Sonargaon University (SU)

Research Monograph
On
Safeguard of Fundamental Rights and Human Rights under the Constitutional Mandate of Bangladesh & International Instruments

A Research Monograph submitted for the partial fulfillment of the award of the degree LLM (1 Year), Faculty of Arts and Humanities, Department of Law

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Letter of Transmittal

To

Md. Abdul Alim

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Subject: Submission of Research Monograph on "**Safeguard of Fundamental Rights and Human Rights under the Constitutional Mandate of Bangladesh & International Instruments"**

Dear Sir,

This is a great pleasure to submit the Research Monograph on **"Safeguard of Fundamental Rights and Human Rights under the Constitutional Mandate of Bangladesh & International Instruments"** as a partial requirement for the fulfillment of my LLM (1 Year) course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Yours sincerely

.....

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Declaration

I do hereby declare that the Research Monograph Title **"Safeguard of Fundamental Rights and Human Rights under the Constitutional Mandate of Bangladesh & International Instruments"** prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LLM (1 Year) Degree. This is an original work of nine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

.....

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Supervisor Certificate

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Faculty of Arts and Humanities, Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LLM (1 Year) program.

.....

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Acknowledgement

***In the name of Allah, the Beneficent, the Merciful".**

Praise by Allah & thanks to Allah for patronizing me to finish this Research Monograph. I am very happy to finish it. It is a great Research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of Law in Sonargaon University (SU) to fulfill my dream. But through my whole study life in this field, I did not get much more opportunities to examine and show my knowledge and skill in this wide field. Lastly I have got a great chance to make my study meaningful when I got the chance to prepare a Research Monograph on **Safeguard of Fundamental Rights and Human Rights under the Constitutional Mandate of Bangladesh & International Instruments**

I acknowledge my grateful to respected course teacher **Md. Abdul Alim** for instructing me how to prepare a Research Monograph and his famous Books lectures on this subject help me to complete my task sincerely.

I am also thankful to my classmate as they help me to complete the Research Monograph. I am extremely paying my solitude to all the authors and writers whose works help me to draft this original Research Monograph.

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Thank you

Sabrina Akter

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List of Abbreviation

AD	: Appellate Division
AIR	: All India Reporter
Art.	: Article
BCR	: Bangladesh Case Reports
BILIA	: Bangladesh Institute of Law and International Affairs
BLC	: Bangladesh Law Chronicles
BLD	: Bangladesh Legal Decisions
Chap.	: Chapter
CJ	: Chief Justice
DLR	: Dhaka Law Reports
Edn.	: Edition
J	: Justice
Ltd.	: Limited
M/O	: Ministry of
No.	: Number
Nos.	: Numbers
PLC	: Pakistan Law Chronicles
PLD	: Pakistan Legal Decisions
QBD	: Queens Bench Division
SC	: Supreme Court
SCC	: Supreme Court Cases
Sec.	: Section
UDHR	: Universal Declaration of Human Rights
UK	: United Kingdom
UPL	: University Press Limited
USA	: United States of America
V.	: Versus
Vol.	: Volume

Chapter I

1.1 Abstract

This research monograph is focused on the fundamental rights in the Constitution of Bangladesh. The fundamental rights are defined as basic human freedoms for every citizen of a country for proper and harmonious development of his life. The language of fundamental rights is understood and utilized by the people in very diverse circumstances and these rights have become indispensible to understand of how human being should be treated by one another and by national bodies. The object 6 of this thesis is to explore the nature, value of fundamental rights which guaranteed in Bangladesh Constitution as well as its extent of basic and legal necessity. An attempt has also been made to analysis the constitutional measures to protect and enforce of these rights.

This paper is an attempt to explore fundamental rights which is incorporated in our constitution on the basis of international human rights law. Bangladesh is a deltaic country situated in the Bay of Bengal having over 160 million of people. In spite of ratification of many international human rights instruments, every year many peoples are deprived to exercise fundamental rights because of political unrest. The Fundamental Rights of Bangladesh Constitution themselves have no fixed content, most of them are empty vessels into which is generation must pour its content in the light of experience. The study intends to examine violation of fundamental rights in the light of present situation. Furthermore, this paper attempts to examine the general criticisms of the enforcement of fundamental rights and desirability of judicial activism in the fulfillment of such right. The main purpose of this paper is to ensure fundamental rights by imposing the international human rights instruments by the political parties as well as our domestic court.

1.2 Introduction

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[1].

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. Modern judiciary is regarded as an excellent product of civilization to put the concept of justice to work in the midst of divergent force with conflicting class or individual interests. Such conflicts make is difficult to bring about equilibrium in the society for a peaceful and orderly association of citizens for their common good. An independent judiciary and strong democratic institutions are the best guarantee against assaults on the rights of the citizens.

This dissertation is mainly focusing on the features of fundamental rights in the constitution of Bangladesh inspired by the Universal Declaration of Human Rights, 1948 ; the constitution of Bangladesh enumerated some basic civil and political rights common to most liberal democracies and also insures the rights to constitutional remedies for the protection of the rights. In addition, the fundamental rights of the constitution of Bangladesh are aimed at overturning the inequalities of past social practice. I prohibit discrimination on the grounds of religion, race, sex, color place of birth, forbid trafficking human being, and forced labor.

Thomas Jefferson said, “We hold these truths to be self-evident. That all men are created equal. That their creator with certain inalienable secure these rights, government are instituted among men, deriving their just, endows them powers form the consent of the governed. That whenever any form of government becomes destructive of those ends, it shall be the right of the people to alter or abolish it and to institute new government, laying its foundations upon such principles, and organizing its power in such forms, as shall seem to them most likely to affect their safety and happiness[2].

The universal Declaration of Human Rights 1948, which states “Everyone has the right

[1] The doctrine of fundamental rights

[2] A summary View if the Rights of British America (1774)

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. However, 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 one of the safeguards of democracy. Bangladesh accepted fundamental rights and incorporated the same in their constitution. Within less than a year after the emergence of Bangladesh as a new, independent, sovereign republic, the constitution of Bangladesh was passed, though; however, it came into force on December 16, 1972, the first anniversary of the day of liberation.

1.3 Methodology of the study

This study is generally a non-empirical analysis. The main sources of this study include secondary sources like textbooks, reports, relevant national and international legislations, case studies, some important daily newspapers, online documents and some publications. The study has also relied on decided cases of Apex Court of Bangladesh and the Subcontinent.

Chapter II

Nature of Fundamental Rights

2.1 What is Right?

Before understanding fundamental rights are should have idea about rights and human rights. Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory[3].

Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology. Rights are often considered fundamental to civilization, for they are regarded as established pillars of society and culture, and the history of conflicts can be found in the history of each right and its development. According to the Stanford Encyclopedia of Philosophy, "rights structure the form of governments, the content of laws, and the shape of morality as it is currently perceived".

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[4]. 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- natural rights and legal rights.

1) **Natural rights** are rights which are "natural" in the sense of "not artificial, not man-made", as in rights deriving from human nature or from the edicts of a god. They are universal; that is, they apply to all people, and do not derive from the laws of any specific society. They exist necessarily, inhere in every individual, and can't be taken away. For example, it has been argued that humans have a natural right to life. These are sometimes called moral rights or inalienable rights.
2) **Legal rights**, in contrast, are based on a society's customs, laws, statutes or actions by legislatures. An example of a legal right is the right to vote of citizens. Citizenship, itself, is often considered as the basis for having legal rights, and has

[3] The universal Declaration of Human Rights 1948

[4] "Stanford Encyclopedia of Philosophy",Stanford University, July 9,2007

been defined as the "right to have rights". Legal rights are sometimes called civil rights or statutory rights and are culturally and politically relative since they depend on a specific societal context to have meaning.

Some thinkers see rights in only one sense while others accept that both senses have a measure of validity. There has been considerable philosophical debate about these senses throughout history. For example, Jeremy Bentham believed that legal rights were the essence of rights, and he denied the existence of natural rights; whereas Thomas Aquinas held that rights purported by positive law but not grounded in natural law were not properly rights at all, but only a facade or pretense of rights.

2.2 What are Human rights?

The term “Human Rights” which does not mean any right is used in special sense. Human rights are those of legal and moral rights which can be claimed by any person for the veryreason that is a human being[5]. These rights come with birth and applicable to all people throughout the world irrespective of their race, color, sex, language or political or other opinion. These are those rights, that are inherent in human person and without which they cannot live as human beings.

So we can say, ‘Human Rights’ are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, col our, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

2.3 What are Fundamental Rights?

The term fundamental right is a technical one, for when certain human rights are written down in a constitution and protected by constitutional guarantees they are called

[5] “Sepulveda et al. 2004”,p.3 copy”, Archived from the original on March 28,2012.

fundamental rights[6]. They are called fundamental rights in that sense that they are placed in the supreme or fundamental law of the land which has a supreme society over all other law of the land.

From WEX Legal Dictionary, 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 (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[7].

Article 26 to 47 of Bangladesh constitution confers a number of substantive fundamental rightson every citizen of Bangladesh e.g. the right to freedom of expression, assembly, association,movement and profession.

According to Hidayatullah, J., Fundamental Rights are those rights which the states enforces against itself[8].

2.4 Distinction between Human rights and Fundamental rights

There are some Fundamental distinction between directives and fundamental rights:

First, when certain human rights are written down in a Constitution, a supreme law, and protected by constitutional guarantees they are called fundamental rights. Directive principles, on the other hand, are polices relating to social, economic and cultural rights which are to be followed in governance of the country.

Second, 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 jucticiable rights in favour of individuals. The court can not 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

[6] "International Covenant on Civil and Political Rights"Article 1

[7] WEX Legal Dictionary

[8] L.C. Golak Nath v. State of Punjab, AIR 1967 SC 1643 at 1656 & 1708.

contravenes any of directives principles.

Third, fundamental rights are mandatory in nature whereas directives are declaratory in nature as they have expressly been excluded from the preview of the courts[9].

Fourth, the fundamental rights create negative obligation on the state, i.e., the state is required to refrain from doing something. The directives, on the other hand, impose positive obligation on the state i.e., to implement these principles the state will have to achieve certain ends by its actions.

Fifth, the directive principles may be described as inchoate fundamental rights while the fundamental rights are full-fledged i.e. the former requires legislation to become effective while the latter need not requires such legislation. And so long there is no law carrying out the policy laid down in directives neither the state nor an individual can violate any existing law or legal right under the colour of directive principles.

Sixth, Fundamental rights are primarily aimed at assuring political freedom to citizens by protecting them against excessive state action while directive principles are aimed at securing social and economics freedom by appropriate state action.

2.5 Nature of Fundamental Rights

The Fundamental Rights were intended to serve three important purposes, namely:

1. to prevent the Executive from acting arbitrarily;
2. to ensure some amount of security and protection to various types of minorities; and
3. to promote and foster social revolution by establishing the conditions necessary for achieving justice, social, economic and political.

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. But the Fundamental Rights as contained in part III of the constitution, are neither rooted in the doctrine of natural law nor did they base on the theory of reserved

[9] Halim , Md. Abdul, Constitution, Constitutional Law and Politics: Bangladesh Perspective (1998)

rights. They are conferred rights and embody the social values of the present generation. As the social values are not static, the Fundamental Rights are subject to changes and modifications in order to fulfill the aspirations of man in the context of his changed conditions and environment in which he lives.

2.6 Classification of Fundamental Rights

The Fundamental Rights enumerated in the Bangladesh Constitution may be classified in to following three groups-

A .Absolute Rights

1. Equality before law, (Art. 27).
2. Discrimination on grounds of religion etc (Art.28).
3. Equity of opportunity in public employment (Art.29).
4. Prohibition of foreign titles etc (Art.30).
5. Safe guards as to arrest and detention (Art.33).
6. Prohibition of forced labour (Art.34).
7. Protection in respect of trial and punishment (Art.35).
8. Enforcement of Fundamental Rights (Art.44).

B. Rights on which reasonable restriction can be imposed:

1. Freedom of movement (Art.36).
2. Freedom of Assembly (Art.37).
3. Freedom of Association (Art.38).
4. Freedom of thought and conscience and of speech (Art.39).
5. Freedom of religion (Art. 40)
6. Protection of home and correspondence.

C. Fundamental rights which has been practically left to the legislature

1. Right to protection of law (Art.31)
2. Protection of right to life and personal liberty (Art.32)
3. Right to lawful profession, occupation or business (Art.40)
4. Protection of property right (Art.42)
5. In the interest of the security of the state, public order, public morality or public health(Art.43)

In the case of above mentioned fundamental rights parliament can by law impose only reasonable restriction as mentioned in the respective Articles.

The question is when a restriction can be said to be reasonable. What is the standard by which the reasonableness of a restriction can be judged? The courts opine that no fixed standard can be laid down for general application and it will vary depending on the varying circumstances of each case. In *Abul A'la Moudoodi v. The Government* [10], it was held that a restriction will be treated as unreasonable "if the restriction is for an indefinite or an unlimited period or disproportionate to the mischief sought to be prevented or if the law imposing the restriction has not peovided any safeguard at all against arbitrary exercise of powers". The reasonableness of restrictions has to be determined in an objective manner[11]. The court has to decide the question of reasonableness of restriction[12].

[10] (1965) 17 DLR (SC) 209; see also Chitta Ramjan v. Secy.,judicial Department, (1965) 17 DLR 451.

[11] Oali Ahad v. Bangladesh (1954) 26 DLR 376; Municipal Corp v. Jan Mohammad, AIR 1986 SC 1205/

[12] Chintaman Rao v. M.P.,AIR 1951 SC 118.

Chapter III

Fundamental Rights Under The Constitution Of Bangladesh

3.1 Feature of Fundamental Rights in Bangladesh

18 fundamental rights have been enumerated in the constitution commencing from Article 27 to 44. Prior to delving into the Articles under part III which are meant for fundamental rights , it is worthy to to refer the provision of Article 111 [13] of the Bangladesh Constitution, as without the support of this Article 111 judicial innovation and interpretation of the fundamental rights will be of no use.

Thus, Article 111 says-the law declared by the Appellate Division shall nbe binding on the High Court Division and the law declared by either division of the Supreme Court[14] shall be binding on all courts subordinate to it. All of these rights are civil and political rights. These 18 fundamental rights may be firstly divided into two groups:

a) Rights granted to all persons-citizens and non citizens alike. These are six rights enumerated in Articles 32, 33, 34, 35, 41 and 44 of the constitution.
b) Rights granted to citizens of Bangladesh only, these are 12 rights enumerated in Articles 27, 28, 29, 30, 31, 36, 37, 38, 39, 40, 42 and 43.

Briefly discussion Article basis starting from Fundamental rights in Bangladesh constitution.

Laws in consistent with Fundamental rights to be void

Article, 26 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 v. Bangladesh[15], popularly known as the constitution (Eight Amendment) case has also expressed the same view.

In that decision, Shahabuddin Ahmed, j. held at paragraph 381, as under: “As to the

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[13] This Article embodies doctrine of precedent and says regarding the binding effect of the Supreme Court Judgments.

[14] Bangladesh Supreme Court consists of teo Divisions-the High Court Division and the Appellate Division.

[15] Case of “Anwar Hossain vs. Bangladesh” (known as The Constitution Case)

constituent power, that is power to make a constitution, it belongs to the people along. It is the original power. It is doubtful whether it can be vested in the parliament, though opinion differ, people after making a constitution give the parliament power to amend it in exercising its legislative power strictly following certain special procedures constitutions of Anwar Hossain v. Bangladesh popularly known as the constitution (Eight Amendments) case has also expressed the same view. In that decision, Shahabuddin 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. It is doubtful whether it can be vested in the parliament, though opinion differ, people after making a constitution give the parliament power to amend it in exercising its legislative power strictly following certain special procedures constitutions of some countries may be amended like any other status following the ordinary legislative procedure. Even if the constituent power is vested in the parliament the power is a derivative one and the mere fact that an amendment has been made in exercise of the derivative constituent power will not automatically make the amendment immune from challenge. In that sense there is hardly any difference whether the amendment is a law, for it has to pass through the order in validity test my considered opinion therefore is that an amendment of the constitution is not included in law" with in the meaning of Article 7 in the same way as it is not law in Article.

Equality before law

Article 27 guarantees every citizen's right to equality before the law and the equal protection of the laws. It combines the English concept of equality before law and the American concept of equal protection of law.

"Equality before law" means that among equals law shall be equal and shall be equally administered. There shall not be any special 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. The first part is negative while the second is positive in approach. Equality before law is involved in the enforcement of law, while equal protection of law involves the validity of a law. But these are not independent or severable concepts in their application and will

often be found to overlap each other this article more than others firmly embodies the concept of rule of law the establishment of which is one of the prime objectives of the constitution[16].

Discrimination on grounds of religion etc.

Art. 28 has been introduced to make classification only or grounds of religion, race, caste, sex or place of birth parse unreasonable except when a provision is made in favor of women, children and backward section of citizens[17].

As a matter of fact, this article projects the citizen against discrimination. The state can not discrimination only on the grounds as mentioned in Article 28, but with some other national factor, the discrimination would be valid. The crucial word in this Article is discrimination which means making an adverse destination with regard to or distinguishing unfavorably from others.

Equality of opportunity in public employment

Clause (1) of Article 29 of the constitution guarantees equality of opportunity for all citizens in the matter of employment or office in the service of the Republic. The expression "the service of the Republic" means any service, post or office whether in a civil or military capacity, in respect of the government of Bangladesh and any other service declared by law to be a service of the Republic. Equality of opportunity in respect of employment under this clause means equality as between members of the same class of employees and not equality between members of separate classes. This clause gives effect to the doctrine of equality in respect of appointment as well as promotion. Inequality of opportunity for promotion between holders of posts in the same grade may be an infringement of this clause, but those who hold post in different grades are not entitled to invoke it. When an application for a post has been made, it must be considered on merits.

Prohibits discrimination in respect of employment an office in the service of Bangladesh on the grounds only of religion, race, caste, sex or place of birth. Where selection for promotion to the next higher grade is on the "basis of seniority cum-merit" a public

[16] The Constitution Of The People's Republic Of Bangladesh

[17] The Constitution Of The People's Republic Of Bangladesh

servant is entitled to claim relief under this clause if he is placed in the placed in the list of seniority contrary to the rules governing seniority. Clause (3) provides an exception by restricting the operation of clauses (1) and (2) of Article 29. A provision an exception can not be so interpreted as to nullify or destroy the main provision[18].

In the case of Bangladesh v. Azizur Rahman[19], will interpreting Article 29 of the constitution, Equal opportunity held at paragraph 44 as under: The guarantee of equal opportunity in respect of employment is available at the stage of initial appointment and of promotion. Merely because chances of promotion of the write petitioners may be said to have been affected by the impugned rules of 1990 would not amount to denial of equality of opportunity in respect of the employment, as chances of promotion are not conditions of service. As a matter of fact, no writ petitioners have been deprived of the right to be considered for promotion and as such, the submission that they have been denied the right of equal opportunity in respect of future employment is untenable and there is in fact no violation of Article 29(1) of the constitution.

Prohibition of foreign titles, etc.

Article 30 provides that No citizen shall, without the prior approval of the president, accept any title, honor, award or decoration from any foreign state[20].

Right to protection of law

Article 31 deals with the protection of law to be enjoyed by citizens and persons residing in Bangladesh and in particular, in respect of life, liberty, body, reputation and property. The term in accordance with law is akin to American concept[21].

Protection of Right to life and personal liberty

No personal shall be derived of life on personal liberty saved in accordance with law. In the case of Islam Mahmud v. Bangladesh[22], H. M. Habibur Rahman, j. held that the detaining authority must have some jurisdictional facts for detaining an individual, since the detaining authority is curtailing the liberty of a citizen by detaining him on preventive

[18] The Constitution of the People's Republic Of Bangladesh

[19] Case of "Bangladesh vs. Azizur Rahman"

[20] The Constitution of The People's Republic Of Bangladesh

[21] The Constitution Of The People's Republic Of Bangladesh

[22] Case of "Islam Mahmud vs. Bangladesh"

detention; it is exercising a non-judicial authority. To curtail fundamental rights of personal liberty enshrined in the constitution it is essential that the detaining authority.

Must have report and materials that is jurisdictional facts for exercising power to detain the detune under the special power Act[23].

Safeguards as to arrest and detention

Article 33 consists of two parts: Clauses (1) and (2) relate to persons otherwise than a preventive detention of law. Clauses from (3) to (6) apply to person arrested or detained under preventive detention. This Article provides for protection against unreasonable arrest and detention. This Article provides for some specific procedural safeguard as in clause (1) of 33, a person in detention is entitled to know the grounds of his arrest and he cannot be denied the right to consult or be defended by a lawyer of his/her choice. In clause (2) a person arrested must be produced before the nearest magistrate within twenty four hours excluding the tie for such journey. The Article provides for certain substantive and procedural safeguard in respect of deprivation of life and personal liberty as a matter of fact, disclosure of grounds of arrest and detention before a magistrate even mandatory, under clause (1) of Article 33. There are numerous judicial decisions of the supreme court of Bangladesh on the question of preventive detention and the safeguards to be observed have become a highly specialized subject. Clause (4) provides that no person can be detained at the first place exceeding six months and during this time he must be given an opportunity to be heard by an Advisory Board. This clause also speaks of the constitution of the board. Clause (5) of Article 33 provides for early communication of grounds of detention of such person, the provision of this clause also authorizes the detaining authority for not disclosure of facts in public interest[24].

In the case of professor Ghulam Azam v. Bangladesh, Md. Abdul jalil[25], j. held at paragraph 25 asunder: From the facts and circumstances as discussed above we are of the opinion that the petitioner having been living in Bangladesh is entitled to the protection under Article 33(5) of the constitution and as such the detaining authority was under

[23] The Constitution Of The People's Republic Of Bangladesh

[24] The Constitution Of The People's Republic Of Bangladesh

[25] Case of "Professor Ghulam Azam vs. Bangladesh"

constitutional obligation to communicate grounds of detention as soon as may be, but no grounds were communicated within such long period of more than 1 year and 3 months.

Prohibition of Forced Labour

Clause (1) of Article 34 prohibits all forms of forced labour and any contravention of this rule has been made punishable in accordance with law. Clause (2) prevents persons undergoing punishment for sentence given by a court of law from invoking the prohibition against forced labour provided in the proceeding clause and further the state is empowered to require compulsory services for public purposes. The Article does not expressly mention slavery as has been mentioned in the thirteen Amendments of the United States constitution, and though there is no longer the remotest likelihood of enforcing such institution the prohibition against forced labour would extend to it if at all any attempt is made to introduce it[26].

Protection in respect of trial and punishment

Article 35 guarantees a cluster of rights in respect of trial and punishment. Clause (1) provides protection against ex post facto laws, clause (2) provides guarantee against double jeopardy, clause speedy and fair trial: clause (4) grants privilege against self incrimination and clause (5) prohibits torture and cruel, inhuman or degrading punishment. Clause (6) provides that nothing in clause (3) or clause (5) shall affect the operation of any existing law, which prescribes any punishment or procedure for trial[27].

Freedom of movement

Rights of locomotion is an important part of liberty, the right of a person to move freely to reside where he will and to work where he will is connected with his livelihood and pursuit of happiness. Even though this right may be protected by the due process clause of art, 31, as an important segment of liberty, the frames of the constitution made special provision to protect the freedom of movement of citizens, Art.36 provides that subject to reasonable restrictions imposed by law in the public interest, every citizen has the right to move freely through out Bangladesh, to reside and settle in any place in Bangladesh, and

[26] The Constitution Of The People's Republic Of Bangladesh

[27] The Constitution Of The People's Republic Of Bangladesh

to leave and re-enter Bangladesh[28].

In the case of Dr. Mohiuddinfarooque v. bangldesh and others[29], Mustafa Kamal, j. held at paragraph 31 as under: These rights, attached to a citizen are not local. They pervade and extend to every inch of the territory of Bangladesh stretching up to continental shelf..

Freedom of assembly

Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health[30].

Freedom of Association

The very existence of democracy is dependent on the right to form associations, without the right there can not be any political party which is an essential institution of democracy. The right of free association is closely allied with the freedom of speech and which is a right to free speech, and foundation of a free society[31].

Freedom of thought, conscience speech and press

Freedom of thought and conscience is essential to the development of human personality and every person should be free in his thought and conscience. On the other, freedom of speech is essential for the development and functioning of democracy. Without freedom of speech there can not be any democracy and the first thing and autocrat does is to curb the freedom of speech[32].

In the case of Bangladesh National curriculum and Text Board v. A.Msamsuddin and others[33], A.T.M. Afzal, c.j. held at paragraph 32 while interpreting Article 32(2) as under: The right to freedom of speech and expression as claimed by the writ petitioners does not extend to the right of printing and publishing of note books or textbook prepared and published by the textbook board under stationary authority the court was not justified in

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[28] The Constitution Of The People's Republic Of Bangladesh

[29] Case of "Dr. Mohiuddin Farooque vs. Bangladesh and others"

[30] The Constitution Of The People's Republic Of Bangladesh

[31] The Constitution Of The People's Republic Of Bangladesh

[32] The Constitution Of ThePeople's Republic Of Bangladesh

[33] Case of "Bangladesh National curriculum and Text Board vs. A.M Samsuddin and others"

declaring the impugned Act to be ultra vires of Article 39(2) of the constitution.

Freedom of profession or occupation

Article 40 provides that every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business[34].

Freedom of religion

Article 41 ensures that every citizen has the right to profess, practice or propagate any religion and every religious community on group can establish, maintain and manage its religious institutions subject to reasonable restriction imposed by law on the ground of public order and morality[35].

Rights to property

Article 41 guaranteed that every citizen has right to acquire, hold, transfer or otherwise dispose of property, subject to restrictions imposed by law compulsory acquisition, nationalization and requisition of property is not permissible without the authority of law[36].

Protection of home and correspondence

Article 43 ensures the citizens right to be secured in his home against entry, search and seizure and also to the privacy of his correspondence and other means of communication. Restriction can be imposed on such rights on the ground of security of the state, public order, public morality and public health. This article guarantees the privacy of home and correspondence and communications[37].

Enforcement of fundamental rights

Article 44(1) provides that the right to move the Supreme Court for enforcement of any of the fundamental rights is itself a fundamental right. Art. 44(2) enables parliament to confer the jurisdiction to enforce fundamental rights on any other court, but such conferment cannot be in derogation of the power of the Supreme Court under Art. 102(1) which means that such other court may be given concurrent, but not exclusive, power of

[34] The Constitution of the People's Republic Of Bangladesh

[35] The Constitution Of The People's Republic Of Bangladesh

[36] The Constitution of the People's Republic Of Bangladesh

[37] The Constitution Of The People's Republic Of Bangladesh

enforcement of fundamental rights. The Court must always have the power of enforcement of fundamental rights[38].

3.2 VIOLATION FUNDAMENTAL RIGHTS IN BANGLADESH PERSPECTIVES

Fundamental Rights violated in all of the third world countries. All third world countries Constitution ensured this right but they cannot exercise it. In the view of our country fundamental rights violation is highly, today in the view of our country our executive body, our legislative body, our judicial body violates the fundamental rights[39].

3.3 Violation of Fundamental Rights by Government

Once again the government has promulgated an uncivilized ordinance that defies all norms of humanity and violates fundamental human rights. During the 87 days of the army operation that began on 16th of October 2002, a black chapter has been added in the history of Bangladesh. It may be mentioned that under direct orders from the Prime Minister. They Army operation known as 'Operation Clean Heart' has resulted in serious violation of human rights and political persecution.

The promulgation of this black ordinance denies the right to justice to 50 victims of army custodial deaths and to others who became handicapped and lame due to inhuman physical torture. This discriminatory and unlawful ordinance gives immunity to the members of the joint forces and the administration for their action during the 'Operation Clean Heart' between October 16, 2002 and January, 2003. With this the door of justice has been shut for the people depriving them their right to equal justice and security. No court of Bangladesh can try the forces for their acts.

3.4 BLAST Holds Seminar On Compensation For The Violations Of Fundamental Rights

On October 10, 2018 Bangladesh Legal Aid and Services Trust (BLAST) hosted a seminar titled 'Compensation as a Constitutional Remedy for Violations of Fundamental

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[38] The Constitution Of The People's Republic Of Bangladesh

[39] https://online.thedailystar.net/law-our-rights/news/blast-holds-seminar-compensational-remedy-violations-fundamental-rights-1647226

Rights’ as part of its Law in Practice Seminar Series at the BILIA auditorium. The focus of the seminar was on the growing importance of public law compensation and to identify the extent to which the Judiciary has recognised and granted constitutional compensation to redress fundamental rights violations[40]. Mr. Taqbir Huda, Research Specialist, BLAST, conducted the keynote presentation which was titled ‘Rights without Remedies: Activating Public Law Compensation in Bangladesh’[41]. He explained that Article 102 of the Constitution of Bangladesh is worded broadly enough to cover constitutional compensation and has been invoked by public interest lawyers and rights bodies to remedy victims of human rights violations. However, through a chronological analysis of compensation cases under Article 102 he highlighted the judicial conservatism in this area and the tendency to either tokenise compensation awards or conflate it with compensatory cost awards. He argued

that until tort law remains cumbersome and outside the reach of victims of fundamental rights violations, public law compensation will continue to be the only effective remedy, which is precisely why we need to activate it. Dr. Ridwanul Hoque, Professor of Law, University of Dhaka, was the designated discussant who contended that thus far there has been no judgment in Bangladesh which could adequately qualify as public law compensation. He argued that even though the principle of public law compensation has been embedded in the purposive wording of our Constitution since 1972, our courts

have unfortunately failed to utilise this. He referred to foreign jurisdictions where public law compensation has seen significant development such as India and South Africa, and cited a recent Indian Law Commission report which specifically recognised the importance of public law compensation. The panel discussants included Barrister Anita Ghazi Rahman, Advocate,

Supreme Court of Bangladesh and Founder of Think Legal Bangladesh and BarristerAbdul Halim, Advocate, Supreme Court of Bangladesh and counsel in

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https://online.thedailystar.net/law-our-rights/news/blast-holds-seminar-compensational-remedy-violations-fundamental-rights-1647226

thelandmark Zihad case. They addressed the question of what practical hurdles are involved in filing compensation claims through writ jurisdiction.Barrister Rahman submitted that the hurdles are threefold. The first is fault attribution: which specific branch of State should bear the brunt of paying damages in a constitutional compensation case? Secondly, what should be the quantum of compensation? Should the writ petitionersbe expected to specify the amount of compensation and the specific branch of State who should pay it in their writ petitions or is this the duty of the court to do so? She contrastedthe differing compensation amounts awarded in the cases discussed in the keynote presentation and pressed for the need to establish proper guidelines on quantum of compensation for the purposes of consistency. Thirdly, she said that the realisation of compensation even when the court rules in one's favour is 'half the battle' and takes an unduly long time[42].Barrister Halim spoke about the hurdles he personally experienced when pursuing the Zihad case, such as the great judicial reluctance to accept the notion that compensation should be paid for fundamental rights violations and the lack of domestic precedent on public law compensation. He highlighted that the Zihad case should be considered a benchmark for the development of public law compensation in the judicial system of Bangladesh since it marks the first time that the High Court Division, embraced judicial activism, analysed gross negligence and breach of statutory duty of a government authority and applied principles of constitutional tort.The panel discussion was followed by an open discussion among the participants which consisted of Supreme Court and District Court lawyers, university lecturers, academics, researchers and officers from the UN OHCHR. The closing address was given by Justice Md. Nizamul Huq, Chief Legal Advisor, BLAST and former Justice of the Appellate Division of the Supreme Court of Bangladesh, who remarked that there is immense potential for the growth of compensation law in our country and that this will be the first of many compensation seminars which will be organised by BLAST.

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https://online.thedailystar.net/law-our-rights/news/blast-holds-seminar-compensational-remedy-violations-fundamental-rights-1647226

THE EVENT WAS JOINTLY COVERED BY BARRISTER ABDULLAH ANBAR ANAN TITIR, RESEARCH SPECIALIST BLAST AND FAHAD BIN SIDDIQUE, INTERN,

BLAST.

3.5 Supremacy of the Fundamental Rights

Supremacy of the Fundamental Rights is safeguarded by the constitution of Bangladesh. It is a rigid constitution; it can be amended by two third majorities of the parliament members.

The constitution but not parliament is supreme. It is stated in the preamble that it is our sacred duties to safeguard protects and defend this constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh. Article 7 states all powers in the Republic belong to the people and their exercise on behalf of the people shall be affected only under and by the authority of this constitution[43]. This constitution is as the solemn expression of the will of the people. The supremacy of law of republic and if any other law is inconsistent with constitution that other law shall to the extent of the inconsistency to void. Article 26 states that all existing laws inconsistent with the provisions of this part i.e. Fundamental Rights, shall to the extent of such inconsistency become void on the commencement of this constitution. The state shall not to make any law inconsistent with the provision of this part and any law so made shall to the extent of such inconsistency is void. Under article 102 the Supreme Court has been empowered to scrutinize the government actions done is violation of Fundamental Rights. Again under Article 7 and 26 the Supreme Court exercises the power of judicial review i.e. to examine the constitutionality of any law passed by the parliament.

[43] The Constitution Of The People's Republic Of Bangladesh

Chapter IV

Fundamental Rights and Human Rights Under The International Imstruments

4.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted [44]by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas Member States have pledged themselves to achieve, in co-operation with the

[44] Mary Ann Glendon, A world made new:: Eleanor Roosevelt and the Universal Declaration of Human Rights. New York Random House,2001. Eleanor Roosevelt's paper are in the Franklin D. Roosevelt Presidential Library.

United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Now, therefore.

The General Assembly.

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations[45], to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood[46].

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty[47].

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in

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[45] The Universal Declaration of Human Rights

[46] Johannes Morsink, The Universal Declaration of Human Rights: origin, Drafting and Intent Philadelphia: University of Pennsy Nania Press,1999.p.38 (hereafter Morsink,UDHR).

[47] http://www.slavevoyages.org/voyage/

violation of this Declaration and against any incitement to such discrimination[48].

Article 13

Everyone has the right to freedom of movement and residence within the borders of each state.

Everyone has the right to leave any country, including his own, and to return to his country[49].

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance[50].

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection[51].

Everyone has the right to form and to join trade unions for the protection of his interests.

Article 29

Everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

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[48] Morsink, UDHR

[49] https://www.unfpa.org/about-us

[50] Morsink, UDHR

[5151] https://una-gp.org/the-sustainable-development-goals-2015-2030/

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations[52].

4.2 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty that commits nations to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. It was adopted by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966 and entered into force 23 March 1976 after its thirty-fifth ratification or accession.[A] As of June 2022, the Covenant has 173 parties and six more signatories without ratification, most notably the People's Republic of China and Cuba; North Korea is the only state that has tried to withdraw.

The ICCPR is considered a seminal document in the history of international law and human rights, forming part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).

Compliance with the ICCPR is monitored by the United Nations Human Rights Committee, which reviews regular reports of states parties on how the rights are being implemented. States must report one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets at the UN Office at Geneva, Switzerland and typically holds three sessions per year.

4.2 History

The ICCPR (International Covenant On Civil and Political Rights) has its roots in the same process that led to the Universal Declaration of Human Rights. A "Declaration on the Essential Rights of Man" had been proposed at the 1945 San Francisco Conference which led to the founding of the United Nations, and the Economic and Social Council was given the task of drafting it. Early on in the process, the document was split into a

[52] http:/www.un.org/documents/ga/res/41/a41r128.htm

declaration setting forth general principles of human rights, and a convention or covenant containing binding commitments. The former evolved into the UDHR and was adopted on 10 December 1948.

Drafting continued on the convention, but there remained significant differences between UN members on the relative importance of negative Civil and Political versus positive Economic, Social and Cultural Rights.These eventually caused the convention to be split into two separate covenants, "one to contain civil and political rights and the other to contain economic, social and cultural rights[53]." The two covenants were to contain as many similar provisions as possible, and be opened for signature simultaneously. Each would also contain an article on the right of all peoples to self-determination.

The first document became the International Covenant on Civil and Political Rights and the second the International Covenant on Economic, Social and Cultural Rights. The drafts were presented to the UN General Assembly for discussion in 1954 and adopted in 1966.[9] As a result of diplomatic negotiations the International Covenant on Economic, Social and Cultural Rights was adopted shortly before the International Covenant on Civil and Political Rights. Together, the UDHR and the two Covenants are considered to be the foundational human rights texts in the contemporary international system of human rights.

4.3 Articles of the Covenant

The Covenant follows the structure of the UDHR and ICESCR, with a preamble and fifty-three articles, divided into six parts.

Part 1 (Article 1) recognizes the right of all peoples to self-determination, including the right to "freely determine their political status[54]", pursue their economic, social and cultural goals, and manage and dispose of their own resources.

Part 2 (Articles 2 – 5) obliges parties to legislate where necessary to give effect to the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of those rights.

Part 3 (Articles 6 – 27) lists the rights themselves. These include rights to:

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[53] United Nations General Assembly Resolution 543, 5 February 1952.

[54] ICCPR, Article 1.1.

- physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8);
- liberty and security of the person, in the form of freedom from arbitrary arrest and detention and the right to habeas corpus (Articles 9 – 11);
- procedural fairness in law, in the form of rights to due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 16);
- individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 – 24);
- prohibition of any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law (Article 20);
- political participation, including the right to the right to vote (Article 25);
- Non-discrimination, minority rights and equality before the law (Articles 26 and 27).

Many of these rights include specific actions which must be undertaken to realize them.

Part 4 (Articles 28 – 45) governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant. It also allows parties to recognize the competence of the committee to resolve disputes between parties on the implementation of the Covenant (Articles 41 and 42).

Part 5 (Articles 46 – 47) clarifies that the Covenant shall not be interpreted as interfering with the operation of the United Nations or "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources[55]".

Part 6 (Articles 48–53) governs ratification, entry into force, and amendment of the Covenant.

[55] ICCPR, Article 47.

4.4 Rights to physical integrity

Main articles: Right to life, Torture, and Slavery

Article 6 of the Covenant recognises the individual's "inherent right to life" and requires it to be protected by law. It is a "supreme right" from which no derogation can be permitted, and must be interpreted widely. It therefore requires parties to take positive measures to reduce infant mortality and increase life expectancy, as well as forbidding arbitrary killings by security forces.

Article 10 requires anyone deprived of liberty to be treated with dignity and humanity. This applies not just to prisoners, but also to those detained for immigration purposes or psychiatric care. It requires prisons to be focused on reform and rehabilitation rather than punishment[56].

Article 16 requires states to recognize everyone as a person before the law Individual liberties

Article 12 guarantees freedom of movement, including the right of persons to choose their residence, to leave and return to a country. These rights apply to legal aliens as well as citizens of a state, and can be restricted only where necessary to protect national security, public order or health, and the rights and freedoms of others[57].

Article 13 forbids the arbitrary expulsion of resident aliens and requires such decisions to be able to be appealed and reviewed.

Article 19 mandates freedom of expression[58].

Article 20 mandates sanctions against inciting war and hatred.

Article 23 mandates the right of marriage[59].

4.5 Political Right

Article 3 provides an accessory non-discrimination principle. Accessory in the way that it cannot be used independently and can only be relied upon in relation to another right protected by the ICCPR.

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[56] ICCPR, Article 10.3

[57] ICCPR, Article 12.3

[58] ICCPR, Article 19.

[59] ICCPR, Article 23.

In contrast, Article 26 contains a revolutionary norm by providing an autonomous equality principle which is not dependent upon another right under the convention being infringed. This has the effect of widening the scope of the non-discrimination principle beyond the scope of ICCPR.

4.6 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly (GA) on 16 December 1966 through GA. Resolution 2200A (XXI), and came in force from 3 January 1976[60]. It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of July 2020, the Covenant has 171 parties. A further four countries, including the United States, have signed but not ratified the Covenant.

The ICESCR (and its Optional Protocol) is part of the International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), including the latter's first and second Optional Protocols.

The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.

4.7 Genesis

The ICESCR has its roots in the same process that led to the Universal Declaration of Human Rights. A "Declaration on the Essential Rights of Man" had been proposed at the 1945 San Francisco Conference which led to the founding of the United Nations, and the Economic and Social Council was given the task of drafting it. Early on in the process, the document was split into a declaration setting forth general principles of human rights, and a convention or covenant containing binding commitments. The former evolved into the UDHR and was adopted on 10 December 1948.

Drafting continued on the convention, but there remained significant differences between

[60]" International Convenent on Economic, Social and Cultural Rights"

UN members on the relative importance of negative civil and political versus positive economic, social and cultural rights. These eventually caused the convention to be split into two separate covenants, "one to contain civil and political rights and the other to contain economic, social and cultural rights." The two covenants were to contain as many similar provisions as possible, and be opened for signature simultaneously[61].Each would also contain an article on the right of all peoples to self-determination.

The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The first document became the International Covenant on Civil and Political Rights, and the second the International Covenant on Economic, Social and Cultural Rights. The drafts were presented to the UN General Assembly for discussion in 1954, and adopted in 1966[62].

4.8 Summary

The Covenant follows the structure of the UDHR and the ICCPR, with a preamble and thirty-one articles, divided into five parts

Part 1 (Article 1) recognises the right of all peoples to self-determination, including the right to "freely determine their political status", pursue their economic, social and cultural goals, and manage and dispose of their own resources. It recognises a negative right of a people not to be deprived of its means of subsistence[63], and imposes an obligation on those parties still responsible for non-self governing and trust territories (colonies) to encourage and respect their self-determination.

Part 2 (Articles 2–5) establishes the principle of "progressive realisation" (see below.) It also requires the rights be recognised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The rights can only be limited by law, in a manner

[61] United Nations General Assembly Resolution 543, 5 February 1952.

[62] United Nations General Assembly Resolution 2200, 16 December 1966.

[63] CESCR General Comment 3, paragraph 10.

compatible with the nature of the rights, and only for the purpose of "promoting the general welfare in a democratic society".

Part 3 (Articles 6–15) lists the rights themselves. These include rights to work, under "just and favourable conditions", with the right to form and join trade unions (Articles 6, 7, and 8);

social security, including social insurance (Article 9);

family life, including paid parental leave and the protection of children (Article 10);

an adequate standard of living, including adequate food, clothing and housing, and the "continuous improvement of living conditions" (Article 11);

health, specifically "the highest attainable standard of physical and mental health" (Article 12);

education, including free universal primary education, generally available secondary education and equally accessible higher education. This should be directed to "the full development of the human personality and the sense of its dignity", and enable all persons to participate effectively in society (Articles 13 and 14);

participation in cultural life (Article 15).

As negative and positive rights are rights that oblige either action (positive rights) or inaction (negative rights), many of these aforementioned rights include specific actions which must be undertaken to realise them, as they are positive economic, social and cultural rights that go beyond relatively inaction-based civil and political negative rights.

Part 4 (Articles 16–25) governs reporting and monitoring of the Covenant and the steps taken by the parties to implement it. It also allows the monitoring body – originally the United Nations Economic and Social Council – now the Committee on Economic, Social and Cultural Rights – see below – to make general recommendations to the UN General Assembly on appropriate measures to realise the rights (Article 21)

Part 5 (Articles 26–31) governs ratification, entry into force, and amendment of the Covenant.

4.9 Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General

Assembly. Described as an international bill of rights for women, it was instituted on 3 September 1981 and has been ratified by 189 states[64]. Over fifty countries that have ratified the Convention have done so subject to certain declarations, reservations, and objections, including 38 countries who rejected the enforcement article 29, which addresses means of settlement for disputes concerning the interpretation or application of the convention. Australia's declaration noted the limitations on central government power resulting from its federal constitutional system. The United States and Palau have signed, but not ratified the treaty. The Holy See, Iran, Somalia, Sudan, and Tonga are not signatories to CEDAW.

4.10 Summary

The convention has a similar format to the Convention on the Elimination of All Forms of Racial Discrimination, "both with regard to the scope of its substantive obligations and its international monitoring mechanisms[65]". The convention is structured in six parts with 30 articles total.

Part I (Articles 1–6) focuses on non-discrimination, sex stereotypes, and sex trafficking.

Part II (Articles 7–9) outlines women's rights in the public sphere with an emphasis on political life, representation, and rights to nationality.

Part III (Articles 10–14) describes the economic and social rights of women, particularly focusing on education, employment, and health. Part III also includes special protections for rural women and the problems they face.

Part IV (Article 15 and 16) outlines women's right to equality in marriage and family life along with the right to equality before the law.

Part V (Articles 17–22) establishes the Committee on the Elimination of Discrimination against Women as well as the states parties' reporting procedure.

Part VI (Articles 23–30) describes the effects of the convention on other treaties, the commitment of theA states parties and the administration of the convention.

Core Provisions

Article 1 defines discrimination against women in the following terms:

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[64] "United Nations Treaty Collection". United Nations. Archived from the original on 6 September 2015.

[65] Henkin, Louis (2009). Human Rights. Foundation press.p.221.

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2 mandates that states parties ratifying the Convention declare intent to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women.States ratifying the Convention must also establish tribunals and public institutions to guarantee women effective protection against discrimination, and take steps to eliminate all forms of discrimination practiced against women by individuals, organizations, and enterprises.

Article 3 requires states parties to guarantee basic human rights and fundamental freedoms to women "on a basis of equality with men" through the "political, social, economic, and cultural fields."

Article 4 notes that "[a]doption...of special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination." It adds that special protection for maternity is not regarded as gender discrimination.

Article 5 requires states parties to take measures to seek to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped role for men and women[66]. It also mandates the states parties "[t]o ensure...the recognition of the common responsibility of men and women in the upbringing and development of their children."

Article 6 obliges states parties to "take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women."

Article 7 guarantees women equality in political and public life with a focus on equality in voting, participation in government, and participation in "non-governmental organizations and associations concerned with the public and political life of the country."

[66] Convention on the Elimination of All Forms of Discrimination against Women.

Article 8 provides that states parties will guarantee women's equal "opportunity to represent their Government at the international level and to participate in the work of international organizations."

Article 9 mandates state parties to "grant women equal rights with men to acquire, change or retain their nationality" and equal rights "with respect to the nationality of their children."

Article 10 mandates equal opportunity in education for female students and encourages coeducation. It also provides equal access to athletics, scholarships and grants as well as requires "reduction in female students' drop out rates."

Article 11 outlines the right to work for women as "an unalienable right of all human beings." It requires equal pay for equal work, the right to social security, paid leave and maternity leave "with pay or with comparable social benefits without loss of former employment, seniority or social allowances." Dismissal on the grounds of maternity, pregnancy or status of marriage shall be prohibited with sanction.

Article 12 creates the obligation of states parties to "take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure...access to health care services, including those related to family planning[67]."

Article 13 guarantees equality to women "in economic and social life," especially with respect to "the right to family benefits, the right to bank loans, mortgages and other forms of financial credit, and the right to participate in recreational activities, sports and all aspects of cultural life."

Article 14 provides protections for rural women and their special problems, ensuring the right of women to participate in development programs, "to have access to adequate health care facilities," "to participate in all community activities," "to have access to agricultural credit" and "to enjoy adequate living conditions."

Article 15 obliges states parties to guarantee "women equality with men before the law," including "a legal capacity identical to that of men." It also accords "to men and women the same rights with regard to the law relating to the movement of persons and the

[67] "OHCHR-"ohchr.org. Archived from the original on 13 December 2013.

freedom to choose their residence and domicile[68]."

Article 16 prohibits "discrimination against women in all matters relating to marriage and family relations." In particular, it provides men and women with "the same right to enter into marriage, the same right freely to choose a spouse," "the same rights and responsibilities during marriage and at its dissolution," "the same rights and responsibilities as parents," "the same rights to decide freely and responsibly on the number and spacing of their children," "the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation" "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

Articles 17 – 24 These articles describe the composition and procedures of the CEDAW Committee, like the hierarchical structure and rules and regulations of systematic procedure of the relationship between CEDAW and national and international legislation and the obligation of States to take all steps necessary to implement CEDAW in full form.

Articles 25 – 30 (Administration of CEDAW)

These articles describe the general administrative procedures concerning enforcement of CEDAW, ratification and entering reservations of concerned states

[68] "Oppnevnte mann til kvinnekomite"

Chapter V

Judicial Innovation Concerning Fundamental Rights in Bangladesh

5.1 Constitutional Gurantee Safeguard

Laws inconsistent with fundamental rights to be void

26. (1) All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.

(2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.

(3) Nothing in this article shall apply to any amendment of this Constitution made under article 142.

5.2 Enforcement of fundamental rights

(1) The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.

(2) Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.

Powers of High Court Division to issue certain orders and directions, etc.

Article 102. (1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution. (2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law –

(a) on the application of any person aggrieved, make an order-

(i) directing a person performing any functions in connec-tion with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do ; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority, has been done or taken

without lawful authority and is of no legal effect ; or

(b) on the application of any person, make an order-

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner ; or

(ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office[69].

(3) Notwithstanding anything contained in the forgoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.

(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of-

(a) prejudicing or interfering with any measure designed to implement any development programme, or any development work ; or

(b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has heen given reasonable notice of the application and he or an advocate authorised by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-caluse (b).

(5) In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.

5.3 Amendment Relating to Enforceability of Fundamental Rights

Two very significant events have taken place which have had significant events taken place which have had significant consequence upon the operation and enforcement of the fundamental rights. One is the proclamation of emergency throughout the country on December 28, 1974 whose effect, however is bound to be short lived. As consequences of this proclamation an order was passed on the court of law during the continuance of the

[69] AIR 1951(SC)226

emergency. As soon as the emergency ends, these rights will be revived. The other event which is of permanent nature is the enactment of the constitution (Fourth Amendment) Act, 1975 on January 25, 1975. So far, the changes effected by the forth amendment to the constitution relater to the enforcement of the fundamental rights, its is unusualness is as attractive as it is full of significance, if not for any other reason, at least for introducing a unique and unprecedented departure from the normal constitutional pattern followed elsewhere. Under unlamented provisions of articles 44 and 102 of the constitution, any citizen or in some cases, any person aggrieved by an infraction of any of the fundamental rights could move the supreme court for the necessary relief. Besides, being in conformity with the constitutional principles followed in countries which declared similar rights in their constitutions, the provisions relating to enforcement of fundamental rights by the supreme court as originally incorporated in article 44 and 102 of the constitution were considered necessary for three reasons, namely, rights of citizens declared under the constitution should, in fitness of thing and in accord with constitutional propriety, be adjudicated upon by one of the principal organs of government, namely, the highest tribunal, the supreme court of Bangladesh[70], for, in many cases involving the breach of fundamental rights the respondent against whom remedy would be sought is one or the remaining two organs of the government, namely, the executive or the legislature. Since the constitution declared the fundamental rights, they are limitation on the powers of the legislature as well as the executive and whether such limitations have been transgressed by them determination, by an independent and impartial body or tribunal, involving high policy considerations. Secondly, such adjudication by the highest tribunal in the country was preferred because it is likely to command respect both of the rulers and the governed, perhaps, quite understandably, more than any other tribunal or court set up under an act of parliament. Thirdly, such means of enforcement would ensure speedy remedy, the number of appeals against an order made by the court would be minimized; under the un amended provision of articles 44 and 102 only one appeal from such an order lay to the appellate division of the court. If leave to appeal was granted to be it under article 103(3), or a

[70] 44 DLR (AD) 319

certificate to appeal was granted by the High court Division under article 103(2) of the constitution.

5.4 Changes made by the 5th Amendment:

The 5th Amendment brought, inter alias, the following important changes in the constitution:

Part VIA of the constitution dealing with one party system as introduced by the 4th Amendment was omitted.

The independence of judiciary which was completely destroyed by the 4th Amendment was restored partially [71](Articles 96 and 116).

The jurisdiction of the High court Division of the Supreme Court to enforce fundamental rights was restored to its original position as was in the original constitution (Article 44 and 102).

Provision of supreme judicial council in respect of security of tenure of the judges of the Supreme Court was interested (Article96).

The provision of absolute veto power of the president introduced by the 4th Amendment was abolished (Article 80).

A provision of referendum in respect of amendment of certain provisions of the constitution was inserted and to that end a new clause IA was created in Article 142.

Religious words 'BISMILLAHIR RAHMANIR RAHIM' was inserted in the beginning of the constitution i.e. above the preamble.

In the original constitution it was provided in Article 6 that citizens of Bangladesh would be known as 'BANGALEES' But this was changed and it was provided now that citizens would be known as Bangladeshis.

One of four major fundamental principles of state policy 'SECULARISM' was omitted and in its place a new one the principle of absolute trust and faith in the Almighty Allah was inserted (Article 8).

One of four major fundamental principles of state policy socialism was given a new explanation to the effect that socialism would mean economic and social justice (Article

[71] "Law and Our Rights :5th Amendment case: Some concerns". The Dailyy Star. Retrieved 2021-04-16.

8).

A new article 145A was created where it was provided that all international treaties would be submitted to the president who should cause them to be laid parliament.

Another new Article 92A was created where by the president was given power to expend public moneys in certain cases.

Article 58 was amended to the effect that four-fifths of the total number of minister should be taken from among the members of parliament. It was also provided that the president would appoint as prime Minister the Member of Parliament who appeared to him to command the support of the majority of the members of parliament.

Some Case studies On The Fundamental rights:

Case Reference no.1

Dr. Nurul Islam v. Bangladesh

Fact of the case

The appellant Dr. Nurul Islam was appointed an assistant surgeon in 1952(in East Bengal) 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 challenged this notice in the High Court Division by write petition no. 571 of 197889 and a bench of the High Court Division on 6-12-79 declared the notice to have been issued without lawful authority. The government as found by the Supreme Court , reacted to the High Court declaration by ordering the retirement of the appellant from service under sub-section(2)of section 9 of the public servants Retirement Act, 1974 which is to the effect that the Govt. is empowered to retire a govt. servant on the completion of 25 years service . 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.

Judgment of the case

Article 27 of the constitution which speaks of entitled to equal protection of law interpreted by R.Islam, J.at paragraph 87 as under:

"The principle on which the doctrine of equal protection of laws is founded is that persons in similar circumstances must be governed by the same laws. The legislative classification by itself does not offend against the principle of equal protection of the laws provided the laws operate equally in all members of the said class or group. For valid legislation, classification must be reasonable for the purpose of legislation, should be based on proper and justifiable distinction, should not clearly arbitrary and should have all reasonable relation to the objects and to the public purpose sought to be achieved by the legislation.

Case reference no 2

University of Dhaka v. Dr.S.Hussain and another

Fact of the case

The principle of protection as provided in Article 35 of the constitution was invoked in as much as presidents order No. 67 of 1972 does not contain any express words giving retrospective effect, but the statute is prospective in nature only. Dr. Sayed Sajjad Hossain, who was the vice chancellor of the Dhaka University during the war Liberation. His case was referred to the First screening Board constituted under the presidents order No. 67 of 1972. The screening Board found him guilty. Accordingly, the respondent was dismissed from his service. The dismissal order was challenged before the High Court Division. The

High Court Division upheld the order of dismissal.

Judgment of the case

B.H.Chowdhury, J. in paragraph 45 as held as follows:

In view of the matter the opinion of the activities attributed to the respondent Dr. Sajjad Hossain and Dr. Mohar Ali allegedly were performed in 1971 do not come within the mischief of the presidents order No. 67 of the 1972. Such activities are punishable under presidents order No. 8 of 1972 which was given retrospective effect. Both the respondents were given clemency and in the write petition they quoted the statement of the prime minister as mentioned in the press note. After assurance of such clemency, it was not permissible for initiation of any proceedings. Presidents order NO.67 of 1972, however, has no manner of application because it was not given respective effect.

Chapter VI

United Nations Human Rights Council

The United Nations Human Rights Council (UNHRC) is a United Nations body whose mission is to promote and protect human rights around the world[72].The Council has 47 members elected for staggered three-year terms on a regional group basis. The headquarters of the Council are at the United Nations Office at Geneva in Switzerland.

The Council investigates allegations of breaches of human rights in United Nations member states and addresses thematic human rights issues like freedom of association and assembly, freedom of expression[73], freedom of belief and religion, women's rights, LGBT rights, and the rights of racial and ethnic minorities.

The Council was established by the United Nations General Assembly on 15 March 2006[c] to replace the United Nations Commission on Human Rights (UNCHR, herein CHR).[10] The Council works closely with the Office of the High Commissioner for Human Rights (OHCHR) and engages the United Nations special procedures. The Council has been strongly criticized for including member countries that engage in human rights abuses.

6.1 Structure

The members of the General Assembly elect the members who occupy 47 seats of the Human Rights Council. The term of each seat is three years, and no member may occupy a seat for more than two consecutive terms. The previous CHR had a membership of 53 elected by the Economic and Social Council (ECOSOC) through a majority of those present and voting.

Sessions

The UNHRC holds regular sessions three times a year, in March, June, and September[74].The UNHRC can decide at any time to hold a special session to address

[72] "About the Human Rights Council". Office of the High Commissioner for Human Rights. Archived from the original on 11 March 2017.Retrived 29 October 2016.

[73] "HRC Freedom of Opinion and Expression". Archived from the original on 3 july 2010. Retrieved 2 June 2012.

[74] "United Nations Human Rights Council, Sessions". Archived from the original on 20 May 2012.

human rights violations and emergencies, at the request of one-third of the member states[75].As of May 2020, there have been 28 special sessions.

Members

See also: List of members of the United Nations Commission on Human Rights

The Council consists of 47 members, elected yearly by the General Assembly for staggered three-year terms. Members are selected via the basis of equitable geographic rotation using the United Nations regional grouping system. Members are eligible for re-election for one additional term, after which they must relinquish their seat.

The seats are distributed along the following lines:

- 13 for the African Group
- 13 for the Asia-Pacific Group
- 6 for the Eastern European Group
- 8 for the Latin American and Caribbean Group
- 7 for the Western European and Others Group

6.2 Bangladesh

About one million Rohingya refugees live in the largest refugee camp in the world in Cox's Bazar, Bangladesh. The Rohingya are an ethnic minority who have been denied citizenship in Myanmar, making them the world's largest stateless population. Most arrived in 2017, fleeing persecution, large-scale violence and human rights violations.

Rohingya refugees rely entirely on humanitarian assistance for protection, food, water, shelter and health. They live in temporary shelters in a highly congested camp setting. With Bangladesh ranking third in the world among states most hit by natural disasters, Rohingya refugees are highly exposed to weather-related hazards, such as cyclones, flooding and landslides.

Together with our partners, UNHCR works to support the Government of Bangladesh to provide essential services and meet the protection needs of refugees, including special services for women, children and persons with disabilities. UNHCR's support is extended

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Retrieved 2 June 2012.

[75] "HRC Sessions". www.ohchr.org.OHCHR. Archived from the original on 27 May 2020.Retrieved 2 June 2012.

to host communities while continuously working towards solutions to ensure that refugees can return in a safe, dignified, voluntary and sustainable way once conditions in Myanmar allow.

6.3 For information about our work in Bangladesh:

For legislation, case law and UNHCR policy relating to claims for international protection, visit Refworld.

For up-to-date information about our programmes and operations in Bangladesh, including funding level and donor contributions, visit Global Focus, UNHCR's reporting portal.

The Global Report

The Global Report presents the work carried out by UNHCR in 2021 to protect and improve the lives of tens of millions of people of concern—refugees, returnees, internally displaced people, stateless persons, and others of concern.

It highlights the year’s achievements, as well as challenges faced by the organization and its partners, in attempting to respond to multiple life-threatening crises and ever-growing humanitarian needs.

In 2021, the number of people displaced like Tiliphonsa reached the highest level ever. People forced to flee their homes may seek asylum in foreign countries and become refugees, or they may be internally displaced – uprooted within their own country. This can happen to anyone. And when it does, they rely on UNHCR for help.

People of concern to UNHCR also include stateless people, and those who have recently returned after being forced to flee. All are vulnerable and are at risk of having their rights denied to them.

In 2021, UNHCR responded to 40 new emergencies around the world.

Chapter VII

Recommendations

1.We have been observed that the constitution of Bangladesh has included all the **basic** attributes of fundamental rights. But practically sometimes the government is compelled to violate the fundamental rights of the people in Bangladesh due to some unavoidable circumstances.

2.The ruling class should be truly respectful to the fundamental rights of the people. There should not be any international barrier Created by government for political interest and to oppress the opposite.

3.It is the responsibility of the government to limit the events to violate the fundamental rights of the people and try their best respond these rights in some very rare cases where there is no really no other alternative and which is truly done for the sake of the country s overall benefit with no purpose of self interest of the ruling party some more restriction and controlling can be developed in the constitution of our country to regulate and prevent the indiscriminate and whimsical violation of the rights by the ruling power further more, the consciousness rights. So their rights can not be violated by the ruling class for their self itself.

4, As regards Right to Property (Article 42), we have seen that though legislature cannot enact any Act that extinguishes this right of an individual, it can impose any restrictions it pleases in the enjoyment of this right.

5..Article 30 (Prohibition of foreign titles) should be omitted feom part III of the Bangladesh Constitution which is found to be a mere prohibition on the citizens rather than fundamental right to accept foreign tiltes without the permission of the President of Bangladesh.

However the recommendations made above cannot be implemented at present. Because recent amendment to the Bangladesh Constitution.

Chapter VIII

Conclusion

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. 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. 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. The above issues could also be addressed by statutory regulation, should constitutional amendment be considered too ambitious. It will require the parliament to introduce a bill on negotiation, conclusion, ratification and implementation of treaties as well as international customary norms within domestic jurisdiction. t is also possible to address the problem by making special approaches to specific categories of treaties and customs, a Bill of Rights incorporating all human rights universally recognized as such as well as all rights enshrined in international human rights instruments to which Bangladesh is a party, could be adopted by the parliament to make them part of domestic law as well. This would substantially serve the cause of protection, promotion and development of human rights which has now become a credible measure of human progress and welfare.

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