bangladesh Constitution Fundamental Principles of State Policy are not justifiable in court parliament is a creation of the constitution it self, the local elective bodies are created by their respective statutes in pursuance of Article -9 of the Constitution ,which appears in part-II relating to Fundamental Principles of state policy. These principles, though they must be applied by the state in the making of law, are not justifiable in court. The main function of parliament is law making that is legislative, whereas the main function of local bodies are executive in nature.

5.5 Dr. Mohiuddin Farooque Vs Bangladesh and others, 49 DLR (1996) (AD) 1.

In Dr. Mohiuddin Farooque Vs Bangladesh and Others The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health. The Constitution also commands the duties of the citizens and of public servants in no uncertain terms. Article 21 reads as follows:

(1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property.

(2) Every person in the service of the Republic has a duty to strive at all times to serve the people.

But in spite of the Constitutional commands and the provisions of the Act and the Rules, the gap remained as before between the letters of law and the implementation thereof in the field of environmental pollution due to unresponsiveness of the apathetic concerned officials, indifferent to the Constitutional edicts so solemnly declared in Article 18 and Article 32.

The oath of office of the Judges of the Supreme Court requires that they will preserve, protect and defend the Constitution and the laws of Bangladesh. These are not mere ornamental empty words. These glorifying words of oath praise the supremacy of judiciary. It is by now well settled that if the Government or its functionaries fails to act and perform its duties cast upon them by the laws of this Republic, the High Court Division of the Supreme Court, shall not remain a silent viewer to the lifelessness on the part of the Government or its officials, rather, in order to vindicate its oath of office can issue, in its discretion, necessary orders and directions, under Article 102 of the Constitution to carry out the intents and purposes of any law to its letter, in the interest of the people of Bangladesh because all powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of the Constitution.

Again, the learned Judge expressly said that while upholding the enforcement of the duty cast on the state held further as follows:

If the Legislature or the State Govt. feels that the law enacted by them cannot be implemented then the Legislature has liberty to scrap it, but the law which remains on the statutory books will have to be implemented, particularly when it relates to primary duty.

5.6 Saiful Islam Dilder V. Government of Bangladesh and others, 50 DLR(1998)318

In Saiful Islam Dilder V. Government of Bangladesh and others, the Court observed:
"True, that fundamental principle of state policy, here Article 25, cannot be enforced by Court, nevertheless the fundamental principles of state policy is fundamental to the governance of Bangladesh, and serve as a tool in interpreting the Constitution and other laws of Bangladesh on the strength of Article 8(2) of the Constitution by the superior Court."

Here the Court made it clear that the Fundamental Principles of State Policy are not judicially enforceable. But, on the other hand, when the learned Advocate relying upon Article 25 of the Constitution contended that Anup Chetia, if extradited to India the government would violate the mandate of Article 25, the Court in response to this argument observed that the said extradition does not go against Article 25, one of the Fundamental Principles of State Policy. Thus, the Court rejected the writ petition relying on, *inter alia,* that the said extradition does not violate Article 25, one of the Fundamental Principles of State Policy. Then, from this approach of the Court a question may easily be posed; what would the Court tell if the Article 25 would be violated? Could the Court decide it differently?

5.7 Secretary, Ministry of Finance, Government of Bangladesh V. Mr. Md. Masdar Hossain & others, 20 BLD (AD) (2000) 104

In Masdar Hossain case though the Court does not seem to enforce the *Principle* directly but the Court criticized the State for non-implementation of Article 22 of the Constitution of Bangladesh, one of the Fundamental Principles of State Policy, focusing the failure of the state to separate the judiciary from the executive. The Court observed: "Article 22 of the constitution provides that the State shall ensure the separation of judiciary from the executive organs of the State. Though more than 29 years have elapsed since making of the constitution and its coming into force no effective steps have been taken to separate the judiciary from the executive organs of the State." In the same case, the Court further adds that 'Article 22 contemplates separation of judiciary from the other organs of the State and it is for the legislature to decide on this issue'. Though in India also the Directive Principles are not judicially enforceable, I interestingly, the Supreme Court issued a number of directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by non-implementation of the Directives. The Constitution of Pakistan is rather very particular about the meaning, impact and consequence of certain principles, which are not judicially enforceable. Article 30(2) of the Constitution of Pakistan says-—"The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State or any organ or authority of the state or any person on such ground."

5.8 More Case references relating to enforcement of fundamental principles of state policy—

1. Winifred Rubie vs. Bangladesh 1981 BLD 30.
2. Golak Nath vs. State of Punjab AIR (1967) SC 1643.
3. Anwar Hossain Chowdhory vs. Bangladesh, 1989 BLD Spl 1, p. 61 para 53.

CHAPTER-VI

To be implemented of the fundamental principles of state policy

6.1 Why FPSP is to be implemented: The fundamental principles of state policy have been criticized as inadequate in providing opportunity for all Bangladeshi people. Many political groups have demanded that some issues of fundamental principles of state policy need to be enshrined as constitutional guarantees. In many spheres of our lives we find equality of opportunity in public employment have not been observed while recruitment of employees, usually employers take their relatives in job. According to Article 8, our freedom and fundamental rights shall be guaranteed but unfortunately, right to free contains a number of limiting clauses and has been criticized for failing to check on governmental powers. The phrases public order and morality are unclear having wide implication. Emancipation of peasants and workers are very rare scene in Bangladesh. Recently we saw in many districts of Bangladesh the garments workers came out violently for their equal salary. Article 15 of Bangladesh Constitution says the basic necessities but in the real life these clauses have no effect on people because fundamental principles of state policy are not judicially enforceable. Right to reasonable rest, recreation and leisure are dreams for many workers, where workers do not get appropriate wage. Right to social security is highly debated issue, although nowadays people are getting some social securities.[66]

Adding to these, rural development and agricultural revolution are taking place but very slowly, and a person can never know when our country will get proper rural development and agricultural revolution because none things about rural development and agricultural revolution. People are still adulterated foods not only in public places but also in highly posh areas. Nowadays duty of public servant is criticized most then any other matter. Article 21(2) says public servants should strive to serve people but the matter has not

[66] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.66-67.

come true yet in some cases, still people strive to get their work done by those public servants depositing extra money to those people pocket.[67]

Our judiciary has been separated from the executive, but we still have to wait long time to see its benefits. All debates starts with the words 'judicially non-enforceable'. We should try hard to bring fundamental principles of state policy under judicial enforceability as much as we can, so that people should aware before violating fundamental principles of state policy. [68]

6.2 What steps should be taken for implementation of FPSP: For implementation fundamental principles of state policy, following matters should be followed:

1. the state shall take steps to separate the judiciary from the executive.
2. the state shall take steps to remove the disparity in the standards of living between the urban and the rural areas.
3. the state shall take step to protect historical monuments from destruction and disfigurement.
4. the state shall take steps to secure international peace and security.
5. the state shall take steps to maintain good relations between nations.
6. the state shall take steps to respect international laws and treaties.
7. the state shall take steps to solve disputes through peaceful means.
8. the state shall take steps to promote agricultural revolution.
9. the state shall take steps to raise the level of nutrition and the improvement of public health.
10. the state shall take steps to ensure equality of opportunity to all citizens.
11. the state shall take steps to protect and develop the unique local cultural and traditional of the tribes, minor races, ethnic sects and communities.
12. the state shall take steps to improve the national language, literature, and all the arts to all sections of people.
13. the state shall take steps to protect and improve the environment.

[67] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.67.
[68] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.67.

14. the state shall take steps to preserve and safeguard the natural resources, bio-diversity, wetland, forests and wild life for the present and future citizens.
15. the state shall take steps to adequate means of livelihood, both men and women.
16. the state shall take steps to ensure equal pay for equal work for both men and women.
17. the state shall take steps to secure suitable employment, which shall not have undermined the health of men, women and children.
18. the state shall take steps to stop the moral and material exploitation of women and children.
19. the state shall take steps to improve working conditions.
20. the state shall take steps to secure for all workers reasonable wages to help them lead decent lives.
21. the state shall take steps to provide free and compulsory education.
22. the state shall take steps to stop the exploitation of the peasants and workers.

Thus we can see that the fundamental principles of state policies are important for the establishment of a welfare state. Although they are not binding on any government, they have no moral value. With the help of these principles, the government can bring about more improvements in the condition of the people.[69]

[69] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.48.

CHAPTER-VII

Relationship and distinctions between fundamental rights and fundamental principles of state policy:

7.1 Relationship

Obviously the Fundamental Principles of State Policy are not judicially enforceable whereas the fundamental rights are enforceable in the courts as mentioned by articles 8 and 26. It seems to give higher legal status to the fundamental rights in comparison with the Fundamental Principles

of State Policy. But on the other hand article 47(1) incorporates an interesting and significant provision regarding the relationship between these two. It provides that no law shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the fundamental rights, if Parliament in such law (including, in the case of existing law, by amendment) expressly declares that such provision is made to give effect to any of the fundamental principles of state policy set out in part II of this Constitution. This provision seems to give higher legal status to the Fundamental Principles of State Policy in comparison with the fundamental rights. So I think it will not be wise to term any of

these two as superior to another, because, it seems that the Constitution has maintained a balanced relationship between these two.

7.2 Distinctions

Following points of differences between fundamental rights and fundamental principles of state policy may be mentioned here:

i) As regards judicial enforceability: Fundamentals rights are judicially enforceable, though the fundamental principles of state policy cannot be enforced in the courts.[70]

ii) As regards requirement of legislation for the implementation: Fundamental rights will be enforced and be implemented directly in the form they are mentioned in the Constitution. Whereas, for the implementation of the fundamental principles of state

[70] See Article 8 of the Constitution of Bangladesh.

policy new legislation is required in conformity with the policy. Thus, state policy can only be implemented through another new legislation.

iii) As regards taking away legislative power: The fundamental principles of state policy do not restrict the legislative power, rather than merely formulates certain policies to be followed by the legislature. But the fundamental rights inserted in the Constitution of Bangladesh take away certain legislative power imposing the restriction explicitly in Article 26 that no law in violation of these rights can validly be passed.

iv) As regards violation and declaration o f a law as void: The court can not declare a law as void on the alleged ground of violation of any of the fundamental principles of state policy. Whereas any law passed violating any of the fundamental rights will be declared by the competent court as null and void.

CHAPTER-VIII

Recommendation and Concluding Remarks

8.1 Recommendation: Fundamental principles of state policy enshrined in Article 8 to 25 of the part II of the Constitution of The People's Republic of Bangladesh. These cover a wide range of state activity embracing economic, social, legal, educational and international problems. According to Article 8 the Principles of nationalism, democracy, socialism and secularism meaning economic and social justice, together with the principles derived from them, shall constitute the fundamental principles of state policy. The Article also says that the principles set out in part II shall be fundamental to the governance of Bangladesh, shall be applied by the state in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of work of the state and of its citizens, but shall not be judicially enforceable.[71]

Article 9 says about the principles of nationalism which derives from its language and culture.

Article 10 shall be established a just and egalitarian society, free from the exploitation of man by man.

Article 11 about democracy and human rights which shall be guaranteed fundamental human rights and freedoms and respect for the dignity and worth of the human person.

Article 12 about secularism which is free from any discrimination against, or persecution of, persons practicing a particular religion.

Article 13 principles of ownership which means production and distribution and ownership shall state ownership, co operative ownership, private ownership.

Article 14 enjoins upon the state to emancipate the toiling masses of peasant and workers.

Article 15 about the provisions of basic necessities of life, including food, clothing, shelter, and medical care.

[71] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.51.

Article 16 says that the state shall take effective measures to ensure balanced development of the rural areas so as to remove the disparity in the standards of living between the urban and the rural people.[72]

Article 17 says the state to take effective measures to provide free and compulsory education to all children, and remove illiteracy as early as possible.

Article 18 says the state to take step to improve the level of nutrition and public health and morality.

Article 18A says the state to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, forests and wildlife for the present and future citizens.

Article 19 says the state to ensure equality of opportunity to all the citizens.

Article 20 says that the work is a right, duty and a matter of honor for every citizens, and everyone shall be paid according to his work, and that the state shall endeavor to create conditions in which human labor, whether intellectual or physical, shall become a fuller expression of creativity and of the human personality.[73]

Article 21 is about the duties of the citizens and public servants to maintain discipline, to perform public duties and public properties.

Article 22 says to the state to separate Judiciary from the Executive.

Article 23 is to improve the national culture as the language, literature etc.

Article 23A is about the culture of tribes, minor races, ethnic sects and communities.

Article 24 says to the state to take steps for the protections of all the monuments from disfigurements, damage etc.

Article 25 directs the state to base its international relations on the principles of respect for national sovereignty and equality, non interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the UN Charter.[74]

Most of the members of Parliament are not expert in law who are considered as the representative of the Parliament. As they do not have enough knowledge about

[72] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.51

[73] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.52

[74] Mahbubul Islam, Understanding the Constitution of Bangladesh, University Publication& Titu Publication, First Published-January 2015, p.52

constitutional law or any other laws, they give their consent consciously. So, the opinion of the jurist must be taken. Thus the State can implement the Fundamental Principles of State Policy.

8.2 Concluding Remarks

Finally we can say that, the Fundamental principles inserted in part II of the Bangladesh Constitution are incapable of judicial enforcement only in the sense that the order, time, place and mode of fulfilling the policies should be left with the executive. At the same time the executive should not be allowed to deny the Constitution by allowing them to ignore, disregard and defeat the fundamental principles of state policy in making laws. As it is already inserted in the Constitution of the People's Republic of Bangladesh, it cannot be denied at all.

I think Fundamental Principle of State Policy is mainly co-related with Economic, Social and Cultural rights. That's why the policy of the state is to put it as such type of position that is not judicially enforceable because state think that still now they are unable to fulfill the prescribed rights. But the state cannot deny it at all.

The background of the Fundamental Principles of State Policy not a short term rather its significant is not describable in a word. Eighteen Fundamental Principles of State Policy enrich its application through its nature and characteristics. There is a direct confliction between Fundamental Principles of State Policy and Fundamental Rights. Fundamental Principles of State Policy are not judicially enforceable but it is impossible for any government to skip it.

So, as a welfare state, government should keep trying to fulfill all the public demands according to the Fundamental Principles of State Policy because any citizen can easily justify the performance of that government on the basis of Directive Principles. The state policies are also interpreting the constitution and also interpreting the other laws. Principles are just like a polestar that provides direction. Their basic aim is to persuade the government to provide social and economic justice in all spheres of life, keeping in view its material resources, at the earliest possible. Many of them have been implemented very successfully.

Actually, no government can afford to ignore these instructions as they are the mirror of the public opinion and also reflect the basic spirit of the Preamble of our Constitution.

Lastly it can be said that the Fundamental principles although not binding upon the state and not having the same status, is not to be denied at all. If the Rights are obligatory then the Principles are Preliminary. Lastly I think our government will take steps as early as possible for our better future.

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