Sonargaon University (SU)

Research Monograph

On

Safeguard of Fundamental Rights and Human Rights Under The Constitutional Mandate of Bangladesh and International Instruments .

A Research Monograph submitted for the partial fulfillment of the award of the degree LLM, Faculty of Arts and Humanities, Department of Law.

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Submitted by:
Fahmida Akter Sila
ID No. LLM2201025016
Batch: 25
Program: LLM
Faculty of Arts and Humanities
Department of Law
Sonargaon University (SU)

Under the Guidance of
Md. Abdul Alim
Lecturer
Department of Law
Sonargaon University (SU)

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Letter of Transmittal

To

Md. Abdul Alim

Lecturer

Faculty of Arts and Humanities

Department of Law

Sonargaon University (SU)

Subject: Submission of Research Monograph on "**Safeguard of fundamental rights and Human Rights under the Constitutional mandate of Bangladesh and international instrument ".**

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 and international instrument**" as a partial requirement

for the fulfillment of my LLM 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

_____

Fahmida Akter Sila
ID No. LLM 2201025016
Program: LLM
Batch: 25 , Faculty of Arts and Humanities
Department of Law
Sonargaon University (SU)

Declaration

I do hereby declare that the Research Monograph Title "**Safeguard of fundamental rights and Human Rights under the Constitutional mandate of Bangladesh and international instrument"** prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B. (Hon's) 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.

Fahmida Akter Sila
ID No. LLM2201025016
Program: LLM
Batch: 25, Department of Law
Faculty of Arts and Humanities
Sonargaon University (SU)

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 program.

Md. Abdul Alim

Lecturer

Faculty of Arts and Humanities Department of Law

Sonargaon University (SU)

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 and international instrument ".**

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

Fahmida Akter Sila

Table of contents

Titles. ----------

Pages

Letter of Transmittal. ----------. i

Declaration. ----------. ii

Supervisor Certificate. ----------. iii

Acknowledgement. ----------. iv

Chapter -1 Introduction ---------- 1-6

1.1 Abstract. ---------- 1

1.2 Introduction. ---------- 1-3

1.3 Limitation of the study. ----------. 3-4

1.4 Methodology of the study. ----------. 4

1.5 Rights. ----------. 4

1.6 Human Rights. ----------. 4

1.7 Fundamental Rights. ----------. 4-5

1.8 Distinction between human Rights and fundamental rights.----------. 5-6

Chapter 2- Constitutional mandate of fundamental rights----------. 7-25

2.1 Natural of fundamental rights. ----------. 7

2.2 Classification of Fundamental Rights ----------. 7-8

2.3 Fundamental Rights in Bangladesh Constitution. ----------. 8-24

2.4 Fundamental Rights and some Constitutional Issues. ----------. 24-25

Chapter 3-International Instrument of fundamental Rights----------. 26-31

3.1 The Universal Declaration of Human Rights----------. 26

3.2 International Covenant on Civil & Political Life----------. 26-27

3.3 The International Covenant on Economic, Social & Cultural Right----------. 27

3.4 The Convention on the Elimination of all forms of Discrimination Against Women 27

3.5 UN Charter. ----------. 27-30

3.6 Convention Against Torture ----------. 30-31

Chapter 4- Safeguard guarantee of Constitution----------. 32-33

4.1 The Enforcement of fundamental rights ----------. 32

4.2 Suspension of Fundamental Rights during emergency ----------. 32-33

Chapter 5- NNHRC Report. ----------. 34-40

5.1 United Nations Human Rights Council ----------. 34-37

5.2 Bangladesh Human Rights Report ----------. 37-40

Chapter 6-Case Reference. ----------. 41-45

6.1 Case reference no -1. ----------. 41-42

6.2 Case reference no -2 ----------. 42-43

6.3 The Constitution of Bangladesh, 1972 ----------. 43-44

6.4 Limits of Writ jurisdiction based on case Laws ----------. 44-45

Chapter 7- Conclusions and Recommendations ----------. 46-53

7.1 Recommendations ----------. 46

7.2 Conclusions ----------. 47

Bibliography ----------. 48-53

Chapter -1

Introduction

1.1 Abstract

This dissertation is focused on the fundamental rights in the Constitution of Bangladesh. This dissertation Corley tries to analyse critically few fundamental rights like prohibition of foreign title, suspension of fundamental rights during emergency .Some cases regarding this rights also bee studied in this dissertation. Finally some recommendations have been placed.

Fundamental Rights are the rights and freedom as a part of the constitution that is protected by the constitution of India which is recommended by the Government of India and the Indian parliament which enacted to its citizen of people. In Emergency situation, these rights are banned by the presidents of India at Emergency period and all the people that fall under the jurisdiction of the constitution are granted these rights without presumption or cost of privilege. Basically, these are the rights that are awarded to all citizens as per the legal system of the country without any conditions. These rights and freedom are enjoyed by the citizen of country into the certain determination of boundary. Human Rights are the rights that all global men and women should have. These are the most basics rights that protect a human from inhuman behavior of other humans. There are some rights that are considered universally to be fundamental and essential to live their fulfilment of needs for physical, mental and emotional protection. These rights are more helpful to the survival of every human being in this earth.

Human rights are rights that individuals have simply by virtue of being human. [1]These rights are considered to be universal, nonconditional rights that states, governments, and private actors are required to respect. There are various types of rights, generally classified under the rubric of "generations" of civil and political rights; economic, social, and cultural rights; and solidarity rights. As the rights have become codified in various international instruments, this has resulted in the clarification of the norms and has led to the establishment of enforcement techniques.

1.2 Introduction

[1] Alison D. Renteln, in Encyclopedia of Violence, Peace, & Conflict (Third Edition), 2022

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.[2] The classification of a right as fundamental invokes specific legal tests used by courts to determine the carefully contained conditions under which the United States Government and the various state governments may impose limitations on this right.

Fundamental rights give the citizens dignity of life in an atmosphere of freedom and justice beyond the man made fetters that had constricted their physical and mental horizons. 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;[3] 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 these 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 and 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 they are endowed by their creator with certain inalienable secure these rights, government are instituted among men, deriving their just 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 effect their safety and happiness".

[2] Riddal, J. W., Jurisprudence, Butterworth's 1991, p. 80.
[3] The doctrine of fundamental Rights.

This easy is merely focusing on the features of fundamental rights as have been preserved in the constitution of Bangladesh. The frames of Bangladesh have been discussed in Article basis starting from the preamble of the constitution[4]. The frames of these constitutions practically show concern for necessity of protecting human rights and ensuring fundamental freedoms. In the preamble of the constitution they declared that it shall be a fundamental object of the state to realize through the democratic process a society free from exploitation, a society in which the rule of law, the fundamental human rights and freedom, equality and justice, political, Economical and social will be secured for all citizens.

The universal Declaration of Human Rights 1948, which states –

Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law. Rights and freedoms from the bedrock of democracy. No democracy can function successfully in the absence of some basic freedoms. Again, modern democratic government is a party government. The party winning majority in the election form the government. But coming in to power the government may turn itself into a one violating the basic rights of people and oppressing the opposition. The aim of having a declaration of fundamental rights in the constitution is to prevent such a possible danger. In order words, they provide a restraint on the power of the government so that it can not 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 can not take them away except by constitution amending process which is always a right one. This is why insertion of a Bill of right in a written constitution is considered to be one of the safeguards of democracy. Bangladesh accepted fundamental rights and incorporated the same in their constitution. 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 Limitation of the study

Although the study has reached its aims, there were some unavoidable limitations andshortcomin gs.First, I am an amateur researcher who is not even expert on the field of study; therefore, it was

[4] Barnett, Hilaire, Constitutional and Administrative Law , (7th Edn., 2008)p. 461.

a tough task to assess the objectives perfectly within short time-limit.Second, all the data I used in this study is mostly self-reported that is limited by the fact that itrarely can be independently verified.

1.4 Methodology of the study

This study is generally a non-empirical analysis. The main sources of this study includesecondary sources like textbooks, reports, relevant national and international legislations,[5] casestudies, some important daily newspapers, online documents and some publications. The studyhas also relied on decided cases of Apex Court of Bangladesh and the Subcontinent.

1.5 What is Right?

Before understanding fundamental rights are should have idea about rights and human rights. Rights mean a claim of some interests adverted by an individual or a group of individual which has either moral or legal basis and which is essential for his development in the society. In a sense right not created by law it originates itself as an obvious result of mutual interaction between man and society. Rights are primarily divided in to two categories-moral rights and legal rights.[6]

1.6 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 very reason that is a human being.[7] These rights come with birth and applicable to all people through out the world irrespective of their race, color, sex, language or political or other opinion. These are therefore those rights that are inherent in human person and without which they cannot live as human beings.

1.7 What are fundamental rights?

[5] Feldman, D. Civil Liberties and Human Rights in England and Wales, Oxford, p. 169. Cited in: Preventive Detention Legislation and Judicial Intervention in Bangladesh, Dr. Quazi Reza-ul-Hoque, (1999) p. 143

[6] Jasjit Singh v. Charanjit Kaur , AIR 1995 p& H 177 at 179 .

[7] Bari , Abdul Aziz, Malaysian Constitution: A Critical introduction, the Other press , Kuala Lumpur, 2003 ,p . 143.

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

In the case of the State v. Dosso[8] Chief Justice Mohammad Munir reaffirmed the aforesaid views and has observed that the essence of a fundamental right is that it is more or less permanent and cannot be changed like ordinary law. In Vanhorne v. Dorrance [9] it is mentioned that "the Constitution of a State is stable and permanent, not to be worked upon by the temper of times, nor to rise and fall with the tide of events. Notwithstanding the competition of opposing interests and the violence of contending parties, it remains firm and immovable, as a mountain amidst the strife and storms, or a rock in the ocean amidst raging of waves."

1.8 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

[8] PLD 1958 (SC)533.
[9] IL, Ed , 391.

government to carry out any of the directives. Again, the courts cannot declare any void, which is otherwise valid, on the ground that it contravenes any of directives principles.

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.[10]

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.

[10] Halim, Md. Abdul, Constitution, Constitutional Law and Politics: Bangladesh Perspective (1998), p. 89.

Chapter -2

Fundamental Rights Under The Constitution of Bangladesh

2.1 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. [11]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 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.

2.2 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).

[11] These are Articles 26 to 47A.

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)

2.3 Fundamental Rights in Bangladesh constitution

18 fundamental rights have been enumerated in the constitution commencing from Article 27 to 44. 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.[12]

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.

[12] This Article embodies doctrine of precedent and says regarding the binding effect of the Supreme court judgement.

1. Laws in consistent with Fundamental rights to be void (Article 26)

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.

Analogous Provisions

1.Section 15(4) of the Constitution of Eire,1937.

2.Article 13 of the Constitution of India.

3.Article 8 of the Pakistan Constitution, 1973.

In our jurisdiction, the case of *Anwar Hossain v. Bangladesh*, 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 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.

2. Equality before law(Article 27)

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[13]. 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.

Ahmed v. Bangladesh and others,[14] it was held that the classification between the two categories of officer on the basis of intelligible differentia is not discriminatory.

II. The differential must have a rational to the object sought to be achieved by the law under challenge.

In the case of Sheikh Abdus Sabur v. Returning Officer, Gopalgong[15] the Appellate Division of the Bangladesh Supreme Court very clearly spelt out these criteria, which runs as follows:

Equality before law is not to be interpreted in its absolute sense to hold all persons are equal in respect disregarding different conditions and circumstances in which they are placed or special qualities and characteristics which some of them may possess but which are lacking in others...

[13] Basu, D. D , Introduction to the Constitution of India, 2001, p. 88.
[14] 49 DLR 353.
[15] 40 DLR(AD).

To stand the test of equality's a classification besides being based on intelligent differentia, must have reasonable nexus with the object legislature intends to achieve by making classification.

Analogous Provisions

1.Section 40(1) of the Constitution of Eire, 1937.

2.Article 3(1) of the Constitution of West Germany, 1949.

3.Section 1 of Amendment 14 of the Constitution of USA.

4.Article 14 of the Constitution of India.

5. Article 25 of Pakistan the Constitution, 1973.

3. Discrimination on grounds of religion etc.(Article 28)

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.

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.

Analogous Provisions

1.Article 15 of the Constitution of India.

2.Article 117 of the Constitution of the Common wealth of Australia.

3.Articles 25(2), 25(3) and 26 of the Constitution of Pakistan, 1973.[16]

4. Equality of opportunity in public employment.(Article 29)

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

[16] Rahman Justice Latifur, The Constitution of the people's Republic of Bangladesh with Comments & Case – Laws, (2nd Edn. , 2005)p. 60.

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. Clause (2)

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"[17] a public 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.

Analogous Provisions

1.Article 6 of the Constitution of the USA.

2.Article 16 of the Constitution India.

3.Section 116 of the Constitution of Australia.

4.Article 27of the Pakistan Constitution, 173.

In the case of *Bangladesh v. Azizur Rahman,* 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

[17] (1994) 46 DLR (AD)19.

in respect of future employment is untenable and there is in fact no violation of Article 29(1) of the constitution.

5. Prohibition of foreign titles, etc.(Article 30)

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.

Analogous Provisions

1.Article 18(2),(3) and (4) of the Constitution of India.

2.Article 1,Sections 9 and 40(2) of the Constitution of Eire, 1937.

3.Article 1,Section 9(6) of the Constitution of USA.

6. Right to protection of law.(Article 31)

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.[18]

Analogous Provisions

1.Article 2 of the Constitution of Pakistan, 1962.

2.Article 20 of the Constitution of the Islamic Republic of Iran.

7. Protection of Right to life and personal liberty. (Article 32)

No personal shall be derived of life on personal liberty saved in accordance with law.

Analogous Provisions

1.Article 21 of the Constitution of India.

2.Article 9 of the Constitution of Pakistan, 1973.

3.5th and 14th Amendments to the Constitution of USA.

In the case of *Islam Mahmud v. Bangladesh*, H.m.Habibur Rahman, j. held that the detaining authority must have some jurisdictional facts for detaining an individual, since the detaining

[18] Basu , D. D., Introduction to the Constitution of India, 2001, p. 89.

authority is curtailing the liberty of a citizen by detaining him on preventive detention; it is exercising a non-judicial authority. [19]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.

8. Safeguards as to arrest and detention.(Article 33)

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[20]. 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[21] 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.

Analogous Provisions

1.Article 10 of the Constitution of Pakistan, 1973.

2.Article 22 of the Constitution of India.

[19] Munim, F. K M. A., Rights of the Citizen under the Constitution and Law , BILIA, Dhaka, 1975, pp. 53-54.
[20] 44 DLR 1.
[21] Munim F. K. M . A., Rights of the Citizen under the Constitution and Law, BILIA, Dhaka, 1975,p. 85.

3.The Sixth Amendment of the Constitution of USA.

In the case of *professor Ghulam Azam v. Bangladesh*, Md. Abdul jalil, 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 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.[22]

9. Prohibition of forced labour.(Article 34)

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.[23]

Analogous Provisions

1.Article 23 of the Constitution of India.

2.Article 11 of the Constitution of Pakistan, 1973.

3.Article 4 of the Universal Declaration of Human Rights, 1948.

4.Article 8 of the Covenant on Civil and Political Rights, 1966.

10. Protection in respect of trial and punishment.(Article 35)

Article 35 guarantees a cluster of rights in respect of trial and punishment. Clause (1) provides protection against ex post facto laws,

[22] Chowdhury, Badrul Hyder , The long Echoes, 1990, p. 144.
[23] Basu, D D.Introduction to the Constitution of India, 2001,p. 114.

clause (2) provides guarantee against double jeopardy, clause speedy and fair trial: clause (4) grants privilege against self incrimination and[24]

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.

Analogous Provisions

1.Article 20 of the Constitution of India.

2.Article 15(2) of the Constitution of Eire,1937.

3.Articles 12 and 13 of the Constitution of Pakistan, 1973.

11. Freedom of movement.(Article 36)

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 to leave and re-enter Bangladesh.

Analogous Provisions

1.Article 11 of the Pakistan Constitution, 1962.

2.Article 11 of the Pakistan Constitution, 1956.

3.Article 15 of the Pakistan Constitution, 1973.

In the case of *Dr. Mohiuddinfarooque v. Bangladesh and others,* 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.

[24] 42 DLR 199.

In Abul Ala Maududi v. The State Bank of Pakistan' [25]the right of free movement along with the right against deprivation of life and personal liberty save in accordance with law was considered.

12. Freedom of assembly.(Article 37)

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.

Analogous Provisions

1.Article 19(1) (b) of the Constitution of India.

2.Article 16 of the Constitution of Pakistan, 1973.

3.First Amendment to the Constitution of USA.

Article 37 purports to guarantee the right to assemble and to participate in public meetings and processions peacefully and without arms. The rights of assembly, meetings and processions are regulated by law but the Article has emphasized their importance as constitutional rights.

However, under this Article rights are not absolute Reasonable restrictions may be imposed in the interest of public health. In deciding the reasonableness of restrictions, the court will have to take into consideration the conditions prevailing at that time, the nature, extent and duration of the restrictions and all the attending circumstances. The restrictions should be imposed directly by law rather than by mere authority of police or similar authority.

The need for balancing the conflicting interests such as the right to assemble peacefully and without arms and the maintenance of public order was emphasized by the High Court in Nasrullah Khan v. District Magistrate."[26] The Privy Council in Manzur v. Zaman[27] held that:

Persons of whatever sect are entitled to conduct religious processions through public streets; they do not interfere with the ordinary use of such streets by the public.The Privy Council in Martin

[25] PLD 1969 Lah 908.
[26] PLD 1965 Lah 642.
[27] AIR 1925 ,36 .

and Co. v. Faizaz Hussain [28]reaffirmed the above view. To sum up it may be said that this Article ensures that the citizens have the right to assemble peacefully at any place for the discussions of public questions of any kind.

13. Freedom of Association. (Article 38)

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.

Analogous Provisions

1.Articles 19(1) (c) and (4)of the Constitutional of India.

2.Article 20, Universal Declaration of Human Rights, 1948.

3.Articles 11(1) and (2) of the Covenant on Civil and Political Rights, 1966.[29]

14. Freedom of thought, conscience speech and press. (Article 39)

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.

Analogous Provisions

1.Article 19(1)(a) and 25(1) of the Constitution of India.

2.Article 19 of the Pakistan Constitution, 1973.

3.Article 44(2)1 of the Constitution of Eire,1937.

In the case of *Bangladesh National curriculum and Text Board v. A.Msamsuddin and others*, 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

[28] AIR 1944, 33 .
[29] 49 DLR 542 .

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

Under this Article, Clause (1) guarantees the freedom of thought and conscience in absolute form as it is a subjective condition of mind which cannot be curbed by imposing law. Thus, in the case of Zebunnisa v. Pakistan,[30] Justice Munir observed that:

15. Freedom of profession or occupation. (Article 40)

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.

Analogous Provisions

1.Articles19(1) (g) and (6)of the Constitution of India.

2. Article 23 of the Universal Declaration of Human Rights, 1948.

3.Article 28 of the Constitution of Islamic Republic of Iran.

competence, skill, fitness and special knowledge of the atizen, before he may be allowed to enter upon a profession or trade. The other type of restriction which a law may impose arises from the word 'subject to any restrictions which prefaces the right itself guaranteed by the Article. Restrictions other than those related to the former category are contemplated by these words."[31]

In both the cases, the Article empowers the parliament to prescribe qualifications for certain profession or occupation. Thus, it has been observed in the case of Nasreen Fatema v. Bangladesh[32] that: Under Article 40 of our Constitution, reasonable restriction can be imposed on a person's entering into any lawful profession or occupation and to conduct a lawful trade or business. When we have already seen that reasonable restrictions have been imposed on certain persons under the impugned provisions in public interest, therefore, we find no violation of Article 40 of the Constitution also in the impugned provisions.

[30] PLD (1958) , SC 35 .
[31] Munim F. K M., Rights of the Citizen under the Constitution and Law, BILIA, Dhaka, 1975, p. 287.
[32] 49 DLR 542.

.**16. Freedom of religion.(Article 41)**

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.

Analogous Provisions

1.Article 25 and 26 of the Constitution of India.

2.Article 18 of the Constitution of Pakistan, 1956.

3. The First Amendment of the USA Constitution.

4.Article 44 of the Constitution of Eire, 1937.

All these things are, however, not uncontrolled or unfettered. They are subject to law, public order and morality. Thus, in the case of Bangladesh Anjuman-e-Ahmadya v. Bangladesh,"[33] it has restricted the ambit of this right by holding that the right of the Ahmadya community to preach their religious belief is, however, subject to law, public order and morality. By the aforesaid passage in our view the author and the publisher are deliberately and maliciously propagating a matter which is outrageous to the religious feelings of the bulk of the Muslim in this country.

17. Rights to property.(Article 42)

Article 42 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.

Analogous Provisions

1.Articles 23 and 24 of the Constitution of Pakistan, 1973.

2.Article 17 of the Universal Declaration of Human Rights, 1948.

3.Amendment 14 to the USA Constitution.

[33] 45 DLR 185.

The fundamental right of acquiring, holding and disposing of property is guaranteed under Article 42 of the Constitution. This Article also delimits the State power to take over any property, whether of a citizen or non citizen."[34]

Thus, the Article guarantees citizen's right to acquire, hold, transfer or otherwise dispose of property and those which delimit the State power to acquire private property. A citizen may hold and deal with his property in any manner he likes but subject only to any restrictions imposed by law. Compulsory acquisition, nationalization and requisition of property are not permissible without the authority of law. This Article also further imposes limitations by Clause (2) which provides for the compensation in case of acquisition, nationalization or requisition of property.

In the case of Mohammad Rahimuddin Bhorosha v. Bangladesh, [35] Article 42 has been interpreted as follows: Petitioner as a citizen of Bangladesh has right to hold the

disputed property owned by him unless such right is restricted by any law acquired or nationalized by the authority of law. We have already found that the property owned by the petitioner does not answer the description of abandoned property and inclusion of the same in the list of abandoned properties is without jurisdiction.

18. Protection of home and correspondence.(Article 43)

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.

Analogous Provisions

1.Article 14(1) of the Constitution of Pakistan., 1973.

2.Article 19(1) (e) and the Article 21 of the Constitution of India.

3.Amendment 14 of the Constitution of USA.

[34] Munim, F. K. M. A. Rights of the Citizen under the Constitution and Law, BILIA, Dhaka, 1975, p. 286.
[35] 46 DLR 130 .

Thus, under this Article, a citizen has a 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. But the rights given under this Article are neither limitless nor absolute. These rights are subject to reasonable restrictions imposed by law in the interest of the security of the State, public order, public morality or public health For better anticipation, the provisions of Articles 32. 36, 37, 38, 39 and of this Article 43 are to be read together.[36]

19. Enforcement of fundamental rights.(Article 44)

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

Analogous Provisions

1.Article 32 of the Constitution of India.

2.Article 22 of the Constitution of Pakistan, 1956.

3.Article 28 of the Universal Declaration of Human Rights, 1948.

In the case of Anuar Hossain Chowdhury v. Bangladesh,[37]" the express mandate of Article 44 along with article 102 has been held to be read together so as to declare the inconsistent amendment repugnant and nugatory:

The mandate is clear and express if Articles 44 and 102 are read together. It is well settled that in interpreting the Constitution that the entire Constitution is to be looked into and if any amendment to the Constitution does not fit with the Constitution itself then the amendment is to be declared ultra vires because Constitution is a logical whole.

[36] Huda, A. K. M. Shamsul, The Constitution of Bangladesh (1997) Vol . 1, p.
[37] BCR 1989 AD , Vol . 1 (popularly known as 8th Amendment Case).

Modification of rights in respect of disciplinary law.(Article 45)

Article 45 is a modification of rights in respect of disciplinary law. The provisions of part III will not be applicable to the members of disciplined forces for ensuring proper discharge of their duties or maintenance of discipline in that force, disciplinary law is kept out of the ambit of enforcement of fundamental rights.

Analogous Provisions

1.Article 33 and 34 of the Constitution of India. Article 45 provides that no challenge on the ground of disciplinary law violation of fundamental rights guaranteed by Part III will be available in respect of any provision of a relating to the members of a disciplined force, which is a provision limited to the purpose of ensuring the proper discharge of duties by members of the disciplined force or the maintenance of discipline in that force. Article 45 saves only a law of the specific kind and not any action. Thus, where a fundamental right is violated by an action, that action shall not be immune from attack.[38] But if the violation is authorised by a law of the kind mentioned in Article 45 no challenge can be maintained.[39]

.Power **to provide indemnity.(Article 46)**

Article 46 grants indemnity by law in respect of acts dines during the national liberation struggle or the maintenance or restoration or order in any area in Bangladesh.

Analogous Provisions

1.Article 34 of the Constitution of India.

In view of the provision of Article 46, violation of fundamental rights cannot be urged in respect of any law that may be passed by Parliament making provisions to indemnify any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration of order in any area in

[38] Major Gen Moinul Hossain Chowdhury v . Bangladesh, (1998) 50 DLR 370.
[39] New Ideal Engineering Works v. Bangladesh Shilpa Bank, (1990) 42 DLR (AD) 221.

Bangladesh or to validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in such area.[40]

Saving for certain laws.(Article 47)

47 certain laws have been saved and Clause (1) of this Article grants immunity form challenge on the ground of violation of fundamental rights. Clause (2) gives the protection of certain laws in first schedule in spite of the inconsistency with any provision of the constitution. Clause (3) of this article provides for detention, prosecution and punishment for genocide, war crimes against humanity under international law and in case of conflict with any provision of this constitution, the law made for such detention, prosecution or punishment of any person under international law shall not be void.

Inapplicability of certain Articles.(Article 47A)

The persons in respect of whom Clause (3) of Article 47 applies shall be precluded from moving the Supreme Court for any remedy under the constitution. It provides for inapplicability of certain Article of this part mentioned in Article 47(A) of the constitution.

In the above-named the Article basis starting from the preamble, Security for the fundamental rights in Bangladesh constitution.[41]

2.4 FUNDAMENTAL RIGHTS AND SOME CONSTITUTIONAL ISSUES

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

[40] Islam, Mahmudul Constitutional Law of Bangladesh, Mullick Brother Dhaka, Bangladesh, third Edition, p. 386.
[41] Rahman Justice Latifur, The Constitution of the People's Republic of Bangladesh with Comments & Case- laws, (2nd Edn., 2005) p. 82.

by the authority of this constitution. 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.

Chapter -3

International Instruments of Human Rights

Bangladesh has become one of the top ranking countries in violence.There are as follows:

3.1 The Universal Declaration of Human Rights (UDHR)

UDHR is a milestone document in the history of human rights. Drafted 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)[42] 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).

3.2 International Covenant on Civil and Political Rights (ICCPR)

The States Parties to the present Covenant,Considering that, in accordance with the principles proclaimed in the Charter of the United Nations[43], 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,Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,[44]Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human

[42] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: https://www.refworld.org/docid/3ae6b3712c.html [accessed 2 December 2022]

[43] Article 53 of the ICCPR

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

rights and freedoms,Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.[45]

3.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

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.[1] 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[46], the right to education, and the right to an adequate standard of living. As of July 2020, the Covenant has 171 parties.[3] A further four countries, including the United States, have signed but not ratified the Covenant.

3.4 The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

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.[1] 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.[2] Australia's declaration noted the limitations on central government power resultingfromit'sfederal constitutional system. [47] 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.

3.5 UN Charter

[45] United Nations General Assembly Resolution 2200, 16 December 1966.
[46] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: https://www.refworld.org/docid/3ae6b36c0.html [accessed 2 December 2022].
[47] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: https://www.refworld.org/docid/3ae6b3970.html [accessed 2 December 2022]

Bangladesh established initial links with the UN during the period of War of Liberation in 1971. Besides being a war of liberation it was also a fight against violations of basic human rights. UN's involvement in Bangladesh's war of liberation was mainly in:

a. Taking stand against violation of human rights; and

b. Providing aid to the refugees.

In March 1971, during its historic NON-COOPERATION MOVEMENT the leaders of the movement sent message to U Thant, the then Secretary General of UN, urging the Organization's support for the campaign for self-determination by the people of the then East Pakistan. They also held a special meeting with an UNDP representative in Dhaka. The genocide in Bangladesh in 1971 sparked off sharp reactions all over the world. With all other world leaders, Secretary General U Thant condemned this genocide and described it as a 'darkest chapter in human history.'

After the formation of Bangladesh Government in exile on 17 April 1971, one of its most important tasks became the elicitation of support from all countries of the world and creation of favourable world public opinion in support of its war of liberation. For this purpose the Bangladesh Government from its headquarters in Mujibnagar sent special emissaries to the United Nations on 21 September 1971 on the 26th session of the UN General Assembly. In October 1971, the leader of the Bangladesh delegation let the world know through a press conference held in UN Plaza, that 'we have reached a point of no return'. On 4 December 1971, a long statement prepared by Bangladesh delegation in UN was distributed as an 'Official Document'. The letter was docketed as an 'Official Document' of the Security Council. This was the first occasion when a statement on behalf of the people of Bangladesh was presented at the UN directly by a delegation from Bangladesh.

The second area where UN was actively involved was in helping the refugees. As a result of the inhumane oppression and genocide by the Pakistan Army, thousands of people left home and took refuge in neighbouring India[48]. The organizational management and the financial strength needed to keep these refugees alive were beyond any country's ability alone. The United Nations organized a massive international operation for relief of the refugees from Bangladesh in India.

[48] Nurul Momen, Bangladesh-UN Partnership in The Daily Star, February 19, 2006.

Bangladesh's war of liberation also gained technical advantage because of the involvement of UN in helping the refugees. This put an end to the dirty tricks of Pakistan and some other countries that were trying hard to portray this struggle as 'internal affair' of Pakistan and a quarrel between India and Pakistan. Top UN officials including Sadruddin Aga Khan, the UN High Commissioner for Refugees, visited several refugee camps. Besides the UNHCR, other UN Agencies like WHO, WFP, and UNICEF also started work for the refugees.

On the other hand, United Nations started its relief activities in the then occupied Bangladesh. On July 1971 United Nations East Pakistan Relief Operation (UNEPRO) started its activities under John R Kelly. Later, Paul Mckee Henry, Under Secretary General of UN took this responsibility at UN Headquarters. Bangladesh government at that time complained that the Pakistan army was deliberately misusing this relief operation. On 16 November the entire operation was taken directly by UN from Pakistan control. This was a moral blow to the then administration of East Pakistan.

In the Aid-Consortium meeting of the World Bank held in Paris in June 1971, the donor communities refused to give any new aid until normalcy was restored in East Pakistan. 'East Pakistan is in effect without a government', this comment by the World Bank added a new momentum to the war of liberation of Bangladesh. The refugee problem in Bangladesh was also a serious item on the agenda of United Nations' Economic and Social Council (ECOSOC) in 1971.

After the emergence of Bangladesh, the United Nations started a massive relief and rehabilitation operation. Kurt Waldheim, the Secretary General of UN, gave formal announcement of United Nations Relief Operations in Dhaka (UNROD) on 21 December 1971, [49] and appointed Sir Robert Jackson as Under Secretary General in over-all charge. The operation was later enhanced and renamed as UNROB, an acronym of United Nations Relief Operations in Bangladesh. When this operation terminated its activities of emergency relief and rehabilitation as planned on 31 December 1973, UNROB had become until then the largest of its kind ever conducted under the auspices of the United Nations.

[49] Bangladesh and the UN: 25 years of Cooperation, United Nations Association of Bangladesh (UNAB), Dhaka, 2000; Nurul Momen (ed.), UN and Bangladesh, Cooperation for Development

The relationship between United Nations and Bangladesh further strengthened when the UN Secretary General Kurt Waldheim visited Bangladesh on 9 February 1973 and met with the Prime Minister Bangabandhu Sheikh Mujibur Rahman to discuss ways and means to rebuild the country. After this visit, United Nations supports the nation building process of Bangladesh. With the assistance of the United Nations, the Chalna Port, which was devastated during the war of Liberation, was cleared off the sunken vessels. UN also arranged a chartered plan to bring back the stranded Bangalis from Pakistan in July 1973.

3.6 : Convention Against Torture(CAT)

According to Article 1 of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), torture means:

" any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or any other person acting in official capacity."

Under international law, the right to freedom from torture is a non-derogable right; in other words, it is absolute, and exceptions to this right cannot be justified under any circumstances. Bangladesh ratified the Convention against Torture (CAT) in 1998 [50] and the International Covenant on Civil and Political Rights (ICCPR) in 2000. Therefore, Bangladesh has international treaty obligations to prohibit torture and hold perpetrators of torture accountable. Its ratification of these instruments shows at least a nominal commitment towards the protection of its citizens from torture by state officials. However, the State's failure to ratify the Optional Protocol to CAT and the fact that it has signed, but not yet ratified, the Statute of International Criminal Court and most important its failure, to date, to incorporate these treaty obligations into national laws, brings into question the extent of its commitment to enforce the absolute prohibition on torture. It has also entered reservation to article 14(1) of CAT,[51] which offers a

[50] BLAST v Bangladesh , 55 DLR (2003) 363.
[51] New Age , 22 May 2006, The Daily Star , 27, 30 May and 4 June, 2006.

scope for the victim to obtain compensation. Although as an elected member of the Human Rights Council, Bangladesh has promised to ensure regular submission of reports to the UN Treaty Bodies, it has failed to date to submit its initial reports as required under CAT and ICCPR.

Constitutional Safeguards

The Constitution of Bangladesh provides safeguards against torture, ill treatment and arbitrary arrest. Article 11 provides that democracy, human rights, freedoms and respect for human dignity shall be fundamental principles of state policy. [52] Article 27 establishes the right to equality before the law. Article 31 provides for protection of law, and prohibits actions not taken "in accordance with law." Article 32 protects the right to life and personal liberty, and Article 33 provides safeguards from arbitrary arrest and detention. Article 35 provides explicitly that, "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

In 2003, the High Court gave a judgment in BLAST v Bangladesh[53], 1 that in view of Article 35 of the Constitution, "any information which is obtained or extorted by taking an accused on remand and by applying torture, the same information cannot be considered as evidence and cannot be used against him." In the same judgment the Court further stated that the very system of taking an accused into remand and extorting information by application of force is, "totally against the spirit and explicit provisions of the Constitution[54]." The judgment also made key recommendations to amend the Criminal Procedure Code so as to make it more consistent with the Constitution. The Court's recommendations are discussed in detail below.

[52] New Age , 7 August, 2006. Also see Chapter 3, p.39.
[53] BLAST v Bangladesh , 55 DLR (2003) 363.
[54] Saifuzzaman v State , 56 DLR (2004) 324.

Chapter – 4

Safeguards Under The Constitution of Bangladesh

4.1 The Enforcement of the Fundamental Rights

The insertion of fundamental rights in a constitution in a constitution becomes meaningless rights if it is not provided by the constitution for easy and effective procedure for their enforcement. And this easy and effective enforcement should be available not only against the executive but also against the legislative. If the executive does anything in violation of fundamental rights, the citizens must have a remedy. Similar if the legislature enacts any law which is inconsistent with any of the fundamental rights, there must be procedure to declare that law unconstitutional. The idea of protection of fundamental rights can be best understood from the American Declaration of Independence, 1776 [55]where it is stated that all men are created equal that they are endowed by their creator with certain in alienable rights, that among these are life, liberty, and pursuit of happiness; that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is right of the people to alter or abolish it and to institute a new one. The declaration, therefore, has laid the utmost emphasis on the enforcement of rights that if the peoples rights for the protection of which the government is formed, can not be enforced than the government would be useless, the importance of remedies to enforce fundamental rights has got recognition in article 8 of the universal declaration of human rights, 1948 which states-

"Every one has the right on an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law".

4.2 Suspension of Fundamental Rights during emergency.

There are emergency provisions in the constitution of some countries but nowhere it is exactly defined what emergency is. Normally emergency means an unexpected occurrence requiring immediate action[56]. The idea of suspension of some fundamental rights in time of emergency is

[55] Bari, Abdul Aziz, Malaysian Constitution: A Critical Introduction, 2003 p. 183.
[56] Aleem-al-Razee, Constitutional Glimpses of Martial Law in India,

common to all legal systems. Somewhere the constitution itself and somewhere a special law makes provisions in legal terms for situations of crisis when states of emergency may be involved.

The necessity for suspension of certain rights in times of emergency is internationally recognized. Almost all regional and international instruments of human rights make provisions for suspension of rights in cases of emergency. Article 4(1) of the international covenant on civil and political rights, 1966, article 15 of the European convention for the protection of Human Rights and Fundamental Freedom 1950 and article 27 of the American convention on Human Rights, 1969 make, more or less, it may take measures derogating from its obligation under the convention. Bangladesh has been under a state of Emergency since January 11, 2007. This is the fifth time this has happened since the independence issued by the president clearly declared that "the right to lodge cases with the courts in order to reinstate the fundamental rights ensured in part III of the constitution shall remain suspended during the State of emergency" according to the Article 141B and 141C of the constitution of Bangladesh. Article 141B concerns the suspension of provisions of certain article during emergencies and Article 141C concerns the suspension of enforcement of fundamental rights during January 25, 2007[57]. Both the ordinance and the rules have empowered the "law and order maintaining force" to arrest citizen without a warrant, Around 55,000 military personnel were already deployed on December 9, 2006- 33 days before the store of Emergency to "aid the civil administration for the maintenance of law and order in the country according to the Home Ministry's proclamation".

1.While a proclamation of Emergency is in operation, the president may, on the written advice of the prime Minister, [by order], declare that the right to move any court for the enforcement of such of the rights conferred by part III of this constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of the right so specified, shall remain suspended for the period during which the proclamation is in force or for such shorter period as may be specified in the order.

2. An order made under this article may extend to the whole of Bangladesh or any part thereof.

3. Every order made under this article shall, as soon as may be, be laid before parliament.

Pakistan and Bangladesh, UPL, 1986, p. 65.

[57] Patwari, A. B. M. Mafizul Islam, Protection of the Constitution and Fundamental Rights under the Martial Law in Pakistan, the Dhaka University Press, 1988, p. 168.

Chapter – 5

UNHRC Report

5.1 United Nations Human Rights Council

Most recently, Bangladesh has achieved its membership in the United Nations Human Rights Council for the period of 2023–2025 with the highest vote from the Asia-Pacific region. The representatives of 160 countries supported Bangladesh in becoming a member of the Human Rights Council, which I believe is a significant achievement for the government. In the recent past, there has been a lot of discussion about the human rights situation in Bangladesh, nationally and internationally. A group continues to try to embarrass Bangladesh and its government in the international arena by spreading false information about human rights violations in the country. Based on their fabricated information, the United Nations published a report entitled "Victims of Enforced Disappearances", [58] which the organisation later revised. A few days after the publication of that report, Michelle Bachelet, the highest official of the United Nations responsible for the global human rights situation, visited Bangladesh.

The group was very excited about her visit, thinking Bachelet might write something negative about the human rights situation in Bangladesh in her report. But their hopes were not fulfilled because Bachelet did not mention anything alarming about the human rights situation in the country in the written statement she handed over to journalists before leaving Bangladesh at the end of her scheduled visit. As she called on the government to discuss with various parties to update the Digital Security Act, she also praised the steps taken by the Bangladesh government in various fields, including the Rohingya issue. At the end of the written speech, she wished for the further development of Bangladesh. Bachelet's speech at the end of her visit to Bangladesh shocked the group. They received another big blow when Bangladesh received the most votes and became a UN Human Rights Council member.

The issue of human rights is explicitly written in the constitution of Bangladesh. Article 11 of the Constitution states that "the Republic shall be a democracy in which fundamental human rights

[58] UN Human Rights Committee (HRC), *Report of the UN Human Rights Committee (Volume 1)*, 1998, A/53/40, available at: https://www.refworld.org/docid/3f4755cd4.html [accessed 2 December 2022]

and freedoms and respect for the dignity and worth of the human person shall be guaranteed." As a result, the state or the government does not have the power to take away the rights of any person or organisation because the government runs the state within the guidelines of the constitution. It cannot be said that there has never been any incident during the present government's tenure in which the rights of any individual or institution have been violated. Some isolated incidents may have occurred, but it is not right to promote those incidents as human rights violations. If we look closely at these isolated incidents, it will be apparent that some overenthusiastic members of the government or law enforcement have caused many of the problems that have embarrassed the government.

No such incident is happening regularly in Bangladesh that may be considered a human rights violation. The list of disappearances and murders given to various countries and institutions in the name of human rights violations by a group was flawed. About half of that list turned out to be wrong. Many of those who were said to be lost have returned. On behalf of the government, their position on this matter was clarified by the Minister of State in charge of the Ministry of Foreign Affairs.

He pointed out in his speech, by clear example, that the list contains the names of the accused, who may be absconding themselves. Again, several people accused of murder have been included in that list. If a murderer is accused of absconding to escape the process of murdering people, can he/she be claimed as missing? Therefore, it is impossible to reach any conclusion without investigating these claims. [59]

Moreover, we have seen many individuals return after being lost for quite some time. Even a top BNP leader was rescued from India after missing for several days. How to explain such events?

Therefore, those who keep shouting that human rights are being violated will never succeed in proving this claim. Bangladesh's veteran human rights activist, Advocate Sultana Kamal, has spoken to the media about the UN-published "Victims of Enforced Disappearance" report. At the same time, Professor Imtiaz Ahmed, a teacher at the International Relations Department of Dhaka University, has expressed his opinion on this matter. They highlighted the flaws in the UN human rights report in front of the media. However, a top BNP leader attacked Advocate

[59] General Assembly Official Records Fifty-third Session Supplement No. 40 (A/53/40)

Sultana Kamal in a very nasty way for her speech. Civil society has widely criticised this matter and called for an apology from the leader. Because he spoke about a person who does not belong to any party, she is nationally and internationally recognised for her contribution to the protection of human rights and is a former advisor to the Caretaker Government.

In the political reality of Bangladesh, when a person or institution speaks for someone, they are held in the head. And when that person or institution speaks against a person or institution, they are identified as an agent of the government. If we do not come out of this mentality, the overall development of our country will never be sustainable because development is a comprehensive concept. Only roads or significant buildings will not make a country develop. People need mental development. If we continue to look for people's mistakes in all cases or criticise everything for the sake of criticism, then that culture is never desirable for sustainable development.

Those who have remained active in claiming that there are frequent human rights violations in Bangladesh and that the government is committing human rights violations, how they will react to Bangladesh's membership in the United Nations Human Rights Council is a million-dollar question. This recognition indicates that Bangladesh's human rights situation is not alarming, and the government is quite aware of ensuring human rights. This UN council takes care of human rights in all countries of the world. So, if Bangladesh's human rights state had been terrible, 160 countries would not have voted for it to join the Human Rights Council.

If work is done with bad intentions, it never succeeds—this has been proven once again. Fellow citizens and the world have witnessed the human rights situation in Bangladesh during the regime of those who have complained to various international organizations that human rights are being violated.

The people of Bangladesh still remember how minorities were tortured under state sponsorship after the 2001[60] elections. Were those events not human rights violations? Minorities have been tortured in some places, even in the current government. Even in some cases, Awami League leaders may have been involved in those incidents. But, those incidents should be considered isolated incidents.

[60] Report of the UN Human Rights Committee (Volume 1)

Minorities have not been tortured with state support while the current government has been in power.

So we should all show the mentality of working together for the country's development without criticising just for the sake of criticism. Propagation of baseless information may bring temporary benefits, but its effects are never positive in the long run. Bangladesh's United Nations Human Rights Council membership has proved that fact. Lastly, I thank the Prime Minister and the Ministry of External Affairs for this outstanding achievement.

5.2 Bangladesh Human Rights Report

DHAKA, April 13, 2022 – Today, the State Department released the *2021 Country Reports on Human Rights Practices,* an annual report required by U.S. law. President Biden has put human rights at the center of his foreign policy. The United States is committed to a world in which human rights are protected, [61]their defenders are celebrated, and those who commit human rights abuses are held accountable.

"Working together, we must commit ourselves to promoting respect for human rights. We must speak honestly about the challenges we face. Progress on human rights begins with the facts," said Ambassador Peter Haas.

Guided by the United Nations' Universal Declarations on Human Rights and subsequent human rights treaties, the country reports cover observance of and respect for internationally recognized human rights and worker rights. The country reports do not draw legal conclusions, rate countries, or declare whether they failed to meet standards.

President Biden is committed to a foreign policy that unites our democratic values with our diplomatic leadership, and one that is centered on the defense of democracy and the protection of human rights. In this 50th anniversary year of the U.S.-Bangladesh bilateral relationship, promoting democracy, good governance, and human rights will remain paramount..

Bangladesh 2021 Freedom of expression continued to be heavily curtailed by draconian laws. The authorities carried out serious human rights violations including enforced disappearances,

[61] Home | News & Events | BANGLADESH HUMAN RIGHTS REPORT

unlawful detention, torture and extrajudicial executions. Peaceful protests by opposition political parties and students were prevented and suppressed by the authorities, on some occasions using excessive force. Violence against women increased during the Covid-19 pandemic. Indigenous peoples experienced scarcity of resources because of increasing deforestation and land-grabbing. Refugees and religious minorities suffered violent attacks.

Torture and other ill-treatment

On 10 March, political cartoonist Ahmed Kabir Kishore filed a case with the metropolitan sessions judge's court in the capital, Dhaka, under the Torture and Custodial Death (Prevention) Act 2013. He accused state security agencies of torturing him in custody.[3] He had been detained along with writer Mushtaq Ahmed in May 2020 under the Digital Security Act, for posting satirical cartoons and comments on Facebook, critiquing the government's response to the Covid-19 pandemic. Mushtaq Ahmed died after 10 months in prison without trial. [62] The government's investigative committee concluded that he died of natural causes. He had been denied bail at least six times. Ahmed Kabir Kishore told Amnesty International that he was forcibly disappeared from his Dhaka residence at least three days prior to the date stated in official records of his arrest. He added that both he and Mushtaq Ahmed were tortured in custody by state security agents. The cartoonist required a hearing aid after losing the hearing in his right ear.

Extrajudicial executions and enforced disappearances

According to Ain o Salish Kendra, at least 80 people were subjected to extrajudicial executions during the year. Among them, 73 people were killed allegedly in "shootouts" or "crossfire" and seven others died after they were subjected to physical torture. Odhikar, another local human rights organization, [63]reported that 18 people were allegedly subjected to enforced disappearance in the first nine months of the year.

[62] Human Rights quarterly.

[63]County reports on human rights practices.

Despite allegations of hundreds of enforced disappearances reported in the media, the government continued to deny them. In some cases they justified extrajudicial executions as "self-defence" by the security forces.

Police frequently attributed deaths of suspects to "gunfights", "shootouts" or "crossfire". In many cases, the fact that these deaths occurred after victims had been taken into police custody raised concerns that the victims were extrajudicially executed by the authorities. On 13 November[64], state minister Kamal Ahmed Majumder told high-school students: "I'm in favour of crossfire because hundreds of thousands of people pass sleepless nights because of criminals. Those criminals have no right to live." His statement indicated that "crossfire" was used by the authorities to mean extrajudicial execution, as opposed to retaliation in self-defence.

Violence against women and girls

At least 1,321 women were reported to have been raped during the year, although actual numbers were likely to be higher. Reports indicated a rise in the number of incidents of sexual harassment and violence against women compared to previous years. According to Ain o Salish Kendra, 224 women were murdered by their husbands, alongside other incidences of violence against women including physical assault by male partners or family members. Section 155(4) of the Evidence Act 1872 allows defence counsels to raise questions regarding the character of a woman who files a complaint of sexual violence. Calls for reforms to the legislation and justice system from rights activists were not addressed during the year.

Indigenous peoples' rights

On 28 October the cabinet secretary, Khandker Anwarul Islam, said that people living in forests would be removed to other places in a bid to keep forests "intact". Indigenous peoples' rights activists expressed concern that the action could put Indigenous peoples at risk of forced eviction. Some Indigenous communities have been living in the forests for centuries and Indigenous groups reported continued violations of their rights, including land grabbing and

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[64] Office of the High Commissioner for Human Rights. United Nations; 2013. [3 October 2013]. What are human rights? [website] *http://www.ohchr.org /EN/Issues/Pages/WhatareHumanRights*.

deforestation. On 30 May, non-state actors cut down 1,000 betel trees belonging to 48 Indigenous Khasi families at Agar punji, a cluster village in Moulvibazar. The trees had been a key source of livelihood for the community. Continued deforestation and clearing of stones and sand from surface water bodies across Rangamati, Khagrachhari and Bandarban districts of Chittagong Hill Tracts worsened the problem of water scarcity for hill people in the region.

Chapter -6

Case Study

6.1 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[65]. 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

[65] WP 1825 of 1999

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,[66] 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.

6.2 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.

[66] Supreme Court of Bangladesh.

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.

6.3 The Constitution of Bangladesh, 1972

Arts. 45 & 102 (5): High Court Division has no jurisdiction to interfere with the decision and order of Court Martial convened under the Army Act. 1952, except on limited grounds of coram non judice and malafide.[67]

Art. 102 (5) A member of any disciplined force, if aggrieved by an order of a court or tribunal established under law relating to the disciplined force, is debarred from invokingthe writ jurisdiction subject to the rule that the order is ceram nubice or malafide. [68]

As regards malafide in Mansurul Aziz & another v Secretary MO LA & LR & others[69], the Appellate Division of the Supreme Court of Bangladesh held that "Arbitrary exercise of power is itself malafide that is malice in law."

In Mestaque Almed v Bangladesh[70], the conviction of Mostaque Ahmed, an ex-President of another Martial Law regime, by a Martial Law Court, which was also reviewed by the Chief Martial Law Administrator, was set aside on ground of malafide

[67] Jamil Huq & others v. Bangladesh & others, 2 BCR 1982 AD 65 (petition dismissed).
[68] Bangladesh & others v. A. K. M. Zahangir Hossain, 2 BCR 1982 AD 65(Appeal disposed of).
[69] Civil Appeal no. 62 of 1980.
[70] 34 DLR (AD)222.

Finally, it is, however, pertinent to point out here that under Article 102(2)(a), only an aggrieved person can apply to the High Court Division of the Supreme Court of Bangladesh for writs of Prohibition, Mandamus and Certiorari and no other person interested in any such matter can move a writ petition for public benefit. In this context, it is contended by critics that suitable provisions should be made in the Constitution so as to enable any person to move the High Court Division of the Supreme Court for such writs on the ground of pro bono publico (for the public good) in order to safeguard public interest and thereby to meet the ends of justice.

6.4 Limits of writ jurisdiction based on case laws

Laches or unreasonable delay: There is maxim based on equitable principle that delay defeats equity'. Inordinate and unreasonable delay in filing a writ petition may bar theremedy under Article 102 of the Constitution[71]" However, i the delay is unintentional and properly explained, then at times the writ jurisdiction may be exercised on the facts and circumstances of each case

Disputed question of facts:- Disputed question of title cannot be the subject matter of writ jurisdiction is not the proper forum for seeking remedy in disputed question of fact. [72]

Economic and Political policies of the Government: - The Court cannot issue prerogative writ directing the Government to implement its policies. Policies are directory; it cannot be enforced through Court. [73]

No writ after taking the benefit:- A person cannot be allowed to blow hot and cold at the same breadth. If a person has acquired some benefit under a statute or of an official act he cannot be allowed to challenge the constitutionality of the law or the official action as he has already taken the benefit out of that legislation under challenge.[74]

Petitioner must approach the Court with clean hand: - A writ petition is liable to be dismissed on the ground that the petitioner has not approached the court with clean hands. Suppression of material facts while making the writ petition, when the petitioner had knowledge of the same will disentitle one to the relief under writ jurisdiction.

[71] Sarwarjan Bhuiyan and others v. Bangladesh, 44 DLR 144; Delwar Hossain (MD) v. Bangladesh, 54 DLR 494.
[72] Tasmina Chowdhury v. Deputy Commissioner, 49 DLR 29 .
[73] Younus Mia v Ministry of public Works , 44 DLR 488.
[74] Nurul Hoque (Md) and another v. Bangladesh, 51 DLR (AD) 140.

Misrepresentation: - Where the petitioner makes a clear misrepresentation as to material facts, the Supreme Court may dismiss the petition at any stage on that ground, even revoking a Rule Nisi which may have been issued earlier.

The principle of resjudicata: - The petitioner has no right to move the Supreme Court under Article 102 of the Constitution more than once on the same facts. In the absence of new circumstances, after dismissal of a writ petition, the same matter cannot be reagitated by a fresh petition.

In both Forums writ petition cannot be agitated simultaneously:- When the petitioner has obtained relief by way of stay order granted to him in another proceedings, a petition under Article 102 of the Constitution has held to be infructuous and consequently not maintainable. One will not be allowed to move forums for the same relief.

Chapter – 7

Recommendations And Conclusions

7.1 Recommendations

Fundamental rights are a group of rights that have been recognized by a high degree of protection from encroachment. There are as follows _

1.The fundamental rights of the people of Bangladesh have been guaranteed in Part III (Article 26-47) of the constitution of Bangladesh.

2. when certain human rights are written down in a Constitution, a supreme law, and protected by constitutional guarantees they are called fundamental rights.

3. Fundamental rights are enforceable in a court of law and they create justiciable rights in favour of individuals.

4.Fundamental rights are mandatory in nature whereas directives are declaratory in nature as they have expressly been excluded from the preview of the courts.

5. The fundamental rights create negative obligation on the state, i.e., the state is required to refrain from doing something.

6.The directive principles may be described as inchoate fundamental rights.

7. 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.

8 . We have been observed that the constitution of Bangladesh has included all the basic attributes of fundamental rights.

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

10. The provisions of Part IXA, all Articles of Part III (Fundamental Rights) are not amendable.

11. Fundamental right should be relegated under ordinary statutes.

7.2 Conclusions

The fundamental rights what we find in different Constitutions of the world including Bangladesh Constitution are not the outcome of an overnight initiative rather it enlaces a long historical evolution[75]. The Greek idea of insomnia or equality before the law and isogoria or equal freedom of speech could be said to have the seeds of the realization of fundamental rights as we understand today though there may be some logical distinction between all these and the idea of inherent rights in the modern sense, but it is a distinction without significant disparity.

Positive sides of the fundamental rights –

Bangladesh, as a Welfare State under Part III of its Constitution featured the most striking balance between written guarantee of individual rights and collective interest of the community, some expressions used in some articles regarding fundamental rights will be worth substantiating this feature such as the expression "subject to any reasonable restrictions imposed by law in the public interest."

Article 26 27,28,29,30,31,32,34,44describe the positive sides of the fundamental rights guaranteed in the Bangladesh Constitution.[76]

Negative sides of the fundamental rights

Describe having many positive sides of the fundamental rights guaranteed under part 3 in the Bangladesh Constitution, [77] it is found to have chained with so many negative sides and incompleteness of rights.

During Martial Law it is found that the extra-constitutional gemments had their own laws for detaining individuals and those laws could not be challenged in any court of law. During Martial Law as that of Emergency,[78] fundamental rights are kept suspended, Constitution subverted. As a result, the Executive may take measures against enjoyment and enforcement of fundamental rights and Parliament may make any law inconsistent with these fundamental rights..

[75] Mujibur Rahman v. Bangladesh, 44 DLR (AD) 111 (per M. H. Rahman J).
[76] Islam, Mahmudul, Constitutional Law of Bangladesh, (2012) p. 133.
[77] New Articles 141A, 141B and 141C of the Bangladesh Constitution deal with Emergency .
[78] Talukder, 5. M. Hassan, History of Constitutional Development Bangladesh Perspective, (2014) p. 164.

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1- Clause (3) was added by section 2 of the Constitution (Second Amendment) Act, 1973 (Act No. XXIV of 1973)

2 -Article 30 was substituted by section 5 of the Constitution (Eighth Amendment) Act, 1988 (Act No. XXX of 1988)

3- Article 33 was substituted by section 3 of the Constitution (Second Amendment) Act, 1973 (Act No. XXIV of 1973)

4- Article 38 was substituted by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), section 16.

5- Substituted for the former clause (2) and (3) by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), section 17.

6- Substituted for the former article 44 by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), section 18.

7- Substituted for the proviso by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), section 19 (i).

8- Clause (3) was added by section 2 of the Constitution (First Amendment) Act, 1973 (Act No. XV of 1973)

9- Inserted by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), section 19 (ii).

10- Article 47A was inserted by section 3 of the Constitution (First Amendment) Act, 1973 (Act No. XV of 1973).

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ABBREVIATIONS

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

Lah. : Lahore

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

UPL. : University press Limited

UK. : United Kingdom

USA : United States of America

V. : Versus

Vol. : Volume