**Research Monograph**

**On**

# The Constitutional Enforcement of the Fundamental Principles of the State Policies: Bangladesh perspectives

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


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**Letter of Transmittal**

To

Md. Sagor Hossain

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**Subject**: Submission of Research The Constitutional Enforcement of the Fundamental principles of the State Policies: Bangladesh perspectives"

Dear Sir,

This is a great pleasure to submit the Research Monograph on "The Constitutional Enforcement of the Fundamental principles of the State Policies: Bangladesh perspectives" as a partial requirement for the fulfillment of my LL.M course under the Department of Law of the Sonargaon University (SU).

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

Yours sincerely

…….

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# Declaration

I do hereby declare that the Research Monograph Title "The Constitutional Enforcement of the Fundamental Principles of the State Policies: Bangladesh perspectives" prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.M. Degree. This is an original work of nine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

……

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## Supervisor Certificate

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

It Is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.M. program.

……..

Md. Sagor Hossain

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# Acknowledgement

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

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

I acknowledge my grateful to respected course teacher Md. Sagor Hossain 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. We are indeed thanks to everyone who inspired us to write this Research Monograph.

Thank you

A N M Taifur Rahman

# Abstract

Fundamental Rights and Directive Principle are integral components of the same organic constitutional system. The relationship between Fundamental Rights and Directive Principles has been a matter of great debate and scrutiny since the commencement of the Constitution itself. The major difference between fundamental rights (contained in Part III of the Constitution) and directive principles (contained in Part II of the Constitution) is that while fundamental rights are justiciable, directive principles are non-justiciable. The question of relationship between the directive principles and the fundamental rights has caused some difficulty and the judicial attitude has undergone transformation on this question over time. An attempt has been made in this thesis to make distinctions between fundamental rights and directive principles of the state policy in the light of different justice interpretations given by the judiciary.

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# Chapter 1

## INTRODUCTION

### 1.1 Introduction

The *Constitution of Bangladesh* embodies in its part II certain directions to the state terming them as Fundamental Principles of State Policy. The Constitution itself terms these as „Principle" not laws.[1] The Constitution also embodies in its part III fundamental rights of citizens.

Apart from setting certain ideological objectives, part II contains also the provisions regarding basic necessities which says that „It shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens"[2] the basic necessities and rights, like food, clothing, shelter, education, medical care, right to work, etc. This part in fact contains certain basic duties of the State and certain basic necessities of the type of economic human rights of the people are dependent on the performance of the above duties properly by the state. With the development of the concept of „welfare state in fact this trend has been developed on political grounds to impose more duties on the state without assessing the fact whether the State has the actual ability to perform it or not based on its economic strength. The prime characteristic of these principles is that these are not judicially enforceable and act as guidelines to the state; and many Constitution of modern world also contain such principles.[3]

An individual to lead a life requires some rights. Rights have been described as those claims of an individual that are necessary for the development of his oneself and recognized by

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[1] *The Constitution of the People's Republic of Bangladesh 1972*, Art. 8.

[2] *Ibid.,* Article 15.

[3] Muhammad Ekramul Haque, „Legal and Constitutional Status of the Fundamental Principles of State Policy as Embodied in The Constitution of Bangladesh 1972", *The Dhaka University Studies, Part-F*, vol.XVI (1) (June 2007), p.45.

society or state. Some of rights that are recognized by the state and enshrined in the constitution are called fundamental rights. Fundamental rights are those rights of an individual that are enforceable through courts of law. The aim behind having a declaration of fundamental rights is to make inviolable certain elementary rights appertaining to the individual and to keep them unaffected by the shifting majorities in the legislatures. It is to preserve certain basic human rights against interference the state. The inclusion of a chapter on fundamental rights in the constitution is in accord with the trend of modern democratic thought. These rights are basic to a democratic polity. The object is not only, to ensure the inviolability of certain essential rights against political vicissitudes, but also to impress upon the people the fact of their having reached a new level of national existence. The guarantee of certain basic human rights is an indispensable requirement of a free society. The purpose is to preserve, for the benefit of the people, their fundamental rights against infringement by the institutions created by the constitution.

### 1.2 Objectives

1. To know about the fundamental principles of the state policies.
2. To explore the fundamental principles of the state policies and its enforcement mechanism in Bangladesh.
3. To find out the procedure.
4. To find out how fundamental principles of the state policies and its enforcement mechanism.
5. Courts of most of the countries are suffering from huge caseloads.

### 1.3 Methodology

I have taken option from my Research and some other advocates to whom I work as an appreciative. As secondary source, acts, journal , newspapers and law reports have been used .

Research methods include theoretical procedures experimental studies numerical schemes, statically approaches etc.

It helps us collect samples, data and final a solution to the problem. The functioning of the criminal justice system is wide enough to achieve its goals and objective. It‟s ultimate goal is undoubtedly to make the society safer for its people and protection of law and right in the process of our justice system.

**1.4 Limitation of the Study**

Several limitations remain regarding the coverage and comparability of data.

- Lack of time.
- Confidential matters of the organizations.
- Lack of experience.
- As I m a student it is not possible for me to collect all the necessary information.
- There are many primary data but among them a specific amount of data are secret and for that I could not show them in my report.

## Chapter 2

## GENERAL CONCEPTIONS

### 2.1 Definition of Fundamental Principles of State Policy

"Directive or Fundamental Principles of State Policy" as a term of constitutional jurisprudence have not got any universal definition. But as the term indicates it means primarily those principles which are considered fundamental in matter of policy formulating by the government. From the view of Bangladesh Constitution it may be said that Fundamental Principles of State Policy are those principles which act as fundamental guide to the policy making be it social, economic, administrative or international, governance of the country, making laws and interpreting the Constitution and laws. [4]

Directive Principles of State Policy are in the form of instructions/guidelines to the governments at the centre as well as states. Though these principles are non-justifiable, they are fundamental in the governance of the country. The idea of Directive Principles of State Policy has been taken from the Irish Republic. They were incorporated in our Constitution in order to provide economic justice and to avoid concentration of wealth in the hands of a few people. Therefore, no government can afford to ignore them. They are in fact, the directives to the future governments to incorporate them in the decisions and policies to be formulated by them.

The international human rights law regime has found a strong recognition in the *Constitution of Bangladesh.* It however, creates a dichotomy between civil-political rights and socio-economic rights by making the former enforceable by the court and the latter non-enforceable. Part III of the *Constitution* embodies the „fundamental rights" ,encompassing mainly civil and political rights(Articles 26 to 47).Economic, social and cultural rights are included in part II of the constitution as "Fundamental principles of state policy"(Articles 8 to 25).[5]

[4] *Ibid.,* p. 75.

[5] M. Jashim Ali Chowdhury,*ibid*., p.128.

## 2.2 Nature of Directive or Fundamental Principles

A distinguishing feature of directive principles which is invariably found in all constitutions adopting these principles is that these are not enforceable in a court of law. This non-justiciability of these principles have paved the way for critics to portrait them in variety of descriptions.

Firstly, these are described as „beau idea"[6] in the constitution, i.e., the highest standard of excellence in the Constitution. Because they embody the principles of high ideals like economic emancipation, eradication of poverty, illiteracy etc.

Secondly, these are described as „veritable dustbin of sentiment",[7] for they are the best idealistic words written down in the Constitution without providing anything for their enforcement. They are, therefore, nothing but mere expression of good sentiment of the Constitution makers.

Thirdly, these are something described as „decoratives in the Constitution". Tusher Chatterjee, a communist member of Indian parliament being very harsh in assessing the utility of the directives, commented that he could not feel that these solemn declarations in the Constitution were not directives but mere decoratives in the Constitution.[8]

Professor K.C. Wheare has described them as „paragraph of generalities" into the Constitution. He has severely criticized insertion of such decoratives in the Constitution.
He has doubted "whether there is any gain, on balance, from introducing these paragraphs of generalities into a Constitution anywhere at all, if it is intended that the constitution should command the respect as well as the affection of the. If the Constitution is to be taken seriously, the interpretation and fulfilment of these general objects of policy will raise great difficulties for courts and for legislatures into conflict and disrepute. If these declarations

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[6] A.C. Kapoor, *Select Constitutions*, 12th ed. (New Delhi: S.Chand & Co. 1989), p. 93.

[7] A.C. Kapoor, *ibid.*, p. 94.

[8] *Ibid.*, p. 101.

are, however, to be neglected, if they are to be treated as „words", they will bring discredit upon the Constitutions also."[9]

Professor Ivor Jennings has also questioned the reasonableness of inserting such directives in a Constitution when he describes them as, "the ghost of Sidney and Beatric Webb Stalk through the pages of the text" and "expressions of Fabian Socialism without socialism."[10]

Fourthly, these principles are also described as "a moral homily on the one hand and as a manifesto of aims and aspiration on the other hand", for they are all principles relating to economic, social and cultural rights which are not a matter of immediate achievement. They are goals to which the state has to reach and, keeping in line with the socioeconomic progress, the state will implement them step by step. They, therefore, work as programmes of the government.

### 2.3 Differences between Fundamental Right and Directive Principles of State Policy

***Fundamental Right***

1) Part III, containing articles from 26 to 44 deals with Fundamental Rights.
2) The Fundamental Rights can be enforceable by a court against the State.
3) These are primarily aim at assuring political freedom to the citizens by protecting them against the excessive State action.
4) The Fundamental Rights are given a pride of place by the Constitution makers.
5) The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by legislative or executive act or orders, except to the extent provided in appropriate Article in Part III.
6) Fundamental rights occupy a unique place in the lives of civilized society and have been variously described in judgment of the Supreme Court as "transcendental", "inalienable" and "personal".
7) There are negative in character. The State is asked not to do certain things for the people.

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[9] K.C. Wheare, *Modern Constitutions*, (London: Oxford University Press, 1975), p. 47.
[10] A.C. Kapoor, *ibid.*, p. 101.

***Directive Principles of State Policy***

1) Part II, containing Articles from 8 to 25, deal with Directive Principle of State Policy.
2) The Directive Principles of State Policy can not be enforceable by any Court.
3) These are aimed at securing welfare, social and economic freedoms by appropriate State action.
4) The Directive Principles are given a place of permanence by the Constitution makers.
5) The Directive Principles of State policies have to confirm and to run as subsidiary to the Chapter of Fundamental Rights.
6) The Supreme Court described the Directive Principles of State policy as

   "Conscience of our Constitution".

7) These are positive in character. The State is directed to take certain positive steps for the welfare and advancement of the people.[11]

Finally in above discussion we understand that the genesis and objectives underlying part II and part III have common desideratum in responding to the social consciousness rest with the constitution making force. While fundamental rights focus on interests of personality, the Directives principles look on to the welfare of society. Judicial remedies for fundamental rights and non justiceable of directive principles are the deliberate strategies of the constitution. The dichotomy between part II and part III and the supremacy of former over the latter a theory based on formalistic and too textual an interpretation.

## 2.4 Differences between Fundamental Rights and Human Rights

Firstly, all fundamental rights are human rights but all human rights are not fundamental rights. Fundamental rights are those of human rights which are placed in a written

[11] [http://www.preservearticles.com/201012301972/difference-between-fundamental-right-and directiveprinciples-of-state-policy.html, last visited on 10 January 2019].

constitution. Human rights, therefore, are the whole of which fundamental rights are a part.[12]

Secondly, the source of a fundamental right is the constitution whereas the source of human rights is the international law.

Thirdly, fundamental rights have territorial limitations i.e. they have no application as fundamental rights outside the territory of a particular state. But human rights have no territorial limitations; they have universal application.

Fourthly, fundamental rights are protected by constitutional guarantees and can be enforced through the state courts. But there is no effective enforcement machinery for human rights.

Fifthly, fundamental rights are largely applicable to the citizens while human rights are universally applicable to all human being.

[12] Abdul Halim, *ibid.*, p,75.

# Chapter 3

# FUNDAMENTAL PRINCIPLES UNDER THE CONSTITUTION OF BANGLADESH

## 3.1 Fundamental Principles of State Policy

The Bengali nation had struggled for democracy, secular values and national rights for years. The military rulers of the Islamic Republic of Pakistan tried to deny the democratic and national aspirations of the Bengalis and carried out systematic genocide throughout 1971 in the name of religion. As a result, the struggle of the Bengali people which began with the language movement of 1952 ended with the armed resistance in 1971 and Bangladesh emerged as a secular democratic nation state.

The following fundamental principles enshrined in the Constitution therefore evolved from its traditions and the experience of this popular struggle.

- Democracy
- Nationalism
- Secularism
- Socialism

(Socialism was the fourth fundamental principle. However this principle was generally considered to mean social justice, particularly for the disadvantaged.)

The people of Bangladesh are still continuing their struggle to retain these principles against many odds.

Fundamental Principles of State Policy enshrined in Articles 8 to 11 and 13 to 25 of Part II of the Constitution of the People's Republic of Bangladesh. According to Article 8, as amended by the Proclamations Order No. 1 of 1977, the principles of absolute trust and faith in Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, together with the principles derived from them, shall constitute the fundamental principles of state policy, and that absolute trust and faith in Almighty Allah shall be the basis of all actions. The Article also says that the principles set out in Part II shall be fundamental to the governance of Bangladesh, shall be applied by the state in the making of laws, shall be a guide to the interpretation of the Constitution and of the other

laws of Bangladesh, and shall form the basis of work of the state and of its citizens, but shall not be judicially enforceable.[13]

Article 9 of the Constitution, also amended by the same Order, speaks of promotion of local government institutions with special representation from peasants, workers and women. Article 10, also amended by the Order, enjoins upon the state to take steps to ensure participation of women in all spheres of national life. Article 11, amended by the Constitution (Fourth Amendment) Act, 1975 and the Constitution (Twelfth Amendment) Act, 1991, says that the country shall be a democracy in which fundamental human rights and freedom, and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured. Article 12 which spoke of secularism and freedom of religion was omitted by the Proclamation Order No. 1 of 1977. Article 13 says that the people shall own or control instruments and means of production and distribution through state ownership, cooperative ownership and private ownership.[14]

Article 14 enjoins upon the state to emancipate the toiling masses of peasants and workers and the backward sections of the people from all forms of exploitation. Article 15 makes it a fundamental responsibility of the state to secure for its citizens the provision of the basic necessities of life, the right to work, the right to reasonable rest, recreation and leisure, and the right to social security. Article 16 says that the state shall take effective measures to ensure balanced development of the rural areas so as to remove the disparity in the standards of living between the urban and the rural people. Article 17 asks the state to take effective measures to provide free and compulsory education to all children, and remove illiteracy as fast as possible. Article 18 asks the state to take effective measures to improve the level of nutrition and public health, and to prevent alcoholism, addiction to drugs, prostitution and gambling. Article 19 asks the state to take effective measures to ensure equality of opportunity for all citizens, and uniform level of economic development throughout the

[13] Enamul Haq, State to Endeavour to Consolidate, Preserve and Strengthen Fraternal Relations Among Muslim Countries Based on Islamic Solidarity, An Amendment Made by the Proclamation Order No. 1 of 1977,

[14] en.banglapedia.org/index.php?title=Fundamental_Principles_of_State_Policy

country. Article 20 says that work is a right, a duty and a matter of honour for every capable citizen, and everyone shall be paid according to his work, and that the state shall endeavour to create conditions in which human labour, whether intellectual or physical, shall become a fuller expression of creativity and of the human personality.

Article 21 says that it is the duty of every citizen to observe the Constitution and the laws to maintain discipline, to perform public duties and to protect public property, and that every public servant has a duty to strive at all times to serve the people. Article 22 asks the state to ensure the separation of the judiciary from the executive organs of the state. Article 23 asks the state to adopt measures to conserve the cultural traditions and heritage of the people and to foster and improve the national language, literature and the arts. Article 24 enjoins upon the state to take measures to protect monuments of national importance. Article 25 directs the state to base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the UN Charter.[15]

### 3.2 Principles Laws

Article 7 makes it clear that the Constitution is the supreme law of the land and the same has been made more clear by adding the words'... and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void". For example, if the parliament enacts any law violating any of the Fundamental Rights enshrined in the Constitution that law will be void. But it appears that the Fundamental Principles of State Policy are not laws in the sense that if the parliament enacts any law violating any of these Principles that law will not be void since these Principles are not judicially enforceable as is mentioned in Article 8(2) of the Constitution. [16] Thus this constitutional position of the Fundamental Principles of State Policy gives rise to a paradox, since these are the parts of the supreme law though they are not laws in themselves.

[15] Constitution of Law of Bangladesh [ Art. 8-25]

[16] Article 8 of the Constitution of Bangladesh.

Let us analyze the issue from jurisprudential perspective. In discussing the nature of law[16] Sir Fredrick Pollock has made the following observations:

> "In one sense, we may well enough say that there is no law without a sanction. For a rule of law must at least be a rule conceived as binding, and a rule is not binding when any one to whom it applies is free to observe it or not as he thinks fit. To conceive of any part of human conduct as subject to law is to conceive that the actor's freedomhas bounds whichhe oversteps at his peril."[17] "...On the whole the safest definition of law in the lawyer's sense appears to be a rule of conduct binding on members of a commonwealth as such."[18]

Hedge J. said in his Rau Lectures:

> "... the view that the principles were not binding if they were not enforceable by law, originated with John Austin, and Kelsen propounded a similar view. However, Prof. Good heart and Roscoe Pound took a different view. According to them, those who are entrusted with certain duties will fulfill them in good faith and according to the expectations of the community."[19]

In this connection Seervai commented rejecting the above contention made by Hedge J.:

> Hedge J. makes no reference to the exposition of the nature of law by Sir Fredrick Pollock in his Jurisprudence and Legal Essays.... However, Sir Fredrick Pollock emphasized the point that the ordinary meaning of law, as given in the Oxford Dictionary, (1903) namely, "The- body of rules, whether proceeding from formal enactment or from custom, which a particular state or community, regard as binding on its members or subjects." our founding fathers did not treat framing of our Constitution as a place where a conflict between eminent jurists should be resolved. They used "law" in its plain ordinary sense of" a rule enacted or customary in a community and

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[16] Jurisprudence and Legal Essays, selected and introduced by A. L. Goodheart (1961)

[17] Ibid. pp. 13-14

[18] Ibid. p. 15

[19] Hedge, *Directive Principles of state policy in the Constitution of India* ( "the Rau Lectures"), pp.49-50

recognized as enjoining or prohibiting certain actions and enforced by the imposition of penalties". The juristic analysis of law by Prof. Goodheart and Prof.

Roscoe Pound can have no relevance to the society and it is simply not true that persons entrusted with the duty of implementing the directives will strive in good faith to implement them according to the expectations of the community.[20]

Thus, it appears that from this jurispruciential perspective also that the Funciamental Principles of State Policy as embociied in the Constitution of Banglaciesh are not laws in the sense of enforcement. Justice Mustafa Kamal rightly commented that these are not laws and to term it as laws will be unconstitutional as he says" It is the Law of the Constitution itself that the fundamental principles of state policy are not laws themselves but 'principles'. To equate 'principles' with 'laws' is to go against the Law of the Constitution itself."[21]

### 3.3 Underlying object of incorporation of Fundamental Principles of State Policy in the Constitution

Certain Directive Principles are embodied in the Constitution of India, which are almost similar in nature to the Fundamental Principles of State Policy as enshrined in the Constitution of Bangladesh. Dr. Ambedkar in his speech delivered before the Indian Constituent Assembly explained the underlying object of the Directive Principles embodied in the Constitution of India.[22] In fact, he described most wonderfully in an elaborate way the underlying philosophy of incorporation of such type of principles in the Constitution as he portrayed that these principles give the direction towards the establishment of economic democracy by setting these principles as the ideals of this Constitution, the hopes and aspirations of the nation to be achieved. Instead of dictatorship the Constitution has established political democracy and there must have an objective set by the Constitution to be achieved by the democratic state. That objective is economic democracy, which is the outcome of the Directive Principles embodieci in the Constitution. To quote him:

"I see that there is a great deal of misunderstanding as to the real provisions in the Constitution in the minds of those members of the House who are interested in this kind

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[20] Seervai, H. M. Constitutional Law of India, 4th ed. UniversalBookIraders,DeIhi, 2002, vol.2, at p. 1929.

[21] *Kudrat E-Elahi* V. *Bangladesh,* 44 DLR (AD) 319, p. 346 para 84.

[22] Constituent Assembly Debates of India, Vol. Ill, pp.494-95.

> of directive principle.....By parliamentary democracy we mean "one man, one vote". We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in this Constitution a political democracy is because we do not want to install by any means whatsoever a perpetual dictatorship of any body of people. While *we* have established polical democracy, it is also the desire that we should lay down aiiideal before those who would be forming the Government. *The ideal is economic democracy,* whereby so far as I am concerned, I understand to mean, "one man, one vote".[23]

Then he posed the question that how can it be achieved? He opined that there are many ways to achieve the goal of economic democracy. To quote him:[24]

> There are various ways in which people believe that economic democracy can be brought about; there are those who believe in individualism as the best form of economic democracy; there are those who believe in having a socialistic State as the best form of economic democracy; there are those who believe in the communistic idea as the most perfect form of economic democracy.
>
> Now, having regard to the fact that there are various ways by which economic democracy may be brought about, we have deliberately introduced in the language that we have used in the directive principles, something which is not fixed or rigid. We have left enough room for people of different ways of thinking with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act. Sir, that is the reason why the language of the articles in Part IV is left in the manner in which this drafting Committee thought it best to leave it. It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing.

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[23] Ibid.

[24] Ibid.

### 3.3.1 Governance in Bangladesh

- Bangladesh is one of the more successful developing countries in terms of accelerating growth, making growth pro-poor and improving the indicators of social progress.
- Over the past 10 years, the country has also managed to make progress in governance indicators; however global indicators suggest that improving governance should remain a key priority for the full realization of development aspirations.
- The World Bank‟s Country Assistance Strategy (CAS) has identified governance as the fourth pillar of priority and offers a range of support to improve the quality of governance.

Bangladesh is one of the more successful developing countries in terms of accelerating growth, making growth pro-poor and improving the indicators of social progress. Over the past 10 years, the country has also managed to make progress in governance indicators; however global indicators suggest that improving governance should remain a key priority for the full realization of development aspirations. This includes the effectiveness of government, the transparency of authorities, and stability of political situations.

The country‟s Gross Domestic Product (GDP) grew at an average 6 percent a year in the last decade; but recent work on the potential for economic growth indicates that 7.5 percent or higher would be needed for Bangladesh to be a middle income country by 2021. The key question here is: how can improving governance start to catch hold and help boost the prospects for even higher rates of economic growth? And, can continued economic growth be achieved without improving governance?

Recognizing the cross-cutting importance of governance in the overall development of

Bangladesh, the World Bank‟s Country Assistance Strategy (CAS) has identified governance as the fourth pillar of priority and offers a range of support to improve the quality of governance.

Presently, efforts underway on governance in Bangladesh are centered on three main themes:

1) Efforts are underway to improve core governance systems in areas such as public procurement, financial management, fiscal reporting, and watchdog institutions.
   The strategy is to enhance accountability by strengthening „core" governance institutions including the Comptroller and Auditor General, Public Accounts Committee, Bangladesh Bank, Public Service Commission, Securities and Exchange Commission and the courts. One of the largest public financial management trust funds, Strengthening Public Expenditure Management Program (SPEMP) has been supporting the public financial management reforms successfully introducing multi-year budgeting, strengthening financial management systems and improving auditing capacity. The Bangladesh Local Governance Support Project (LGSP) has been supporting union parishads, the lowest tier of elected local government in Bangladesh, in providing services that meet community priorities. The project will focuses on capacity building, particularly regarding financial management and procurement.
2) Giving citizens greater access to public documents, the Right to Information (RTI) Act was passed in 2009 in a bid to increase transparency and change the culture of government officials and their interaction with citizens. The World Bank is working with Government of Bangladesh to develop a program for supporting several agencies to strengthen their compliance with the RTI Act and its rules and regulations on proactive disclosure.
3) The World Bank is also supporting catalytic reforms, through the development of a national identification database in Bangladesh. This will be a great national asset that can provide a platform for reducing fraud, and ultimately improving service delivery. The Bangladesh Identification System for Enhancing Access to Services (IDEA) Project supports the National Identification Wing in this ambitious ID card scheme.

The World Bank has undertaken a series of analytical reports to investigate the impact of governance issues in service delivery. A new financing proposal using a Program for Results instrument is also under preparation to support the government"s Enabling Open Government Program (EOGP) to improve the management of core public services. In light of the low revenue base, strengthening domestic tax mobilization is also a major objective

of this program. The Governance Team also supports the World Bank‟s advisory work to help teams involved in investments in the infrastructure sectors and private sector development efforts. These includes investments in health, education, sanitation, local government strengthening and safety net approaches, which are central to meeting the Millennium Development Goals (MDGs) and improving the quality and efficiency of social service provision to the poor. Through the provision of the DFID financed Joint Technical Advisory Program (JOTAP) a rich set of activities and studies have been undertaken to develop the advisory work, including:

- Bangladesh Poverty Assessment: Assessing a Decade of Progress in Reducing Poverty, 2000-2010
- Climatic Variability and Occupational Diversification in Bangladesh
- Steering Bangladesh in the right direction: A report based on Bangladesh Youth Leadership Summit 2011
- Best practice spectrum renewal and pricing: A review of international best practices and the lessons for the Government of Bangladesh

### 3.3.2 Law Making Process

Among various functions of legislature, law making is a lengthy and to some extend complex process. Ceremoniously it is initiated as a form of Bill by the executive or individual member (for Private Bill) in the house as it mentioned earlier. Before submitting a Bill in the parliament, it follows some pre legislative procedure like; drafting, policy development and cabinet approval .These all pre legislative activities are involved in Pre Legislative Phase. In the house, a Bill passes through three distinct stages which are known as Legislative Phase. In parliamentary parlance these three stages usually known as *first reading* (the title of the bill is announced), *second reading* (discussion on the principles of the bills takes place) and *third reading* (motion is moved to pass the bill**)** respectively[25]. A new stage in the legislative phase, called the committee stage, is also now frequently referred to in many parliaments. This stage came into existence in Bangladesh when the seventh parliament set up a special committee, composed of members belonging to both ruling and opposition parties, to review all bills referred to the JS[26].There is a another phase

[25] Jahan and Amundsen, 2012

[26] Ahmed, 2002

named Post Legislative Phase which involve the ascent of President and the publication of gazette notification. Considering the above mentioned procedures it is seen that the law making process of Bangladesh devised into three broad phases: Pre Legislative Phase, Legislative Phase and Post Legislative Phase.

Article 80 of the Bangladesh Constitution, 1972 provides that every proposal in the Parliament for making a law shall be made in the form of a Bill and When a Bill is passed by the Parliament it shall be presented to the President for assent. The Parliament can make any law which is not inconsistent with the Constitution since any law inconsistent with the Constitution, to the extent of inconsistency, is void[27].

### 3.3.3 Interpretation of Constitutional of Other Laws

Now here before going to the crux of this work, I would like to define some established rules for constitutional interpretations.

**Originalist:** An originalist is a person who believes that the meaning of the constitution does not change or evolve over time, but rather that the meaning of the text is both fixed and knowable. An originalist believes that the fixed meaning of the text should be the sole guide for a judge when applying or interpreting a constitutional provision.

**Textualist:** A textualist is an originalist who gives primary weight to the text and structure of the Constitution. The text means what it would have been understood to mean by an ordinary person at the time it was written. Textualists often are skeptical of the ability of judges to determine collective "intent."

**Intentionalist:** An intentionalist is an originalist who gives primary weight to the intentions of framers, members of proposing bodies, and ratifiers.

**Pragmatist:** A non-originalist who gives substantial weight to judicial precedent or the consequences of alternative interpretations, so as to sometimes favor a decision "wrong" on originalist terms because it promotes stability or in some other way promotes the public good.

**Natural Law Theorist:** A person who believes that higher moral law ought to trump inconsistent positive law.

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[27] Article 7(2), the Constitution of Bangladesh, 1972

**Equitable interpretation:** It means decisions taken on the basis of an innate sense of justice, balancing the interests of the parties, and what is right and wrong, regardless of what the written law might provide. It is often resorted to in cases in which the facts were not adequately anticipated or provided for by the lawgivers.

### 3.3.4 Shall of the Basic of State and Citizen

Bangladesh emerged as a sovereign nation on 26 March 1971, the day on which it declared itself as an independent country.[28] The declaration of independence was followed by a 9-month-long bloody war, and the country became physically liberated from Pakistan on 16 December 1971. The people of Bangladesh through the Constituent Assembly, which comprised all elected representatives of people who were elected for the national parliament and Provincial Legislative Assembly through 1970-1971 elections under the Pakistani regime,[29] constituted the new sovereign nation and adopted for themselves the Constitution (hereafter „Constitution") on 4 November 1972.[3031] Bangladesh began its journey with the constituent citizens who were the „residents" of the then East Pakistan. Unlike in India (see Jayal 2016: 164-168), however, there was no debate in the Constituent Assembly regarding the nature of, or the criteria for, Bangladesh citizenship.

Article 6(1) of the original Constitution of Bangladesh stated that „the citizenship of Bangladesh shall be determined and regulated by law".[32] Article 6(2), however, characterised the collective nationality of the people as Bangalee. After an intervening change in 1978,[32] the amended Article 6(2) now provides that the „people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as

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[28] The Proclamation of Independence Order 1971, promulgated by the Constituent Assembly of Bangladesh on 10 April 1971 (with effect from 26 March 1971). See the Seventh Schedule to the Constitution, as below n 3

[29] See the Proclamation of Independence Order 1971, and the Constituent Assembly of Bangladesh Order 1972

[30] The Constitution of the People"s Republic of Bangladesh (effective 16 December 1972).

[31] See also art. 152(1) of the Constitution that defines a citizen as „a person who is a citizen of Bangladesh according to the law relating to citizenship".

[32] The first military regime extra-constitutionally amended the Constitution to characterise the citizens of Bangladesh as Bangladeshis via the Second Proclamation (Fifteenth Amendment) Order, 1978 (Second

Bangladeshis".[33] It thus seems that Bangladesh sees the „institution of citizen" both „as legal status" and „as collective identity".

The Bangladesh citizenry has a constitutionally entrenched participatory role in the governance and affairs of the Republic,[34] which is a democracy based on universal adult franchise. The Constitution also imposes a protective duty on the state vis-à-vis the citizenship (the „existential aspect of citizenship": Irving 2016). It both entitles citizens to a number of civil and political rights and subjects them to a duty to observe the Constitution and the laws and to perform public duties.[35] „Citizenship" is a condition precedent for them to exercise voting rights and to run as candidates in general elections,[36] to obtain passports,[37] and to access basic state services.

### 3.4 Utility of the Fundamental Principles of State Policy in the Constitution

The utility and the significance of these principles have been aptly described by M.C. Setalvad, former Attorney-General of India, who says that although the Directive principles of State Policy—

> "... confer no legal rights and create no legal remedies, they appear to be like an instrument of instructions, or general recommendations addressed to all authorities in the Union reminding them of the basic principles of the new social and economic order which the Constitution aims at building. These fundamental axioms of State policy, though of no legal effect, have served as useful beacon-lights to courts. It has been held in the context of the Directive Principles that legislation making the land resources of the country effectively available to the larger mass of the cultivating commuruty is

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Proclamation Order No. IV of 1978), which was later affirmed by the Constitution (Fifth Amendment) Act 1979

[33] See the Constitution (Fifteenth Amendment) Act 2011 (Act XIV of 2011), sect. 6.

[34] See arts. 11 and 59 of the Constitution that provide for, respectively, „effective participation by the people through their elected representatives in administration at all levels" and local government bodies composed of elected representatives at all administrative units.

[35] See, e.g., art. 21(1) of the Constitution: „It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property".

[36] See art. 122(2) of the Constitution and sect. 7(1) of the Electoral Roll Ordinance 1982.

[37] The Bangladesh Passport Order 1973 (President"s Order No. 9 of 1973).

acquisition of the lands for a public purpose. Restrictions imposed by laws on the freedom of the citizen may well be reasonable if they are imposed in furtherance of the Directive Principles. Thus these principles have helped the courts in exercising their powers of judicial review. They will, therefore, not only form dominating background to ail state action, legislative or executive, but also a guide, in some respects, to courts. The directive principles are but an amplification of the preamble of the Indian Constitution which bases the authority of the Constitution of India of the solemn resolve of the people of India to secure to all its citizens Justice in the social, economic and political fields; Liberty iii all spheres; Equality of status and opportunity, and the promotion among them all of Fraternity assuring the dignity of the individual and the unity of the Nation."[38]

Thus we can sum up the utility of the Directive Principles in the following points;

i) An instrument of instructions to all authorities within the state.

ii) Useful beacon-lights to courts. iii) Important tool in exercising power of judicial review. iv) Utility in interpreting the Constitution. v) Utility in interpreting other laws.

vi) Utility as the ideology.

vii) Utility as setting the goal.

### 3.5 Educative value of the Fundamental Principles of State Policy inserted in the Constitution

The insertion of the Fundamental Principles of State Policy bears great educative value, though these are not judicially enforceable, strictly speaking. It is worth mentioning here that Sir B. N. Rau in fact was in favour of the enforcement of the Directive principles as embodied in the Constitution of India. Mr. Rau talked to the President Valera in Dublin and discussed about the working of the directive principles under the Irish Constitution,[39] perhaps the first of its kind which embodied such principles, and consequently he tried to

[38] Mahajan, V. D. *Constitutional Law of India,* Eastern Book Company, Laucknow, 1991, 7th ed,, p.368

[39] Shiva Rao, *op. cit.* Vol.III, p. 233

give primacy to the Directives in case of its conflict with the Fundamental Rights and for that purpose he brought the following amendments to the draft Constitution of India;

1. At the beginning of cl. 9(2) [now Art. 13(2) ] insert the words

"Subject to the provisions of cl. 10" [which emphasized the fundamental nature of directive principles.] 2. To clause 10 *add* the following: "No law which may be made in the discharge of its duty under the first paragraph of this section, and no law which may have been made by the State iii pursuai-ice of principles of policy now set forth in chapter III of this Part shall be void merely on the grouiid that it contravenes the provisions of (cl.) *9,* or is inconsistent with the provisions of chapter III of this Part.[40]

Mr. Rau further clarified the object of these amendments in the following words:

"... to make it clear that in a conflict betv/een the rights conferred by Chapter II (Fundamental rights) which are for the most part rights of the individual and the principles of policy set forth in Chapter III which are intended for the welfare of the State as a whole, the general welfare should prevail. Otherwise, it would be meaniiigless to say, as clause 10 does say that these principles are fundamental and that it is the duty of the State to give effect to them in making laws."[42]

But these amendments were neither considered nor accepted.[41] Then naturally a question arose : Is there any justification of incorporation of these unenforceable principles in the Constitution? Interestingly Sir B. N. Rau made a wonderful reply to it and the comment made by him regarding the Directive principles incorporated in the Constitution of India is worth mentioning here:

"... certain lawyers object to the Part in the draft Constitution dealing with 'Directive Principles of State policy', on the ground that since the provisions in the Part are not to be enforceable by any court, they are in the nature of moral precepts; and the Constitution, they say, is no place for sermons. But it is a fact that many modem

[40] Ibid. p. 226

[42] Ibid.

[41] Ibid. p. 326

constitutions do contain moral precepts of this kind, *nor can it be denied that they may have an educative value."*[42]

Thus it has been emphasized that these principles though unenforceable by the court yet have an educative value generally, which may inspire all authorities in the State to reach the ultimate goal of economic democracy. Sir B. N. Rau whose draft of the Constitution (of India) formed the basis of discussion in the drafting Committee and in the Constituent Assembly admitted that once his amendments had been rejected, directive principles had no legal force but had moral effect by educating members of the Government and of the Legislatures.[43]

### 3.6 Relationship between fundamental rights and fundamental principles of state policy

Obviously the Fundamental Principles of State Policy are not judicially enforceable whereas the fundamental rights are enforceable in the courts as mentioned by articles 8 and 26. It seems to give higher legal status to the fundamental rights in comparison with the Fundamental Principles of State Policy. But on the other hand article 47(1) incorporates an interesting and significant provision regarding the relationship between these two. It provides that no law shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the fundamental rights, if Parliament in such law (including, in the case of existing law, by amendment) expressly declares that such provision is made to give effect to any of the fundamental principles of state policy set out in part II of this Constitution. This provision seems to give higher legal status to the Fundamental Principles of State Policy in comparison with the fundamental rights. So I think it will not be wise to term any of these two as superior to another, because, it seems that the Constitution has maintained a balanced relationship between these two.

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[42] Rau Senegal Sir, *India's Constitution In the Making,* 2nd revised and enlarged edition, at pp. 388-393.
[43] Seervai H. M., *Constitutional Law of India,* 4th ed. Silver Jubilee Edition, Universal Book Traders, Delhi, 2002, vol. *2,* p. 1927

***Comparison with the provisions o f the Indian Constitution***

*Earlier view:* In case of conflict between fundamental rights and the principles of state policy, fundamental rights shall prevail as it has the primacy over the latter.[44]

*Recent view:* Should avoid any conflicting interpretation between these two and should try to give effect to both as much as possible adopting the principle of harmonious construction.[4546] Fundamental rights and the principles of State policy are supplementary and complementary to each other and fundamental rights must be construed in the light of the principles of State policy.[47]

The original Indian Constitution does not contain any provision like our article 47(1), but the theme of this particular provision is in fact found in certain case laws in India and the an\ended article 31C (inserted in 1972 by the Constitution Twenty-Fifth Amendment Act) contains this theme to a limited extent. Thus this Article 31C gave primacy to articles 39(b) and (c) [two Directive Principles] over the fundamental rights contained in articles 14 and 19, and subsequently in 1976 by the 42nd Constitution Amendment Act the scope of primacy was extended to all principles laid down in Part IV, but this extension was further declared as void for being unconstitutional by the majority decision of the

Supreme Court in 1980 in the case of Minerva Mills V. Union of India,[48] so that article 31C now remains at its pre 1976 form which gives shield to articles 39(b) and (c) instead of including all Directive Principles. This part of article 31C was held as valid by the Supreme Court of India[49] and the latter part of this article was declared void as unconstitutional by the same case[50] on the ground of taking away the power of judicial review, but interestingly yet the text has not been changed due to technical legal difficulty and the earlier text[51] still remains in the Constitution though that has been declared void by the highest court.[53] In

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[44] *Madras V. Champakam Dorairajan,* AIR 1951 SC 226

[45] *C.B. Boarding & Lodging V. Mysore,* AIR 1970 SC 2042,2050; *Re Kerala Education Bill,* AIR 1958 SC

[46] ; *Unni Krisnan V. A.P.,* AIR 1993 SC 2178

[47] *Unni v. Krisnan A.P.,* AIR 1993 SC 2178, para 141

[48] AIR 1980 SC 1789

[49] In *Kesavananda V. State of Kerala,* AIR 1973 SC 1461

[50] Ibid.

[51] *Article 31C of the Constitution of India: "Nohvithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing, Article 14 or Article 19* [53] Supra note 13.

deciding the validity the court opined that there is no disharmony between these two as they supplement each other in aiming at the same target of bringing about a social revolution to establish a welfare state, which is envisaged in the preamble as the ultimate spirit of the Constitution, and it is also the duty of the court to interpret the Constitution so as to ensure the implementation of the Directive Principles.[52]

[52] Ibid.

# Chapter 4

## SOME CASE STUDIES ON THE FUNDAMENTAL PRINCIPLES

### 4.1 *Kudrat E-Elahi V. Bangladesh, 44 DLR (AD) 319*

**Facts**

Kudrat-E-Elahi V. Bangladesh is an elaborate authority on this issue where the nature and the question of judicial enforceability of these principles have been discussed thoroughly both in the High Court Division and in the Appellate Division.

The case of Kudrat-E-Elahi Panir and others v. Bangladesh concerned a challenged to the Ordinance abolishing the elected Upazila Parishads and vested in the Government all rights, power, authorities and privileges of the dissolved Upazila Parishads. The Appellants, some chairman of dissolved Upazila Parishad, unsuccessfully challenged the law in the high court division and then obtaining appeared before the Appellate Division by leave to appeal.

For the convenience of analysis and to get a clear idea about the judicial position regarding this issue the case will be examined here in a detailed manner. In this case, the petitioners before the High Court Division challenged the constitutional validity of the Bangladesh Local Government (Upazila Parishad and Upazila Administration Reorganization) (Repeal) Ordinance, 1991, on the ground, *inter alia*, that this Ordinance is inconsistent with articles 9,11,59 and 60 of the Constitution and as such it is void in terms of Article 7(2) of the Constitution. It appears that the petitioners in this case tried to enforce Articles 9 and 11, two fundamental principles of state policy, judicially enforceable along with Articles 59 and 60, but they could not succeed before the Court.
Before the High Court Division, Respondents- State defended the *vires* of the impugned.

**Enforcement**

Ordinance saying that Fundamental Principles of State Policy are not "judicially enforceable", that these Principles are not laws but are simply guide-lines for the State including Parliament and that even if any law is inconsistent with the Fundamental

Principles that cannot be challenged in court. The High Court Division in this case unanimously held that the Upazila Parishad was not Local Government as the Upazila was not an administrative unit, but the judges differed as to the inconsistence of the said ordinance with the Constitution. Here two contrary opinions are found:

**1. *Fundamental Principles o f State P o licy are not ju d ic ia lly enforceable:*** It was held by one of the judges in the High Court Division that there was not any inconsistency and, even if any, the Repeal Ordinance could not be declared void in view of Article 8(2) of the Constitution, which says that the Fundamental Principles of State Policy are not enforceable by the Court.

**2*, Judicial enforceability of Fundamental Principles of State Policy: A new interpretation:*** The other judge held that though Fundamental Principles of State Policy are not judicially enforceable but a law which is directly contrary to any Fundamental Principle or which negates such a principle then the law may be declared void in spite of the provision in Article 8(2). Thus this opinion is a new interpretation which is in favour of judicial enforceability of the principles, and this view apparently seems to be in conflicting with the provision of Article 8(2).

**Judgments**

Shahabuddin, CJ, before the Appellate Division, made the constitutional position of Fundamental Principles regarding their enforceability in clear terms that these are not enforceable. He says in paragraph 22 of the judgment;

> The Repeal ordinance has been challenged mainly on the ground of its being inconsistent with Articles 9,11 and 59 of the Constitution. Article 7(2) of the Constitution says that any law inconsistent with the Constitution shall be void. Learned Counsels for the appellants are seeking a declaration of nullity of the Repeal Ordinance on this ground. A law is inconsistent with another law if they cannot stand together at the same time while operating on the same field. Article 9 requires the state to encourage the local Government institutions but the Ordinance has abolished a local Government, namely the Upazilla Parishad. Similarly, Article 11, they have pointed out, provides that the Republic shall be a democracy in which, among other things, "effective participation by the people in administration" at all levels shall be ensured; but the Ordinance has done away with such participation in the administration at the Upazilla level. These two Articles as already quoted are Fundamental Principles of

State Policy, but are not judicially enforceable. That is to say, if the State does not or cannot implement these principles the Court cannot compel the State to do so. The other such Fundamental Principles also stand on the same footing. Article 14 says that it shall be a fundamental responsibility of the State to emancipate the toiling masses—the peasants and workers— and backward sections of the people from all forms of exploitation. Article 15(a) says that it shall be a fundamental responsibility of the State to make provision of basic necessities of life including food, clothing, shelter, education and medical care for the people. Article 17 says that the State shall adopt effective measures for the purpose of establishing a uniform mass-oriented and universal system of education extending free and compulsory education to all children, for removing illiteracy and so on. All these Principles of State Policy are, as Article 8(2) says, fundamental to the governance of the country, shall be applied by the State in making of laws, shall be guide to the interpretation of the Constitution and of other laws and shall form the basis of the work of the state and of its citizen, but shall not be judicially enforceable".'[55]

**Decision**

In Kudrat-E-Elahi Panir and others v. Government of Bangladesh, the court struck down an Ordinance ending democratic representation in Upazila Parishads and vesting all powers with the government. It reinforced that local government must include elected representatives, as set forth in the constitution.

### 4.2 Dr. *Mohiuddin Farooque V. Bangladesh, represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and others, 49 DLR (1996 )(AD) 1*

**Facts**

*Dr. Mohiuddin Farooque v Bangladesh* (1996) became the first instance of the judicial recognition of the protection of the environment. The petition was filed challenging the nuisance and sound population during the campaign for the 1996 general elections.

[55] 44 DLR (AD) 319

**Judgment**

It was argued in Dr. Mohiuddin Farooque V. Bangladesh[56] that—

> "The Preamble and Article 8 also proclaim 'the principles of absolute trust and faith in the Almighty Allah' as a fundamental principle of the Constitution and as a Fundamental principle of state Policy. Absolute trust and faith in the Almighty Allah necessarily mean the duty to protect his creation and environment. The appellant is aggrieved, because Allah's creations and environment are in mortal danger of extinction and degradation."[57]

Thus, it appears that an act done contradictory to the Fundamental principles of State Policy can make the concerned person aggrieved though those Fundamental Principles of Sfate Policy are not judicially enforceable. In the same case/° Dr. Farooque referring Article 21(1) of the Constitution, one of the Fundamental Principles of State Policy, which is as follows:

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

argued that he has this constitutional obligation of performing public duties and to protect public property, and he succeeds in proving himself as an aggrieved person.

**Enforcement**

Latifur Rahman J. in this case®^ focused on the interpretive value of the Fundamental Principles of State Policy and also pointed out that the apex court of the country has the obligation to interpret the Constitution in line of the Fundamental Principles of State Policy as enshrined in the same. He observed:

> "Part II of our Constitution relates to fundamental principles of State Policy. Article 8(2) provides that these principles are not enforceable in any court but nevertheless are fundamental to the governance of the country and it shall be the duty of the State to apply the principle in making the laws. The principles, primarily being social and economic rights, oblige the State, amongst other things, to secure a social order for the

promotion of welfare of the people, to secure a right to work, to educate, to ensure equitable distribution of resources and to decentralize power to set up local

[56] 49 DLR (AD) 1

[57] Ibid., p. 9 para 25.

government institutions composed of people from different categories of people as unit of self-governance. A Constitution of a country is a document of social evolution and it is dynamic in nature. It should encompass in itself the growing demands, needs of people and change of time. A Constitution cannot be morbid at all. The language used by the framers of the Constitution must be given a meaningful interpretation with the evolution and growth of our society. An obligation is cast on the Constitutional Court which is the apex court of the country to interpret the Cons titution in a manner in which social, economic and political justice can be advanced for the welfare of the state and its citizens."[58]

——————————— 49 DLR (AD) 1

# Chapter 5

## 5.1 Recommendations

The inter-relationship doctrine between fundamental rights and directive principles of state policy is not only theoretical but also practical and rewarding. Fundamental rights provide for political freedoms to the citizens by protecting them against excessive state action while directive principles are to securing social and economic freedom by appropriated action both are inspiration of reform legislation. The fundamental rights should be interpreted in the light of directive principles to observe the limits set by directive principles in the scope of the fundamental rights.

The judicial attitude has undergone transformation where courts are very active to uphold the fundamental rights enshrined in the constitution thereby interpreting the provisions of part-II i.e. directive principles of state policy. In *Kesavananda Bharati v. State of Kerala*, Hegde and Mukherjee, JJ., observed:

> "The fundamental rights and directive principles constitute the conscience of the Constitution…There is no antithesis between the fundamental rights and directive principles…and one supplements the other."

The theme that fundamental rights are but a means to achieve the goal indicated in the directive principles and that fundamental rights must be construed in the light of the directive principles.[53]

[53] M P Jain, *Indian Constitutional Law 1949*, 6th ed. (Haryana: Lexis Nexis Butterworths Wadhwa Nagpur, 2010), p.1492.

## 5.2 Conclusion

Fundamental principles of state policy indicate those principles which are used as a guideline in formulating different policies. These policies are made up based on the social, economic and administrative perspectives. These principles are the fixed permanent which is not denied by any of the government and policies are made based on these principles as well.

The concept of fundamental principles has been taken to our country Irish constitution and these are taken focusing on the prohibition of economic imbalance and extortion. Now every rolling government follows these fundamental principles. The fundamental principles have been stated in the Article-8 to Article-25 in part II of the constitution Republic of Bangladesh.

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