


**"Fundamental Rights in Bangladesh: A Critical Overview"**

A thesis submitted in partial fulfillment of the requirements for the award of degree of LL. M (Master's), Faculty of Arts and Humanities, Department of Law under Sonargaon University.

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## ABSTRACT

This paper is an attempt to explore fundamental rights which is incorporated in our constitution on the basis of international human rights law. Bangladesh is a deltaic country situated in the Bay of Bengal having over 173 million of people. In spite of ratification of many international human rights instruments, every year many peoples are deprived to exercise fundamental rights because of political unrest. The Fundamental Rights of Bangladesh Constitution themselves have no fixed content, most of them are empty vessels into which is generation must pour its content in the light of experience. The study intends to examine violation of fundamental rights in the light of present situation. Furthermore, this paper attempts to examine the general criticisms of the enforcement of fundamental rights and desirability of judicial activism in the fulfillment of such right. The main purpose of this paper is to ensure fundamental rights by imposing the international human rights instruments by the political parties as well as our domestic court.



**Key Words:** fundamental rights, enforcement of fundamental rights, constitution, judicial activism, international human rights instruments.

## ACKNOWLEDGEMENTS

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## DECLARATION

I, Md. Marfat Ali Khokon, holding Id LL. M 2203027012, a student of LL. M Program, Faculty of Arts and Humanities, Department of Law of 'Sonargaon University'; do hereby declare that the research monograph titled, **"Fundamental Rights in Bangladesh: A Critical Overview"** is an original work of mine.

The assigned task has done by me for partial requirement of my LL. M degree, as a part of academic curriculum. I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

I also declare that the work presented does not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

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## CERTIFICATION BY THE SUPERVISOR

This is to certify that the Research Monograph titled **"Fundamental Rights in Bangladesh: A Critical Overview"** submitted by **Md. Marfat Ali Khokon (ID No: LLM 2203027012)** in partial fulfilLment of the requirements for the award of the Graduate Degree in Law from Sonargaon University, under my supervision and guidance. It is also to be certified that no part of this Research Monograph has been submitted or published anywhere earlier.

I also declare that the presented work does not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

**Supervisor**

Sharmin Jahan Runa

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## ACRONYMS

AD- Appellate Division

AIR- All India Reporter

Art.- Article

BLAST- Bangladesh Legal Aid & Services Trust

BLD- Bangladesh Legal Decisions.

BRTC- Bangladesh Road Transport Corporation

BTV- Bangladesh Television

CEDAW- Convention on Elimination All forms of Discrimination against women

CRC- Convention on the Rights of Children

CAT- Convention Against Torture

CJ- Chief Justice

DLR- Dhaka Law Reports

ed. – Edition

ETV- Ekushey Television

FPSP- Fundamental Principles of State Policy

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

HCD- The High Court Division

HRW- Human Rights Watch

ibid.- is a Latin word, short for *ibidem*, which means *the same place*

IHRO- International Human Rights Organizations

J- Justice

JS- Jatiya Sangshad

LL. M- Legum Magister

NLSIR- National Law School of India Review

PM- Prime Minister

SC- The Supreme Court

UDHR- Universal Declaration of Human Rights

UN- United Nations

US- United States

v/vs- Versus

WW- World War

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# CHAPTER-I
# INTRODUCTORY

## 1.1 Introduction

Bangladesh was born as an independent state through a historic war which happened in exercise of people's right to self –discrimination. The state has emerged to establish and maintain an ordered society wherein life and liberty of the individuals would be secure and they would live with dignity and honor.[1] The constitution of Bangladesh protects human rights these have been incorporated both in justifiable and unjustifiable forms.[2] They are supreme fundamental law of the state and they provide the normative framework for protection of human rights and access to justice for all people. The constitution of Bangladesh in its part contains a set of judicially enforceable fundamental rights. In this part, 18 fundamental rights have been identified. All of them can be classified into two category-civil and political rights.[3] In practice violation of those rights has been widespread in recent days in Bangladesh.

## 1.2 Statement of Problem

The constitution of Bangladesh guarantees all the major internationally recognized human right[4], however, violation of fundamental rights has been a common practice in a developing country like Bangladesh. The primary goal of the study is to assess framework of fundamental rights in constitution of Bangladesh and its paradoxes.

## 1.3 Literature Review

Bangladesh has the obligations to implement international laws, with regard to human rights; therefore the constitution of Bangladesh recognizes those rights as the fundamental rights. There are two theories regarding relationship between international law and national law: monism and dualism. According to monism theory, international law and

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[1] Islam, Mahmudul, (2012), *Constitutional Law of Bangladesh,* 3rd ed, Dhaka, Mullick Brothers

[2] Haque, Muhammad Ekramul, (2011), *T*he Bangladesh Constitutional Framework and Human Rights, *Dhaka University Law Journal*, Volume 22, Number 1, pp-55

[3] Halim, Md. Abdul, (2016), *Constitution, Constitutional law and Politics: Bangladesh perspective,* Dhaka, CCB Foundation,pp-100

[4] Islam, Md. Shariful, (2013) *Human Rights and Governance: Bangladesh*, HongKong: Asian Legal Resource Center

national law 'are concomitant aspects of the general system-law in general[5] and in case of the conflict between two law, international law is said to prevail. Dualism treats international and national law as 'two entirely distinct legal system.[6]

There are some basic bases have been stated for universal human rights, from where fundamental rights have derived. Moral principles or norms[7] are the basis of human rights that describe certain standards of human behavior, and these rights are protected as legal rights in municipal and international law.[8] They are generally understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being,"[9] and which are "inherent in all human beings"[10] regardless of their nation, location, language, religion, ethnic origin or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of being the same for everyone.

> "….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".[11]

The Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly, that is viewed as the preeminent statement of international rights.[12] Governments commit themselves and their people to progressive measures which secure the universal and effective recognition and observance of the human rights set out in the Declaration; However, Major features of fundamental rights in the constitution of Bangladesh have been derived from this declaration. The state of human rights has been persistently criticizes by Amnesty International & Human Right Watch, especially violation of rights by Bangladeshi security forces.[13]

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[5] I,A, Shearer, (1994), *Starke's International* L*aw* , Butterworths,p-63

[6] ibed

[7] Nickel, James & Pogge, Thomas, (2013), *Human Rights*, Stanford, Stanford Encyclopedia of Philosophy

[8] Nickel, James, (2010),*Human Right*, The Stanford Encyclopedia of Philosophy

[9] The United Nations, Office of the High Commissioner of Human Rights, *What are human rights?,* Retrieved August 14, 2014

[10] Burns H. Weston, March 20, 2014, Encyclopedia Britannica, human rights, Retrieved August 14, 2014

[11] Preamble to the Universal Declaration of Human Rights, 1948

[12] Wikipedia, (2016), Human Rights, retrieved from https://en.wikipedia.org/wiki/Human_rights#International_protection_and_promotion

[13] Wikipedia,(2016), Human rights in Bangladesh, retrieved from https://en.wikipedia.org/wiki/Human_rights_in_Bangladesh

### 1.4 Objective of the study:

To get a better understanding of fundamental rights and fundamental rights protected by Bangladesh constitution

- To assess the protection system of Bangladesh
- To find out the challenges to effective enforcement of fundamental rights in Bangladesh

### 1.5 Research Question

- What are the major features of Fundamental rights in the constitution of Bangladesh?
- What are the measures to protect Fundamental rings and how it is being violated in Bangladesh?
- What are the paradoxes about constitutional rights in Bangladesh constitution?

### 1.6 Methodology of the Study

The research methodology chosen for this article is qualitative & non-doctrinal in nature. To establish this research to be an authentic, reliable & well accepted piece of work to all, I've broadly relied on both primary & secondary sources. For primary sources, this article utilizes a vast number of judicial decisions which have also been critically observed. As secondary source I've had the help of the constitutions of many countries of the world, books from national & international authors, documentaries, law directives, journals, newspapers & conversation of Parliamentary Sessions. I relied on authors from national & international arena, journal, documentaries, parliamentary debates, newspapers and the blessings of internet.

#### 1.6.1 Primary Legal Sources

As a primary source I've had the help of the constitutions of many countries of the world (to gather comparative knowledge on fundamental rights' laws of different countries), different statutes, administrative rules & regulations, etc.

#### 1.6.2 Secondary Legal Sources

As a secondary source I've had the help of different books of national & international authors, documentaries, law directives, journals, articles, newspapers & conversation of Parliamentary Sessions.

## 1.7 Limitation of the Study:

Although the study has reached its aims, there were some unavoidable limitations and shortcomings.

First of all, I am an amateur researcher who is not even expert on the field of study; therefore, it was a tough task to assess the objectives perfectly within short time-limit.

Secondly, all the data I used in this study is mostly self-reported that is limited by the fact that it rarely can be independently verified.

## 1.8 Conclusion

In the contemporary world, human rights have become dominant ideology as it received almost universal recognition by all societies and people of all creeds. Human rights are now considered as sine qua non for the holistic development of human personality.[14] Sometimes human rights are identified with fundamental rights. When certain human rights are incorporated in a constitution of a country and are protected by constitutional guarantees, they are called fundamental rights. In this sense, all fundamental rights are human rights but all human rights are not fundamental rights. While fundamental rights have territorial limitations, human rights have no such territorial limitations and they have universal application. Finally fundamental rights are mainly enjoyed by the citizens but human rights are applicable to all human beings.

[14] International human rights law: Protection Mechanism And Contemporary Issues by Abdullah Al Faruque, New Warsi Book Corporation, Dhaka, 1st Edition: 2012, p-2

## CHAPTER-II
## CONCEPT & ADOPTION OF FUNDAMENTAL RIGHTS

### 2.1 Introduction

The term 'fundamental rights' in the context of Bangladesh denotes a set of eighteen constitutional rights specifically granted in Part III of the Constitution. This set of fundamental rights primarily consists of civil and political rights such as the rights to life and personal liberty, and safeguards as to arrest and detention. Article 102 of the Constitution broadly confers the power of judicial review on the HCD, while art 102(1) specifically deals with judicial review for violation of fundamental rights.[15] 9 Therefore, in making civil and political rights directly enforceable (as opposed to socioeconomic rights) and granting citizens the right to seek relief for their violation by the state, Bangladesh largely conforms with constitutional practice elsewhere around the world. Public law compensation in the context of Bangladesh, therefore, refers to awards of compensation under art 102(1) against the state or its officials for their violations of these constitutionally guaranteed fundamental rights.

In the contemporary world, human rights have become dominant ideology as it received almost universal recognition by all societies and people of all creeds. Human rights are now considered as sine qua non for the holistic development of human personality.[16] Sometimes human rights are identified with fundamental rights. When certain human rights are incorporated in a constitution of a country and are protected by constitutional guarantees, they are called fundamental rights. In this sense, all fundamental rights are human rights but all human rights are not fundamental rights. While fundamental rights have territorial limitations, human rights have no such territorial limitations and they have universal application. Finally fundamental rights are mainly enjoyed by the citizens but human rights are applicable to all human beings.

However, volume of rights provided in the international Human Rights instruments including Universal Declaration of Human Rights (UDHR) and two1966 international Covenants on political & civil Rights , and on economic, social and cultural rights e.g. ICCPR and ICESCR is more extensive than the rights guaranteed in Part III of the

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[15] Article 102(2) deals with judicial review of matters other than fundamental rights. art 102(2). Mahmudul Islam, 2012, *Constitutional law of Bangladesh*, 2nd Edition, Mullick Brothers, p.592-593.

[16] Abdullah Al Faruque, *International Human Rights Law: Protection Mechanism And Contemporary*, New Warsi Book Corporation, Dhaka, 1st Edition: 2012, p-2.

constitution and other relevant laws of Bangladesh. Judiciary has opportunities to illuminate existing domestic human rights law by international human rights law to extend its scope and area of application.[17]

## 2.2 Rights

Before understanding fundamental rights one should have idea about rights and human rights. Right means a claim of some interests claimed by an individual or a group of individuals which has either moral or legal basis and which is essential for his development in the society. In a sense right is not created by law; it originates itself as an obvious result of mutual interaction between man and society.[18] Rights are primarily divided into two categories:

- Moral rights; and
- Legal rights.

Moral rights are those rights which have their basis on the rule of natural justice and the violation of which results in moral wrong. Legal rights, on the other hand, are those rights which are recognized by the positive law of the country and can be claimed on legal basis and the violation of which results in legal wrong. As mentioned earlier right originates in the society and remains as a moral right so long it is not recognized by law. Whenever a law recognizes secures its protection, it transforms into a legal right. All legal rights in this sense are moral rights & the distinction between the two is one of degree rather than of form.

### 2.2.1 Human Rights

The term "human right" which does not mean any right is used in a special sense. Human rights are those of legal and moral rights which can be claimed by any person for the very reason that he is a human being. These rights come with birth and are applicable to all people throughout the world irrespective of their race, colour, 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.' Jaques Maritain says, "The human person possesses rights because of the very fact that it is a person, a whole, a master of itself and its acts and which consequently is not merely a means to an end but an end which must be

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[17] M Shah Alam, *Enforcement of International Human Rights law by Domestic Courts*, New Warsi Book Corporation, Dhaka-2007, p-118.

[18] https://www.academia.edu/29472085/Fundamental_Rights_in_Bangladesh_Constitution

treated as such these are things which are owed to man because of the very fact that he is man."[19] It is also pertinent here to mention the comment of Sridath Ramphal as to human rights —

> "They have their origin in the fact of the human condition, and because the have, they are fundamental and inalienable. More specifically, they were born not of man but with man."

Human rights, therefore, have two inherent characteristics— universal inherence and inalienability. These two characteristics distinguish the concept of human right from other right. Universal inherent means that these rights are universally inherent in all human beings and anyone can claim these rights after his birth. Inalienability as an essential feature of human rights means that these rights cannot be taken away; they cannot be the object of sale or purchase or any kind of transfer. In this sense human rights are different from citizens' rights2 which are protected by the positive law of the state and the state can any time take away or abolish any citizen's right. But human rights are rights that existed before the state came into being and for this they are natural and inalienable rights.

It is noteworthy that if 'inalienability' is considered as an essential element of human rights, there is a danger and confusion. Because a perusal of all human rights will give the idea that this element does not apply to all human rights. For example, right to property which is recognized in Article 17 of both the French Declaration on Rights of Man and Citizen, 1789 and the Universal Declaration of Human Rights, 1948. But this right is undoubtedly an alienable right. Only one common characteristic, can, therefore, be found for human rights and that is 'universal inherent'. It is rather better to divide all human rights into two categories—fundamental or basic human rights like right to life, food, shelter, basic necessaries of life, speech etc. and other human rights.

It is also important to indicate here that what has been told here so far about human rights is the only theoretical side of human right while the real picture is quite different. Because everywhere human rights are being violated; there are some human rights which can be taken away by the state, e.g, right to nationality, right to property etc. The truth is that the concept of human right is not at all a legal concept; it is purely a matter of international law. If a particular human right is recognized by a positive law of a state and is maintained

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[19] David Klassen, *Jacques Maritain And Natural Rights: The Priority of Metaphysics Over Poutics*, https://maritain.nd.edu/ama/Human/Human203.pdf

through enforcement machinery only then it becomes legal and enforceable right. It is therefore; better to describe human rights as universal moral rights.

The concept of human rights has got its formal and categorical shape from the Universal Declaration on Human Rights adopted by the UNO in 1948 where 25 human rights have got their place. These 25 rights are mostly referred to as human rights. Of these rights 25 rights are civil and political rights and 6 are economic, social and political rights and 6 are economic, social and cultural rights.

### 2.2.2 Fundamental Right

The term fundamental right is a technical one, for when certain human rights are written down in a Constitution and are protected by constitutional guarantees they are called fundamental rights. They are called fundamental rights in the sense that they are placed in the supreme or fundamental law of the land which has a supreme sanctity over all other law of the land.

Following the footsteps of the French Declaration of Rights of Man and Citizen, 1789 and the American Declaration of Independence, 1776 and then the incorporation of a Bill of Right in the US Constitution in 1791 most of the democratic countries with written constitution are including a chapter for Bill of Rights or Fundamental Rights with special sanctity.

The object of enumeration of fundamental rights in a constitution is not to make them unalterable in any way but main object is that they can not be taken away by ordinary process of law making. They are placed beyond the reach of the executive and the legislative to act in violation of them. The object of the incorporation of fundamental rights in the US Constitution was pointed out by Justice Jackson-

> "The very purpose of a Bill of Rights is to withdraw certain subjects from the vicissitudes of political controversy; to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's fundamental rights may not be submitted to vote, they depend on the outcome of no elections."

In Jibendra Kishor V. The Province of East Pakistan[20], the Supreme Court of Pakistan held—

[20] *Jibendra Kishor v. The Province of East Pakistan*, PLD1957 SC (PAK) 9[26]

> "The very conception of a fundamental right is that it being a right guaranteed by the Constitution cannot be taken away by the law, and it is not only technically inartistic but a fraud on the citizens for the makers of a Constitution to say that a right is fundamental but that it may be taken away by the law."

The same view was reaffirmed by the Pakistan Supreme court in State V. Dosso. The Indian Supreme Court in Golak Nath V. State of Punjab[21] held—

> "The declaration of the fundamental rights of the citizens are inalienable rights of the people. The Constitution enables an individual to oppose successfully the whole community and the state to claim his right."

### 2.2.3 Distinction between Human Rights and Fundamental 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 constitution. Human rights, therefore, are the whole of which fundamental rights are a part.

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.

Sixthly, Both fundamental and human rights are enforceable in nature, but the former is enforced by the law court, and the latter is enforced by the United Nation Organization.

Seventhly, Fundamental rights are derived from the views of a democratic society. Conversely, human rights emerge from the ideas of civilized nations.

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[21] *Golaknath v. State Of Punjab,* (1967 AIR 1643, 1967 SCR (2) 762)

## 2.3 History of Fundamental Rights

The notion of 'human rights' is plainly understood as: every human being by virtue of the very fact of being born as a 'human' is entitled to enjoy certain rights individually, as a part of a community, irrespective of gender, caste, colour, religion or creed. The common interest of humankind to promote certain conditions for human beings led to the international recognition of human rights, catalysed by some significant historical events, such as The Magna Carta, 1215, the American Declaration of Independence, 1776, the French Declaration of Man and of the Citizens, 1789, and the American Bill of Rights, 1791.

Specifically, after the horrific experience of the WWII, the world community realised the need for protection of human rights both nationally and internationally and thereby adopted the Universal Declaration of Human Rights (UDHR) in 1948. Later in 1966 came the twin documents, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) under the auspices of the UN.

In post WWII era, when the world became divided into two major ideological blocks led by the US in one side and the former USSR in the other spectrum, the ideological classification of these human rights became divided into two categories, namely the civil and political rights, enshrined in ICCPR, and the economic, social and cultural rights, enshrined in ICESCR. There has been significant debate over this division, as many scholars consider the link between civil and political rights and the economic, social and cultural rights as too inseparable and interwoven. The adoption of several international instruments on human rights has put states under an obligation to reflect these sets of rights in Constitutions in the form of enforceable Bill of Rights. Depending on the political ideology and economic strength, the states have chosen to put these two sets of rights in their Constitution, either as part of judicially enforceable fundamental rights, or as part of fundamental principles of state policy (FPSP) which are not judicially enforceable, *per se*.

## 2.4 Adoption of Fundamental Rights

When Bangladesh adopted her Constitution on November 4, 1972 it also reflected recognition of these two sets of rights: as FPSP in Part II, Articles 8-25, and as judicially enforceable fundamental rights in Part III, Articles 26-47, of the Constitution.

One fundamental document which provided the foundational principles in textual terms for the Constituent Assembly in drafting the Constitution for the nation was The

Proclamation of Independence of Bangladesh, pronounced on 10th April, 1971, which formally reaffirmed the Declaration of Independence made by the father of the nation, Bangabandhu Sheikh Mujibur Rahman on 26th March, 1971. This collective right as asserted by the people of Bangladesh is the democratic right of the people.

Though the Proclamation did not directly use the phrase "human rights," it clearly committed to warrant three core rudiments which guarantees the "human rights" of citizenry, i.e., equality, human dignity and social justice. It is interesting to note that the framers of the Proclamation intended to keep the nation in tune with the international 'duties and obligations' as prescribed by the Charter of the UN, even before Bangladesh formally became a member of the highest intergovernmental organization. Accordingly, the instrument further goes on to declare that, "We further resolve that we undertake to observe and give effect to all duties and obligations that develop upon us as a member of the family of nations to abide by the Charter of the United Nations."

## 2.5 Conclusion

Fundamental Rights and Human Rights are vital for the existence and development of individuals. It helps to create a better environment and better living conditions for people, as well as they, preserve their dignity. Both fundamental and human rights are enforceable in nature, but the former is enforced by the law court, and the latter is enforced by the United Nation Organization. Fundamental rights are derived from the views of a democratic society. Conversely, human rights emerge from the ideas of civilized nations. The Constitution of Bangladesh, like many other countries uses the technical term "fundamental rights" to define a set of "human rights" as guaranteed in our Constitution. For Bangladesh, these comprise a set of civil and political rights guaranteed in Part III of the Constitution.

## CHAPTER-III
## FUNDAMENTAL RIGHTS IN THE CONSTITUTION OF BANGLADESH

### 3.1 Introduction

The constitution of Bangladesh has adopted its fundamental rights of the state policy specially from the rights that are established by U.N. International Covenant on Economic, Social and Cultural Rights, 1976. 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. An independent judiciary and strong democratic institutions are the best guarantee against assaults on the rights of the citizens. In this chapter we will see the provision 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.

### 3.2 Fundamental Rights in the Constitution of Bangladesh

There are 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:

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.

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.

Keeping in line with this idea restriction has been imposed on some fundamental rights under the Bangladesh constitution. On the basis of this restriction all fundamental rights enumerated in the Bangladesh Constitution may be classified into following three groups.

**I. Absolute Rights:**

Some rights have been kept in an unfettered form in the sense that parliament cannot, except as provided in the Constitution, impose any restriction over them. They are following:

1. Equality before law (Art. 27)
2. Discrimination on grounds of religion etc. (Art. 28)
3. Equality of opportunity in public employment (Art. 29)
4. Prohibition of foreign titles etc. (Art. 30)
5. Safeguards 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).

**II. Rights on Which Reasonable Restriction Can be Imposed**

They are following:

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 (Art. 43).

**III. The Grounds for Imposing Restriction —**

1) in the public interest (Art. 36)
2) in the interest of public order or public health (Art. 37)
3) in the interest of public order or morality (Art. 38)
4) in the interest of the security of the state, friendly relation with foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence (Art. 39)
5) in the interest of the public order and morality (Art. 41)
6) in the interest of the security of the state, public order, public morality or public health. (Art. 43).

In the case of above mentioned fundamental rights parliament can by law impose only reasonable restriction as mentioned in the respective articles. The reasonability of the law can be examined by the Supreme Court and if the restriction seems to be unreasonable

the court can declare the law illegal. It was held in Chintainoni Rao V. State of Madhya Pradesh[22]' —

> "Legislation which arbitrarily invades the right cannot be said to contain the quality of reasonableness The determination by the legislature of what constitute a reasonable restriction is not final or conclusive; it is subject to supervision of courts."

A perusal of the nature of restriction over the above mentioned fundamental rights also reveals the idea that the Constitution of. Bangladesh has struck a balance between the guarantee of individual's rights and the collective interests of the community. Because as mentioned above, the concept of public interest, morality, public order, security of the state, public health etc. all are collective interests. The maintenance of social order and peace depends principally on safe enjoyment of these collective interests which would remain unprotected leading to a realm of anarchy had there been no provision to impose reasonable restriction on individual's liberty.

Fundamental rights which have been practically left to the legislature:
There are some rights on which parliament can by law impose any restriction it pleases. They are following:

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)

### 3.3 Fundamental Rights

Part III of the constitution enumerates a host of rights called fundamental rights. The fundamental rights in Bangladesh are listed under Articles 27 to 44 and the jurisdiction of the high court Division of the Supreme Court to enforce the rights is defined in Article 102 of Part Vl of the Constitution of 1972.

### Right to Equality

Articles 27 and 28 of the Constitution states that all citizens are equal before law and are entitled to equal protection of law, and the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

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[22] *Chintaman Rao v. State of Madhya Pradesh,* AIR 1951 SC 118

Women are categorized as backwards and have been refused admission to the same advantages as men in society and hence positive discrimination is required to elevate their position.[23] However, article 27 of the Constitution provides that all citizens are equal before the law and are entitled to the equal protection of the law. Despite gender equality being guaranteed in state and public life under the Article 27, the constitution of Bangladesh also provides some provisions related to positive discriminations for instance Article 28 (4), 29 (3) (a) and Article 65 (3). Article 28 (4) allows the state to take special measures for the advancement of women, children and other backward groups of the society whereas Article 29 though ensures equality of opportunity in public employment but it has also provided affirmative action which says that there will be no bar for the state to take measures in favour of any disadvantage portion of the society to secure their adequate representation in the service of Republic.

**Protection of Law**

In the Constitution, Article 31 and 32 ensures the protection of the law, and to be treated in accordance with law, is the inalienable right of every citizen, and no action detrimental to the life, personal liberty, body, reputation or property of any person shall be taken except in accordance with law.

It is one of the principles of Natural Justice that "Nobody should be condemned unheard". That is, before condemning a person, the judge must hear the person, if he has anything to say to prevent the miscarriage of justice. Again, article 27 of the Bangladesh Constitution, 1972 provides that all citizens are equal before law and are entitled to have equal protection of law.

**Equality of Opportunity**

Equality of opportunity, for all citizens in respect of employment or office in the service of the Republic irrespective of religion, race, caste, sex or place of birth, ensured by Article 29. Nothing in this article shall impede the State from making special provision in favor of any specific backward section of citizens.

The guarantee of equal opportunity in matters of public employment is a guarantee of something more than what is required by formal equality. It implies differential treatment of persons who are unequal. Egalitarian principle has therefore

[23] Sayeeda Anju, '*A Study on Positive Discrimination of Women in Laws of Bangladesh*' (2011) 53(3) Journal of the Indian Law Institute, 491.

acknowledged that the government has an affirmative duty to eliminate inequalities and to provide opportunities for underprivileged. Proportional group equality is the concept of equality that permits reservation. The individual member of the group is granted preferential treatment if the group is underrepresented or systematically excluded from competing on an equal basis.[24]

**Safeguards As to Arrest And Detention**

Article 33 of Constitution illustrates that, no arrested person shall be detained in custody without being informed of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

The Bangladesh Legal Aid and Services Trust ('BLAST'), a prominent national human rights organization, filed a writ challenging the legality of the detention of a boy (a minor) in custody and also sought compensation for the violation of his fundamental rights in *BLAST vs Bangladesh* ('*BLAST* 1999').[25] BLAST argued that the 'wrongful confinement' amounted to the violation of five fundamental rights: the right to protection of law; right to personal liberty; safeguards as to arrest and detention; safeguards as to trial; and punishment and freedom of movement.

**Prohibition Against Forced Labor**

Article 34 prohibits forced labor, and any violation of this provision shall be an offence punishable in accordance with law. Nothing in this article shall apply to obligatory labor by persons undergoing lawful punishment for a criminal offence, or required by any law for public purposes.

Article 2 of the Forced Labour Convention defines:
"forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for which they said person has not offered himself voluntarily".

The Penal Code also addresses the prostitution of a minor by providing for a maximum punishment of ten years and a fine for either encouraging a minor with the knowledge that she may be "forced or seduced to illicit intercourse," or the

[24] Tapos Kumar Das, the Daily Star, May 8, 2018
https://www.thedailystar.net/law-our-rights/reservation-equality-and-non-discrimination-1572820

[25] *BLAST v Bangladesh and Others* (1999) 4 BLC (HCD) 600

buying or selling of a minor with the "purpose of prostitution of illicit intercourse." Section 366A of the Penal code provides that "whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with the intent that such a girl may be or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to 10 years and shall also be liable to fine."

**Protection in Respect of Trail And Punishment**

Article 35 states that no person shall be convicted of any offence except for contravention of a law in force at the time of the commission of the act accused as an offence, nor be subjected to a penalty greater than, or different from, that which might have been caused under the law in force at the time of the commission of the offence. Accused criminal offence upholds the right to a speedy and public trial by an independent and impartial court or tribunal established by law. No citizen shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

In this view of the matter, in *angladesh Vs. Professor Golam Azam and others*[26], The Honorable High court Division declared the judgment in this cause by pronouncing that the detention of the detemu professor Ghulam Azam son of late Moulana Ghulam Kabir, is declared to be without lawful authority. The respondents are also directed by the Honorable High court Division to set the detenu, professor Ghulam Azam now detained in Dhaka Central jail, at liberty at once, if not wanted in connection with any other case.

**Freedom of Movement**

Freedom of movement has ensured by Article 36 which shows that subject to any reasonable restrictions imposed by law in the public interest, every citizen have the right to move freely throughout the country, and to reside & settle in any place therein and to leave and re-enter Bangladesh. "The main task of the DNCC is to ensure the road for the movement, but despite knowing the problems of the roads, they have not taken any initiative to address the issue."[27]

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[26] *Bangladesh Vs. Professor Golam Azam and others,* 1994, 23 CLC (AD)

[27] Adil Mohammed Khan, professor of urban & regional planning at Jahangirnagar University https://www.thedailystar.net/weekend-read/news/freedom-movement-basic-right-3232541

**Freedom of Assembly**

As per Articles 37 and 38 every citizen shall have the right to form associations or unions, 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 morality, public order or public health.

In 2013, The Dhaka Metropolitan Police issued a circular where organisers of any assembly, meeting, or public gathering must obtain prior approval from the police commissioner. Any decision regarding disapproval of such assembly usually remains final. According to a UN special rapporteur, the exercise of this right should not be subject to prior authorisation. At best, a notification process can be adapted to facilitate the right to assemble.

While imposing restrictions on this right, the authority should avoid using blanket bans such as public safety or public order. In the case of Oali Ahad vs Bangladesh[28], it was held that whenever the authority imposes restrictions, they must demonstrate the grounds for such restriction and its proximate connection with the danger.

**Freedom of Thought And Conscience**

Freedom of thought and conscience is guaranteed in Article 39 of the Constitution. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence the right of every citizen to freedom of speech and expression, and freedom of the press are guaranteed. [29]Freedom of speech is also important to governments because when criticisms of a government are freely voiced, the government has the opportunity to respond to answer unfair comments and criticisms about its actions.

One of the difficulties inherent in discussing freedom of speech is that it contains what libertarians often describe as the paradox of freedom.[30] On a more practical plane, freedom of speech serves many functions. The European Court of Human Rights in a number of cases has emphasized the special importance of

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[28] *Oali Ahad vs Bangladesh* (26 DLR 376)

[29] Scanlon, T., 1972, "A Theory of Freedom of Expression," *Philosophy and Public Affairs*, 1, no.2.

[30] Waluchow, W.J. 1994. *Free Expression: Essays in Law and Philosophy*. Oxford: Oxford University Press.

freedom of expression to democratic institutions.[31] For example in Handyside v. United Kingdom, the Court stated that, "Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man." Freedom of expression provides the citizens with the right to participate to common life as a supporter and ensures their capacity to contribute in action and improvement of institutional organizations that serve the public welfare.[32]

**Freedom of Occupation, Religion And Property**

Article 40 provides that subject to any restrictions imposed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business .

Article 41 provides that every citizen has the right to profess, practice or propagates any religion, and every religious community has the right to establish, maintain and manage its religious institutions. Article 42 of the Constitution every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law.

**Protection of Home**

According to Article 43 every citizen shall have the right to be secured in his home against entry, search and seizure, and to the privacy of his correspondence and other means of communication.

**Right to Enforce Fundamental Rights**

Article 44 guarantees the right of every citizen to move the High Court Division in accordance with clause (1) of Article 102 for the enforcement of any of the fundamental rights conferred by Part III of the Constitution

In *Mrs. Aruna Sen v Govt. of Bangladesh*[33] case the court observed the following:

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[31] *Handyside v. United Kingdom,* (App 5493/72) ECHR 7 December 1976

[32] T.R.S. Allan, 'Common Law Constitutionalism and Freedom of Speech' in J. Beatson and Y. Cripps, 'Freedom of Expression and Freedom of Information', (Oxford University Press, Oxford 2000) 15.

[33] *Mrs. Aruna Sen v Govt. of Bangladesh,* (1975) 27 DLR (HCD) 122

> "The English principle as expressed by Lord Atkin in his dissenting speech in Liversidge v Anderson[34], that every imprisonment without trial and conviction is prima facie unlawful and the onus in upon the detaining authority to justify the detention by establishing the legality of its action according to the principles of English law has been adopted in the legal system of this Subcontinent, as has been rightly observed by Hamoodur Rahman, J., (as he then was) in the Government of West Pakistan and another vs. Begum Agha Abdul Karim Sohorish Kashmiri[35]."

Bilkis Akhter Hossain vs Bangladesh[36] case, the court observed that-

> … in exercise of its constitutional jurisdiction, can award monetary compensation in favor of the aggrieved detenu in case of violation of his fundamental rights guaranteed under the Constitution by the detaining authority in appropriate Habeas Corpus cases for illegal confinement in jail.

### 3.4 Suspension of Fundamental Rights during Emergency

There are some special provision in the Bangladesh constitution that is emergency under Article 141 of the Bangladesh construction. President can declare for emergency on the grounds of external aggression or internal disturbance.

In Bangladesh, the Emergencies Proclaimed in Bangladesh on Five Occasions from 1974 to 2007.[37] The absence of effective constitutional safeguards for governing emergency regimes has resulted in each of the five emergencies being invoked on the imprecise ground of internal disturbance. Two of these emergencies were even continued after the alleged threat posed to the life of the nation was over. Furthermore, during these five periods of emergency, either all or most of the fundamental rights guaranteed by the Constitution were suspended and the power of preventive detention was abused.

The enjoyment of rights can nowhere be seen in an absolute position, for the enjoyment of one's right in the society is subject to the enjoyment of others' right. Moreover, modern states are welfare states where collective interests are given priority over individual's

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[34] *Liversidge v Anderson* [1942] AC 206

[35] *Government of West Pakistan and another vs. Begum Agha Abdul Karim Sohorish Kashmir*i, 21 DLR (SC) 1

[36] *Bilkis Akhter Hossain vs Bangladesh decision*, 1997 [17 BLD 395]

[37]https://www.researchgate.net/publication/345619645_The_emergencies_proclaimed_in_Bangladesh_on_five_occasions_from_1974_to_2007_and_their_justification

rights or interests. Unrestricted individual liberty becomes a licence and paradises the liberty of others. “Civil liberties as guaranteed by the Constitution imply the existence of an organized society maintaining public order without which liberty would be lost in the excess of unrestrained abuses”.’ If individuals are allowed to have absolute freedom of speech and action, the result would be chaos, ruin and anarchy. On the other hand, if state has absolute power to determine the extent of personal liberty, the result would be tyranny. So restrictions may be imposed on the enjoyment of fundamental rights for the greater purpose of public welfare. This idea has got recognition in article 29(2) of the Universal Declaration of Human Rights, 1948

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

It is also worthy here to mention the judgment of Justice Mukharjee in Gopalan V. State of Madras —

> “There cannot be any such thing as absolute or uncontrolled liberty wholly free from restraint; for that would lead to anarchy and disorder. The possession and enjoyment of all rights….. ….. are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community.”

### 3.5 Enforcement of Fundamental Rights

#### 3.5.1 International Phenomenon

The insertion of fundamental rights in a constitution becomes meaningless 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. Similarly 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 where it is stated—

> "That all men are created equal, that they are endowed by their creator with certain inalienable 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 the 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, cannot be enforced then the government would be useless. The importance of remedies to enforce fundamental rights has also got recognition in article 8 of 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."

To this respect the Pakistan Supreme Court in Moudoodi V. Government held—

> "The basic principle underlying a declaration of Fundamental Rights in a Constitution is that it must be capable of being enforced not only against the executive but also against the legislature by judicial process."

### 3.5.2 Bangladesh Phenomenon

Most of the written constitutions provide for the right to constitutional remedies in case of violation of fundamental rights. This right to constitutional remedy has two dimensions—judicial review and judicial enforcement. Judicial review in relation to fundamental rights is provided for with view to enforcing fundamental rights is against the legislature. The supreme court of Bangladesh can exercise this jurisdiction under article 26 & 102 of the constitution.

Judicial enforcement is provided for with a view to enforcing fundamental rights against the executive. This right is guaranteed in article 44 and the High Court Division of the Supreme Court is empowered to enforce fundamental rights under article 102 of the constitution.[38]

[38] Md. Abdul Halim; Constitution, constitutional law and politics.

Though our constitution specifically mentioned the enforcement mechanism of fundamental rights but most of the cases it is not implemented by the executive.It is important to mention here that an unprecedented constitutional violation in respect of fundamental rights of the citizens had been done by the Government.

In the case of BLAST & others vs. Bangladesh, directed the Government to amend s.54 & s. 167 of The Code of Criminal Procedure and made it obligatory to compensate the victims of torture by the perpetrators. Government has not yet implemented those directions instead filed appeal.

In Madan Mohan VS. Government[39], Madan Mohan was arrested on 5.7.77. The High Court Division declared detention illegal and ordered his release. Madan Mohan was released but at the jail gate he was again arrested by serving a fresh order of detention. This was done just to frustrate the High Court Division's order.

Thus purely for political purpose every Government does not implement the decision of the court and violating the constitutional mandate as enshrined in part III of the Bangladesh Constitution.

### 3.6 Misuse of Emergency Power & Its Impact

Firstly, on three grounds emergency can be declared—war external aggression and internal disturbances as to first two grounds there is no objection because both the concepts of 'war' and 'external aggression' are specifically defined in international law. But the problem of misuse of emergency power lies in the third ground—' internal disturbance'. The word 'internal disturbance' is nowhere defined. It is a vague term and due to its vagueness the executive can easily misuse this emergency power. Emergency may therefore be declared even at a peaceful time on the excuse of internal disturbance though there is no disturbance in reality. In fact, as had been the fact of emergency declaration in Pakistan, the ruling elite uses this power as a ready weapon, due to the vagueness of the term 'internal disturbance,' to crash down the opposition and anti-government movement. In the constitutional history of Bangladesh emergency was declared four times. Every time it was declared on the ground of internal disturbance. Three times emergency was declared necessarily for political purpose i.e. to suppress the anti-government movement and to perpetuate rule. The emergency declared for the second time after the death of president Zia

[39] *Madan Mohan VS. Government,* writ petition no.879 of 1977.

was not necessarily for perpetuating rule; it was declared just to face an unexpected situation which might have occurred following Zia's death. Like in Bangladesh the Indira Gandhi Government in India widely abused this emergency power. To prevent this widespread misuse of emergency power the 44th Amendment of the Constitution of India has inserted the word, 'armed rebellion' in place of 'internal disturbance'. Thus the scope of abuse of emergency power now has come to a minimum one. Likewise, to prevent the abuse of this power in Bangladesh such a word should be inserted in place of the term 'internal disturbance'.

Secondly, under the provision of the Bangladesh Constitution once an emergency is declared, it can be continued to be in operation for 4 months (120 days) without the approval of parliament. And a resolution for such an approve is o be passed by a simple majority. Both these provisions are undemocratic. Because no mandatory time limit should be given for the continuance of emergency. It should be specifically provided for that once emergency is declared by the executive it shall be laid before parliament as soon as practicable for its approval and if parliament is not in session an emergency session must be summoned within a shorter period like 7 days or 10 days etc. And for such approval the resolution should be passed by two-thirds of the total number of members of parliament so that the executive cannot prolong the continuance of emergency. To be mentioned here that in India once emergency is declared it has to be approved by a resolution of parliament within one month and such a resolution has to be passed by a majority of the total membership of each House and not less than two-thirds of the total number of members present and voting in each House. Otherwise after one month emergency will cease to operate. In both the 1956 and 1962 Constitutions of Pakistan there was no mandatory time limit for the expiry of the proclamation. Under these Constitutions the proclamation was to be laid before parliament as soon as practicable1. Under the present Constitution of Pakistan it is to be laid before parliament within 2 months.

Another important feature of emergency provisions in democratic countries is that when emergency is declared an special or emergency session of parliament must be summoned immediately if it is not in session. During the emergency of the World War lithe British Parliament was in session till the war ended and emergency withdrawn. During the period of emergency parliament should continue to function so that it can directly exercise its control over the actions of the executive. Under the present Constitution of Pakistan joint sitting of parliament has to be summoned by the president to meet within 30 days of the

declaration of emergency2. In India there is a provision for special sitting. But in Bangladesh Constitution no such provision was inserted.

Thirdly, another interesting point is that it is not indicated in the Constitution how long emergency will remain in force once parliament approves it. It, therefore, means that if emergency is once approved by parliament, it can continue in operation for an indefinite period. In India the provision is that if emergency is once approved, it shall remain in force not more than 6 months.

Fourthly, it is provided in article 141B that with the proclamation of emergency 6 fundamental rights (Articles 36, 37, 38, 39, 40 & 42) will automatically be suspended. This is undemocratic. Because the proclamation of emergency does not always mean the suspension of fundamental rights; more restriction instead of suspension may be imposed over them. In German Constitution there are provisions for 'state of tension' (Article 80a) and 'state of defence' (Article liSa) which are equal to emergency of subversion and of war respectively. But it is specifically mentioned in article 19 that in no case may the essence of a basic right (fundamental rights) be encroached upon. Thus even in emergency period there is no provision for suspension of rights. The Constitution of Singapore provides for emergency provision (Articles 150 and 151) but no power -has been given to suspend fundamental rights'. In India the provision as amended by the 44th Amendment is that in time of emergency of subversion no fundamental right can be suspended and in time of emergency of war and external aggression only six fundamental rights as mentioned in Article 19 shall be suspended.

Fifthly, once emergency is declared Article 141C empowers the President to suspend the enforcement of all fundamental rights. If the enforcement of a right is suspended, the right itself becomes meaningless as like as a car without its engine. Emergency of subversion was declared four times in Bangladesh and it is the fact that every time the enforcement of all fundamental rights was declared suspended and they remained suspended for months together. No democratic principle can justify such a situation. There are some rights e.g. right to property etc. which are in no way connected with the emergency of subversion. But still then the enforcement of all rights was kept suspended. It should, therefore, be specifically demarcated in the Constitution as to the enforcement of which particular rights would be suspended during the emergency of war and which during the emergency of subversion.

It is worthy of notice that in India through the 44th Amendment it has been provided in article 359 that even in time of emergency of war or external aggression the enforcement of rights mentioned in Articles 20 and 21 i.e. protection in respect of conviction of offence and protection of life and personal liberty cannot be suspended.

It is also to be mentioned here that in Britain the Queen has no inherent power to declare emergency. Two types emergency are known to the British constitutional system — peace time emergency and war time emergency. For peace time emergency, there is Emergency Powers Act of 1920 and of 1964. Under this law the Queen can declare state of emergency to face any riot or natural calamity. But if emergency is declared —

1) It must be forthwith communicated to parliament. If parliament is not in sitting, it must be summoned within 5 days.
2) It will remain in force only for one month.
3) So long emergency is in force, regulations may be made by Orders-in-Council for securing the essentials of life to the community. The regulations must be laid before parliament and expire after 7 days unless a resolution is passed by both Houses providing for their continuance.
4) The writ of *habeas corpus* will not be suspended and the Emergency Powers Act expressly prohibits the alteration of any existing procedure in criminal cases or the conferring of any right to punish by fine or imprisonment without trial.

### 3.7 Conclusion

In conclusion we can say, attention must be drawn to some legislation which are in flagrant conflict with the basic rules of the International Bill of Rights, and the earlier they are repealed, the better for the prevalence of the Rule of law. The laws are Indemnity ordinance 1975, the Vested Property that which is nothing but the alter ego of the Enemy Properties Ordinance of Ayub's dictatorial regime, and the Special powers Act 1974.Though there are many provisions in Bangladesh constitution for protecting human rights but these right can not protected by the state. We can see the MP's, Ministers or VIP's get special facilities in trial and jail. So we can say all are not equal in the eye of law. President can suspend the fundamental rights in emergency. So we can say fundamental rights it self is not fundamental. We hope parliament and the government should make policy for established human rights and fundamental freedom like that all the people enjoy these rights equally and none can suspend these right in any cause.

## CHAPTER-IV
## RECOMMENDATION & CONLUSION

### 4.1 Recommendation

Given the situation which is arisen in our country centering around to go to power, it is urgent for the Government and all political parties to realize the need for unity and solidarity as collectively or singly , all the political parties of Bangladesh more or less take the burden of unbecoming attitudes to human rights. Moreover, public sentiment deserves due respect from the Government and all the political parties. However, in order to eliminate gross human rights violation of the current situation in our country pursues the following recommendations:

1. The Constitution of Bangladesh has no provision for forbidding the arbitrary expulsion of residents and aliens (ICCPR-13) that should be included.
2. The constitution of Bangladesh did not include the provision for the right to be treated with dignity and humanity of the convicted person until being proved criminals which should be inserted in our constitution.
3. There is no direction in the constitutional provision regarding to the workers to join international trade union organizations (ICCPR-8) which may be included in our constitution.
4. Article 33(4)(5) which was inserted by the 2nd amendment must be removed.
5. Since Special Power Act, 1974 is a black law, which was constituted on the basis of Art. 33(4)(5) deprives a man of his fundamental rights and puts a person into prison for not fault at all , it should remain in force any more. In the whole of this sub-continent repressive law like this or in any other form is extremely detrimental to the growth and maintenance of human rights. For this reason, Special Power Act, 1974 must be repealed.
6. In most of the cases it is found that the police as well as law enforcing agencies directly or indirectly responsible for violation of human rights in Bangladesh. So police must be made accountable for the commission of such violation.
7. Penal laws and Code of criminal procedure may be amended, if necessary to award speedy and exemplary punishment for commission of offence against women and children.

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

9. Torture, cruel, inhuman degrading treatment is a heinous crime which very often practiced by police, jail authority and other perpetrators. These are prohibited by both international convention and Bangladesh constitution.[40]

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

11. It is also recommended that in the course curriculum of school, college and university human rights should be included so that students and teachers will become aware about human rights.

12. Though Bangladesh is a state party to this convention , but it has yet to give separate declaration recognizing the competence of the committee which is mentioned in Art. 14 of the International Convention on the Elimination of all forms of Racial Discrimination, 21 December,1965 to receive and consider individual complaints.

13. The most important recommendation for the protection and promotion of human rights is the creation of a sense of accountability in the executives working under Government; they should culture this accountability not only in their works but also in their conscience.

14. Bangladesh should also amend the emergency provisions and preventive detention provisions in order to strike a balance between the needs of state security and those of protecting human rights. It should consider amending Article 46 of the Constitution in order to delimit the power of the parliament by excluding acts of torture and other cruel treatment or punishment from the scope of acts for which public officials can be indemnified.

15. Freedom of expression is one of the corner stone of democracy. The media should be able to act as watchdogs. Indeed a healthy government will encourage the media to provide legitimate criticism and that will raise the country's reputation abroad. Moreover,

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[40] Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment, 1984, & Art. 35(5) of Bangladesh constitution.

open criticism will reduce corruption and mismanagement, which are far more harmful to the economy.

16. To maintain and establish the basic democratic fabric and of course freedom of thought and conscience, Article 70 should be amended in such a way that the members of parliament have the right to oppose / support abstain from voting any bill brought before the parliament.
17. Our judiciary is expected to be more enthusiastic in giving effects to civil and political rights by interpreting the fundamental rights within the ambit of international human rights instrument.
18. Bangladesh has ratified important international instruments on human rights. Government should therefore be more serious as regards the implementation of those instruments.

### 4.2 Conclusion

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

The ongoing confrontational politics based on diametrically opposing stands and approaches of the two major political parties, has created a serious stalemate causing threats to democracy and human rights. The political parties are apparently investing their total efforts and time for devising ways and means mainly to go to power. All the political parties, while in power, hardly make any attempt voluntarily to strengthen the bases of democracy and human rights.[41]

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

[41] www.financialexpress-bd.com, viewed on 02.02.2015.

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

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