**Research Monograph**

**On**

# "Reasonable Restrictions imposed upon the exercise of Fundamental Rights in the Constitution of Bangladesh and India- A Comparative Study"

**This Research Submitted for the Partial Fulfillment of the award of the degree in LL.M (Masters) Department of Law, Sonargaon University, Dhaka.**


**Prepared For:**
**Department of Law**
**Sonargaon University, Dhaka**

**Supervised By:**
**Muhammad Ali**
**Lecturer**
**Department of Law**
**Sonargaon University, Dhaka**

**Submitted By:**
**Md. Akash Miaji**
**ID: LL.M 2301028021**
**Program: LL.M (Master's)**
**Batch: 28th**
**Department of Law,**
**Sonargaon University, Dhaka.**


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# *Dedication*

***This Research is dedicated to my Father & Mother***

# LETTER OF TRANSMITTAL

**To**
**Muhammad Ali**
Lecturer
Department of Law
Sonargaon University, Dhaka.

Subject: Submission of research paper on **"Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective"**

Dear Sir.

It is a great pleasure for me to submit the thesis on **"Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective"** While I doing this thesis, I have tried my level best to make this project paper to the latest standard. I think that thesis paper will fulfill your requirement and pleased you. I, therefore, hope that you would be kind enough to go through this thesis paper for evaluation.

I am always be ready for clearance of any part of my thesis.

Thanking you

**Md. Akash Miaji**
ID: LL.M 2301028021
Program: LL.M (Master's)
Batch: 28th
Department of Law
Sonargaon University, Dhaka.

# CERTIFICATION

This is to certify that the thesis on "**Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective**" is done by Md. Akash Miaji in partial fulfillment of the requirements for the degree of LL.M (Master) from Sonargaon University, Dhaka. The thesis has been carried out under my guidance and is a record of the bonafide work carried out successfully.

……

**Muhammad Ali**
Lecturer
Department of Law
Sonargaon University, Dhaka

# DECLARATION

I do hereby that this Research Monograph on the **Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective** have been done by me and this Research is free from all plagiarism and without help of other. I further declare that this monograph is prepared with my own effort and it was not and never submit to any institute for any academic reason.

_____

**Md. Akash Miaji**
ID: LL.M 2301028021
Program: LL.M (Master's)
Batch: 28th
Department of Law
Sonargaon University, Dhaka.

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**Muhammad Ali**

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**Md. Akash Miaji**
ID: LL.M 2301028021
Program: LL.M (Master's)
Batch: 28th
Department of Law
Sonargaon University, Dhaka.

# ABSTRACT

The Fundamental Rights are defined as basic human freedoms which every Bangladeshis citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or sex. But all the Fundamental Rights are enforceable by courts, subject to certain restrictions. Now I define an attempt has been made in this thesis to make the restriction over fundamental rights of Bangladesh constitution and comparison on Fundamental Rights between Bangladesh and India constitution in the light of different justice interpretations given by the judiciary.

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# Chapter 1

## INTRODUCTION

Rights which are essential or fundamental for the well- being of a person are called Fundamental Rights. The Fundamental Rights in Bangladesh enshrined in the Part III of the Constitution of Bangladesh guarantee civil liberties such that all Bangladeshis can lead their lives in peace and harmony as citizens of Bangladesh. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Violations of these rights result in punishments as prescribed in the Penal Code, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Bangladeshis citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or sex. They are enforceable by the courts, subject to certain restrictions.

All past laws inconsistent with these rights were made void by the constitution, and it enjoined upon the state not to make any law inconsistent with these rights. Certain rights may, however, remain suspended under the provisions of articles 141(a), 141(b), and 141(c) during an emergency arising out of a threat to the country's security or economic life.

Moreover, modern states are welfare states where collective interests are given priority over individual's rights or interests. Unrestricted individual liberty becomes a license and jeopardizes the liberty of others. "Civil liberties as guaranteed by the Constitution imply the existence of an organized society maintaining public order without which liberty itself 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[1].

1 English for law by Shahana sultana shammi and Afrin Laila

Chapter 2

# RESTRICTION 0N FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF BANGLADESH

The fundamental rights which have been incorporated in the Constitution of Bangladesh have, in spite of their resemblance to those in the Constitution of Pakistan, 1956 and 1962**,** their own distinct character. Though some of them have made a complete departure from, those contained in the aforesaid Constitution. Each man should be free to develop his own personality to the full and the only duties which should restrict this freedom are those which are necessary to enable everyone else to do the same. Whenever these interests are nicely balanced, the scale goes down on the side of freedom.

## 3.1 Fundamental Rights in the Constitution of Bangladesh

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** : These are only 12 right enumerated in Articles 27, 28, 29, 30, 31, 36, 37, 38, 39, 40, 42 and 43.

These way the 18 fundamental rights have been enumerated in the Constitution commencing from Article 27 to 44 are divided. Now the 18 fundamental rights which enumerated in the Constitution commencing from Article 27 to 44 discuss as follows-

The 18 Fundamental Rights of Bangladesh Constitution are-

**Equality before law (Article 27):**

All citizens are equal before law and are entitled to equal protection of law.

**Discrimination on grounds of religion, etc(Article 28) :**

The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth and women also have equal rights with men in all spheres of the State and of public life.

**Equality of opportunity in public employment (Article 29):**

There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic .No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.

**Prohibition of foreign titles, etc (Article 30):**

No citizen shall, without the prior approval of the President, accept any title, honour, award or decoration from any foreign state.

**Right to protection of law (Article 31):**

The protection of law to be enjoyed by citizens and persons residing in Bangladesh and, in particular, in respect of life, liberty, body, reputation and property.

**Protection of right to life and personal liberty (Article 32):**

No person shall be deprived of life or personal liberties save in accordance with law.

**Safeguards as to arrest and detention (Article 33):**

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be denied by a legal practitioner of his choice.

**Prohibition of force labor (Article 34):**

All forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

**Protection in respect of trial and punishment (Article 35):**

No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.

**Freedom of movement (Article 36):**

Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.

**Freedom of assembly (Article 37):**

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

.

**Freedom of association (Article 38):**

Every citizen has the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order.

**Freedom of thought and conscience, and of speech (Article 39):**

Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to freedom of thought and conscience, and of speech is guaranteed in Bangladesh.

**Freedom of profession or occupation (Article 40):**

Every citizen in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

**Freedom of religion (Article 41):**

Every citizen has the right to profess, practice, or propagates any religion and also has the right to established, maintain and manage its religious institutions.

**Rights of property (Article 42):**

Every citizens 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 and correspondence (Article 43):**

Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health.

**Enforcement of fundamental rights (Article 44):**

The Constitution by incorporating art.44 made the right to move the Supreme Court for enforcement of fundamental rights itself of fundamental right.

### 3.2 Imposition of Restriction over Fundamental Rights of Bangladesh:

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 rights or interests. Unrestricted individual liberty becomes a license and jeopardizes the liberty of others. "Civil liberties as guaranteed by the Constitution imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excess of unrestrained abuses".[2] 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

[2] *Abdul halim, ibid, p.101*

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 [3] - "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."

On the basis of the restriction all fundamental rights enumerated in the Bangladesh Constitution may be classified into three groups, they are as follows –

**A. Absolute Rights**

**i.** Equality before law (Art. 27),

**ii.** Discrimination on grounds of religion etc. (Art. 28),

**iii**. Equality of opportunity in public employment (Art. 29),

**iv.** Prohibition of foreign titles etc. (Art. 30),

**v.** Safeguards as to arrest and detention (Art. 33),

**vi.** Prohibition of force labor (Art. 34),

**vii.** Protection in respect of trial and punishment (Art. 35), and

**viii.** Enforcement of fundamental rights (Art. 44) .

**B. Rights on Which Reasonable Restriction Can Be Imposed**

[3] *Abdul halim, ibid, p.102*

**Freedom of movement**

Governments may generally sharply restrict the freedom of movement of persons who have been convicted of crimes, most conspicuously in the context of imprisonment. Restrictions may also be placed on convicted criminals who are on probation or have been released on parole. Persons who have been charged with crimes and have been released on bail may also be prohibited from traveling. A material witness may also be denied the right to travel.

Governments sometimes also restrict access to disaster-stricken areas, or to places where public health threats exist. Where an individual presents a health threat due to infection with a contagious disease, the government may quarantine that person, restricting their movement for the safety of others.

In a child custody dispute, a court may place restrictions on the movement of a minor child, thereby restricting the ability of the parents of that child to travel with their child4[4].

[4] [https://en.wikipedia.org/wiki/Freedom_of_movement, html, last visited on 23 November 2015]

**Freedom of assembly**

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

**Freedom of association**

Every citizen shall have the right to form associations or unions, subject to any reasonable restriction imposed by law in the interest of morality or public order:

Provided that no person shall have the right to form, or be a member of the said association or unions, if-

a. It is formed for the purposes of destroying the religious, social and communal harmony among the citizen.
b. It is formed for the purposes of creating discrimination among the citizen, on the ground of religious, race, caste, sex, place of birth or language.
c. It is formed for the purposes of organizing terrorist acts or militant activities against the state or the citizens or any other country.
d. Its formation and objects are inconsistent with the constitution.

**39. Freedom of thought and conscience and of speech.**

1. Freedom of thought and conscience is guaranteed.

2. Subject to any reasonable restriction imposed by law in the interest of the security of the state, friendly relation with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence-

a. The right of every citizen to freedom of speech and expression, and

b. freedom of the press.

**40. Freedom of religion:**

1. Subject to law, public order and morality-

a. Every citizen has the right to profess, practice or propagate any religion.

b. Every citizen religious community or denomination has the right to establish, maintain and manage its religious institution.

2. No person attending any educational institution shall be required to receive religious instruction, ceremony or worship, relates to a religion other then his own.

**43. Protection of home and correspondence.**

Every citizen shall have the right, subject to any reasonable restrictions imposed by the law in the interest of the security of the state, public order, public morality or public health. –

a. to be secured in his home against entry, search and seizure, and
b. to the privacy of his correspondence and other means of communication.

The grounds for imposing restriction on these rights have been laid down by the respective sections-

**i.** in the public interest (Art. 36)

**ii.** in the interest of public order or public health (Art. 37)

**iii.** in the interest of public order or morality (Art. 38)

**iv.** 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)

**v.** in the interest of the public order and morality (Art..41 )

**vi.** in the interest of the security of the state, public order, public morality or public health. (Art..43).

**Case law: case relevant to Article -36 or 37(public interest or the interest of public order or public health).**

**Name of the case**: *Dr Mohiuddin Farooque Ors. v. Government of Bangladesh and Ors*

**Fact of the Case:**

The Petitioner was the Secretary of Bangladesh Environmental Lawyers Association (BELA) until his death. He was concerned about the increase in industrial pollution in the country and the Government's lack of combative measures to tackle the issue. The Department of Environment, Pollution Control had carried out a survey identifying 903 industries that caused ecological imbalances through the pollution from their discharges. The report of this survey was published in the Bangladesh Gazette in 1986. However, on investigation, the Petitioner discovered that the Government had not taken any steps to rectify the situation since the report's publication. In fact, the number of industries causing pollution had risen, as was evident from a new report published in 1994 that identified 1176 industries as polluters. Aggrieved by the Government's indifference, the Petitioner preferred a writ in the High Court, contending a violation of the fundamental right to life.

**Judgment of the Case:**

The Court held that the Government could be held liable if it remained a mute spectator in this case. It held that the Environment Conservation Act 1995 (the Act) and the Environment Conservation Rules 1997 (the Rules) specifically laid down the obligations of the Director General regarding pollution prevention. Moreover, the Act and Rules clearly listed out specific duties of the officers appointed under it. The Court also held that under article 18 of the Constitution the State had a duty to promote public health, and that article 21 laid down the obligation of every public servant to perform their duties faithfully. In the instant case, despite the Government's own ordinance dated 1986, no action was being taken against the offenders. The Government was thus liable for its inaction. The

Court also held that if public functionaries were negligent or not performing their duties, it could issue necessary orders.

The Court further held that the right to life had been violated. It considered that the right to life included the right to a "decent and healthy living in a hygienic condition." Living in a healthy environment was one of the fundamental rights of a human being. If a healthy environment was not made available, a constitutional remedy could be pursued by the aggrieved party. In this case, the Government's inaction and negligence caused a blatant violation of the right to life of the citizens of Bangladesh and thus the Court could issue remedial directions.

The Court therefore directed the Government to ensure that existing industries were complying with the relevant laws, by adopting measures to control and prevent pollution. The Government was also directed not to permit any new industries to commence operations without first abiding by the prevailing laws.

Decision Excerpts "The expression 'life' enshrined in Article 32 includes everything which is necessary to make it meaningful and a 'life' worth living, such as. Among others maintenance of health is of utmost importance and preservation of environment and hygienic condition are of paramount importance for such maintenance of health, lack of which may put the 'life' of the citizen at naught." [22 BLD (HCD) 2002, Para 18] "..[the right to life] also means a qualitative life among others, free from environmental hazards. This is also one of the basic rights of a human being to live in a healthy atmosphere....."[5]

[5] [22 BLD (HCD) 2002, Para 18]

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 but the Supreme Court and if the restriction seems to be unreasonable the court can declare the law illegal. It was held in Chintamoni Rao V. State ofMadhya Pradesh, [6] –

"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 individuals, liberty.

**C. Fundamental Rights Which Have Been Practically Left to the Legislation**

**i.** Right to protection of law (Art. 31 ),

**ii.** Protection of right to life and personal liberty (Art. 32).

**iii.** Right to lawful profession, occupation or business (Art. 32), and

**iv.** Protection of property right (Art. 42).

These are the classification of fundamental rights according to Bangladesh Constitution.

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[6] *Abdul halim, ibid, p.101*

### 3.3 Constitutional Guarantees or Remedies of Fundamental Rights in Bangladesh

The Fundamental Rights, guaranteed by part III of the Constitution of Bangladesh, are not "natural' rights but such rights as will be enforceable by Courts; they are a part of the positive law of the land. The insertion of these rights in the Constitution and the guarantee of their enforcement imply judicial review and control of the legislative and executive acts and organs of the State. Under Article 26 of the Constitution the Courts have been empowered to declare laws inconsistent with or made in derogation of the fundamental rights to be void. Any person or citizen who feels aggrieved as a result of an infringement of any fundamental rights may move the High Court Division of the Supreme Court under Article 102(I) of the Constitution. 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.[7]

It is a claim of a constitution embodying fundamental rights that effective constitutional remedies for the enforcement of fundamental rights should be provided for by the Constitution itself. The Supreme Court of Bangladesh can exercise this jurisdiction under Article 26 and 102 of the Constitution. Thus it is not discretionary with the High Court Division to grant relief under article 102(1) of Bangladesh Constitution. Once it finds that a fundamental right has been violated, it is under constitutional obligation to grant the necessary relief.[8] When an authority acts illegally or commits an error of law, the person aggrieved has a remedy under art. 102(2)(a) and in such a situation enforcement of fundamental rights is not necessary. Enforcement of fundamental rights is necessary only when an action is legally valid and operative, but constitutes violation of a fundamental right and art. 102(1) is attracted in all such cases.[9] In relation to art.31, the question of enforcement of fundamental right under art. 102(1) will arise when a

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[7] F. K. M. A. Munim, *ibid*, p.14.

[8] *Konhuni v. Madras,* AIR 1959 SC 725; *Romesh Thapar v. Madras*, AIR (1950) SC, 124.

[9] *Bangladesh v. Mohammad Faruque*, 51 DLR (AD) 112, 116.

law is found to be unreasonable and this violation of art. 31.

The Constitution has not stipulated any procedure for the remedy and it is for the court to adopt its own procedure. The High Court Division follows certain rules of procedure and practice in respect of all writ petitions, whether one involves enforcement of fundamental rights or not.

In matters of enforcement of fundamental right the person 'aggrieved" has to apply and it is the obligation of the High Court Division to adjudicate upon and enforce fundamental rights.[10]

The only limitation placed by the Constitution is that the High Court Division cannot suo motu declare any law or action violation of fundamental right. Though it is the obligation of the court to enforce fundamental rights, it will not, in exercise of the jurisdiction, ignore- the, laws of f procedure, evidence, limitation, resjudicata, and the like.[11]

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[10] Mahmudul Islam, *Constitutional Law of Bangladesh*, 2nd ed. (Dhaka: Mullick Brothers, 2003). p. 451.

[11] *Tilokchand v. H.B. Munshi*, AIR (1970) SC, 898.

Chapter 3

# SUSPENSION OF FUNDAMENTAL RIGHTS DURING EMERGENCY

## 3.1 What is Emergency?

There are emergency provisions in the constitutions of some countries but nowhere it is exactly defined what emergency is. Normally emergency means an unexpected occurrence requiring immediate action. Strictly speaking, the concept of emergency, from the view point of constitutional law, means the suspension of and restriction over certain fundamental rights of citizens in order to deal with a situation when the security of the state is threatened or the national interest is n peril. From the Bangladesh constitutional point of view, emergency means the existence of a condition whereby the security or economic life of Bangladesh or any part thereof is threatened by war or external aggression or internal disturbance.

[12] *Abdul halim, ibid, p.289.*

## 3.2 Need for Emergency provisions

Providing for emergency provisions in the constitution is not an undemocratic something. Because the security of the state as a whole is of greater importance than the liberty of some individuals. The state is to safeguard the liberties of all the people within its territory. If the state itself is destroyed or in great peril the liberties of the individual citizens stands annihilated.

As Shukla V. N. says –

"Events may take place threatening the very existence of the state, and if there are no safeguard , against such eventualities , the state together with all that to desired t remain basic and immutable, will be swept away."

It was also held R. V. Halliday,-

"However precious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed y legal enactment, namely national success in the war, or escape from national plunder or enslavement,"

The idea of suspension of some fundamental rights in times of emergency is common to all legal systems. Somewhere the constitution itself and somewhere a special la makes provisions in legal terms for situations of crisis when states of emergency may be invoked.

The necessity for suspension of certain rights in times is emergency is internationally recognised. Almost all regional and international institutions of human rights in cases of emergency. Article 4(1) of the International Covenant on Civil and Political Rights, 1966, article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and article 27 of the American Convention on Human Rights, 1969 make , more or less , the same provision to the effect that in time of war , public danger , or other emergency that threatens the independence or security of a state party, it may take measures derogating from its obligation under the convention .

Thus providing for emergency measures suspending some fundamental rights is allowed both nationally and internationally. But the problem is that there is a danger in investing such discretionary power with the executive authority. Because such a provision carries with it risk of abuse of power if stern safeguard against its abuse are not provided for specifically. Most governments in developing countries abuse emergency power for political purpose; they use it as a necessary weapon to suppress the opposition and to perpetuate power; they thereby destroy the democratic institutions. The Secretary General of the International Commission of Jurists in his introduction on an ICJ report on states of emergency opined that the most serious human rights violations tend to occur in situations of tension when those in power are or think they are threatened by forces which challenges their authority if not the established order of the society. This is why he thinks that there is an understandable link between cas of grave violations human rights and state of emergency.

[13] *Abdul Halim, ibid, p.289-90*

## 3.3 Emergency provisions in the constitution of Bangladesh

Emergency provisions are dealt with part 9A of the constitution. The part contains three articles 141A, 141B and 141C. Article 141a says

"if the president is satisfied that a grave emergency exists in which the security or economic life of Bangladesh or any part thereof is threatened by war or external aggression or internal disturbance, he may issue a proclamation of emergency".

Thus the president can declare emergency on three grounds – war, external aggression or internal disturbance. Two types of emergency, therefore, can be declared under the constitution of Bangladesh – emergency of war and emergency of subversion.

## 3.4 Suspension of Fundamental Rights during Emergency:

During emergency all the absolute Fundamental Rights are also suspened. In the history of Bangladesh constitution there was a certain time that emergency was declared in our country -

1. 1st emergency was declared by Mujib govt. on 28th December, 1974.
2. 2nd emergency was declared by sattar govt.on 30th November, 1981.
3. 3rd emergency was declared by Ershad govt.on 26th Noember,1987.
4. 4th emergency was declared by Ershad govt.on 27th November,1990
5. 5th emergency was declared by Eyazuddin govt.on 11th January, 2007.

**In the last emergency on January 12, 2007**, with military backing, the former Bangladesh bank governor Fakrudden Ahmed, who had worked for the World Bank, was sworn in as the new Chief Advisor. He appointed five advisors on January 13 to form the new interim government. When he was officially named as the head of the caretaker government, he lifted the curfew. The state of emergency was continued, suspending some basic rights provided by the constitution, such as the freedom of movement, freedom assembly, and freedom speech to limit protests and disruptive political activity.

Chapter-4

# RESTRICTION ON FUNDAMENTAL RIGHTS IN THE CONSTITUTION OF INDIA

## 4.1 Amendment relating to the Fundamental Rights of India Constitution

**First Amendment**

**Freedom of speech, Press, Religion and Petition:**

The First Amendment guarantees freedoms concerning religion, expression, assembly, and the right to petition. It forbids Congress from both promoting one religion over others and also restricting an individual's religious practices. It guarantees freedom of expression by prohibiting Congress from restricting the press or the rights of individuals to speak freely. It also guarantees the right of citizens to assemble peaceably and to petition their government.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**Second Amendment**

**Right to keep and bear arms:**

The Second Amendment has most recently been interpreted to grant the right of gun ownership to individuals for purposes that include self-defense. At first it was

thought to apply only to the Federal government, but through the mechanism of the Fourteenth Amendment, it has been applied to the states as well.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

**Third Amendment**

**Condition for quarters of solder:**

Described by some as "a preference for the Civilian over the Military," the Third Amendment forbids the forcible housing of military personnel in a citizen's home during peacetime and requires the process to be "prescribed by law" in times of war. This Amendment is not considered controversial and has never been litigated before the Indian Supreme Court.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

**Fourth Amendment**

**Right of search and seizures regulated:**

The Fourth Amendment originally enforced the notion that "each man's home is his castle", secure from unreasonable searches and seizures of property by the government. It protects against arbitrary arrests, and is the basis of the law regarding search warrants, stop-and-frisk, safety inspections, wiretaps, and other forms of surveillance, as well as being central to many other criminal law topics and to privacy law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and

particularly describing the place to be searched, and the persons or things to be seized.

**Fifth Amendment**

**Provisions concerning prosecution:**

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids "double jeopardy," and protects against self-incrimination. It also requires that "due process of law" be part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property for public use.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Sixth Amendment**

**Right to a speedy trial, witnesses etc:**

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

**Amendment VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**Seventh Amendment**

**Right to trial by jury:**

The Seventh Amendment continues a practice from English common law of distinguishing civil claims which must be tried before a jury (absent waiver by the parties) from claims and issues that may be heard by a judge alone. It only governs federal civil courts and has no application to civil courts set up by the states when those courts are hearing only disputes of state law.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the Indian, than according to the rules of the common law.

**Eighth Amendment**

**Excessive bail, cruel punishment:**

Most often mentioned in the context of the death penalty, the Eighth Amendment prohibits cruel and unusual punishments, but also mentions "excessive fines" and bail. The "excessive fines" clause surfaces (among other places) in cases of civil and criminal forfeiture, for example when property is seized during a drug raid.

**Amendment VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Ninth Amendment**

**Rule of construction of constitution:**

The Ninth Amendment was James Madison's attempt to ensure that the Bill of Rights was not seen as granting to the people of the Indian only the specific rights it addressed. In recent years, some have interpreted it as affirming the existence of such "un enumerated" rights outside those expressly protected by the Bill of Rights.

## Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Tenth Amendment**

**Rule of the states under constitution:**

The Tenth Amendment helps to define the concept of federalism, the relationship between Federal and state governments. As Federal activity has increased, so too has the problem of reconciling state and national interests as they apply to the Federal powers to tax, to police, and to regulations such as wage and hour laws,

disclosure of personal information in recordkeeping systems, and laws related to strip-mining.

**Amendment X**

The powers not delegated to the Indian by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

[14] [http://www-tc.pbs.org/wgbh/nova/educationalactivities/pdf/3602_spyfactory_01.pdf.html,last visited on 23November 2015]

[15] [https://www.law.cornell.edu/constitution/billofrights.html,last visited on 23 November 2015]

## 4.2 RESTRICTION ON FUBDAMENTAL RIGHTS OF INDIAA

The India Supreme Court has held that, via the due process and equal protection clauses of that amendment, some rights are so fundamental that any law restricting such a right must both serve a compelling state purpose and be narrowly tailored to that compelling purpose.

As citizens of the India they can enjoy the right to due process. The right to due process is part of the Fifth and Fourteenth Amendments. Should they be facing criminal charges, they have the right to be treated fairly. The Fourteenth Amendment ensures citizens the right to life, liberty, and property. A citizen must be given a fair chance to prove their innocence. A feature of the right to due process, under the Fifth and Fourteenth Amendments, is that the government does not have the ability to take away our life, liberty, or property without due process. Some of the most widely-known fundamental rights are covered in the First Amendment. As citizens of the INDIA, we have rights that allow us to freedom of speech, freedom of religion, and freedom to assemble. The feature to these rights is that they cannot be taken away from us. They are clearly stated in the First Amendment and are undeniably our rights.

Now that we have looked at a few of the written fundamental rights, let us look at the fundamental rights that are not in black and white. One of the unwritten rights includes the right to marry. According to the Fourteenth Amendment, INDIA citizens have the right to liberty, which includes the right to marry.

Any restrictions on these rights are evaluated with strict scrutiny. If a right is denied to everyone, it is an issue of substantive due process. If a right is denied to some individuals but not others, it is also an issue of equal protection.

During the Lechers era, the right to freedom of contract was considered to be fundamental, and thus restrictions on that right were subject to strict scrutiny. Following the 1937 Supreme Court decision in *West Coast Hotel Co. v. Parrish*, though, the right to contract became considerably less important in the context of

substantive due process and restrictions on it were evaluated under the rational basis.

Welfare In Shapiro v. Thompson, 394 India 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), the Supreme Court reviewed two state laws that imposed durational residency requirements on persons applying for welfare. Both states required a person to be a resident for one year before becoming eligible for benefits. The states claimed that this discriminatory treatment of new arrivals within their borders maintained the fiscal integrity of state public assistance programs, provided an objective method of determining residency, and encouraged new residents to seek employment.

The Court rejected these arguments, concluding that the constitutional guarantee of personal liberty gave each citizen the right to travel throughout the Indian without unreasonable restrictions. This implied fundamental right of travel was restricted by the residency requirements, which were based on unsubstantiated claims of administrative convenience. Therefore the Court struck down the durational residency requirements as a violation of equal protection of the laws. The Court noted that a case-by-case examination was necessary to determine whether other types of durational requirements promoted compelling state interests or violated the constitutional right of interstate travel.

Public Housing Durational residency requirements were imposed as conditions for admission to low- and moderate-income public housing projects in various cities during the 1960s. The city of New Rochelle, New York, imposed a five-year residency period before a person could apply for public housing. Because the waiting list of applicants was long, a person could wait between eight and 15 years before obtaining public housing. When the law was challenged, a federal appellate court ruled that it was an unconstitutional deprivation of equal protection **(**King v. New Rochelle Municipal Housing Authority, 442 F.2d 646 [2d Cir. 1971], cert. denied, 404 India 863, 92 S. Ct. 113, 30 L. Ed. 2d 107 [1971]). The appeals court rejected the city's contention that it had a compelling state interest to restrict public housing to longtime residents because each community has a

responsibility to take care of its own citizens first. The court disagreed, finding that the city's plan created discriminatory classifications among its citizens without justification.

Chapter-5

# COMPARISON ON FUNDAMENTAL RIGHTS BETWEEN BANGLADESH AND INDIA

Comparison on Fundamental Rights between Bangladesh and INDIAA, these are two different legal system but in the comparison we find some similarities and dissimilarities between these two legal system.

**Similarities are –**

1. The right to freedom of speech.
2. The right to freedom of religion.
3. The right to freedom of movement.
4. The right to equality.
5. The right to assemble.

In the similarities both Bangladesh as well as USA can imposed restriction over these Fundamental Rights.

**Restriction on right to freedom of speech:**

Freedom of speech in the Indian is protected by the First Amendment to the Indian Constitution and by many state constitutions and state and federal laws. The freedom of speech is not absolute; the Supreme Court of the Indian has recognized several categories of speech that are excluded from the freedom, and it has recognized that governments may enact reasonable time, place, or manner restrictions on speech.

Criticism of the government and advocacy of unpopular ideas that people may find distasteful or trevers public policy are almost always permitted. There are exceptions to these general protections, including the Miller test for obscenity,

child pornography laws, speech that incites imminent lawless action, and regulation of commercial speech such as advertising. Within these limited areas, other limitations on free speech balance rights to free speech and other rights, such as rights for authors over their works (copyright), protection from imminent or potential violence against particular persons (restrictions on fighting words), or the use of untruths to harm others (slander). Distinctions are often made between speech and other acts which may have symbolic significance.

Despite the exceptions, the legal protections of the First Amendment are some of the broadest of any industrialized nation, and remain a critical, and occasionally controversial, component of American jurisprudence.

While freedom of speech in the Indian is a constitutional right, these exceptions make that right a limited one. Restrictions that are based on people's reactions to words include both instances of a complete exception, and cases of diminished protection. Commercial advertising receives diminished, but not eliminated, protection. Along with communicative restrictions, less protection is afforded for uninhibited speech when the government acts as subsidizer or speaker, is an employer, controls education, or regulates the following: the mail, airwaves, legal bar, military, prisons, and immigration.

[16] [https://en.wikipedia.org/wiki/Freedom_of_speech_in_the_United_States, html, last visited on 23 November 2015]

**Restriction on right to freedom of religion:**

Based on the unique nature of religion, the Founding Fathers in drafting the First Amendment wisely treated religion and religious beliefs differently from other forms of expression to ensure protection of religious freedom. To do so, they placed special restrictions on religion, but importantly, they also provided religion with special constitutional protections. These special restrictions and protections are expressed in the first sixteen words of the First Amendment (underlined below), and they are called the Establishment Clause and the Free.

Exercise Clause:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.(First Amendment, INDIA Constitution –December 15, 1791).

Taken together these clauses are often referred to as the Constitution's Religion Clauses. Each of these clauses separates religion and government in ways that protect individual religious freedom, and ensure the integrity of both religion and government. Establishment Clause -This clause prohibits a joining between government and religion, such as no official state religion, no preference by government of one faith over another or religion generally, no taxes to support religion, and no government support for religious worship or practice.

Free Exercise Clause –This clause provides each individual with the right to freely practice the religion of his or her choosing. It ensures the autonomy houses of worship and other religious institutions from government in matters of internal governance and religious law. It prohibits government from enacting laws that specifically target religion. Importantly, it empowers the government to provide houses of worship with special 2accommodations and exemptions from civil law that might otherwise interfere with religious worship or practice.

The Indian Constitution also contains a provision called the "Religious Test Clause." It prohibits any kind of religious test for citizens to hold elected public office, or to be a public official or employee. Found in Article VI of the Constitution, the Clause states: "No religious Test shall ever be required as a

Qualification to any Office or public Trust under the Indian." So for example, the government cannot require a citizen to be Christian, Muslim or Jewish, or subscribe to particular religious beliefs in order to hold public office. It also cannot disqualify a citizen from holding public office because he or she is an adherent to a specific faith (e.g. Christian, Jewish, or Muslim) or holds particular religious beliefs.

**Restriction on right to freedom of movement.**

The Supreme Court has not ruled directly on the issue, and many federal courts believe that the right to intrastate travel is not constitutionally protected. This Article explores the constitutional right of intra-state travel that is free from wrongful state infringement along public roadways by law-abiding citizens. Using critical legal history, this Article poses that federal courts' denial of the right to intrastate travel consciously or unconsciously reflects the antebellum, Southern legal doctrine of people as property, which regulated the travel of enslaved African descendants.

The Right to Travel

The doctrine of the "right to travel" actually encompasses three separate rights, of which two have been notable for the uncertainty of their textual support. The first is the right of a citizen to move freely between states, a right venerable for its longevity, but still lacking a clear doctrinal basis.1858 The second, expressly addressed by the first sentence of Article IV, provides a citizen of one State who is temporarily visiting another state the "Privileges and Immunities" of a citizen of the latter state.1859 The third is the right of a new arrival to a state, who establishes citizenship in that state, to enjoy the same rights and benefits as other state citizens. This right is most often invoked in challenges to durational residency requirements, which require that persons reside in a state for a specified period of time before taking advantage of the benefits of that state's citizenship.

Travel to restricted areas within the Indian**:**

A related issue deals with Free Speech Zones designated during political protests. Although such zones were in use by the 1960s and 1970 due to the Vietnam-era protests, they were not widely reported in the media. However, the controversy over their use resurfaced during the 2001-2008 Bush presidency. In essence, Free Speech Zones prevent a person from having complete mobility as a consequence of their exercising their right to speak freely. Citizens are restricted from traveling (without being subject to arrest) due to their political communication, although the Constitution permits free speech anywhere on INDIA territory.

[18] [http://lawreview.law.pitt.edu/ojs/index.php/lawreview/article/view/126, html, last visited on 23 November 2015]

[19.] [http://law.justia.com/constitution/us/amendment-14/96-right-to-travel.html, last visited on 23 November 2015]

[20.] https://en.wikipedia.org/wiki/Freedom_of_movement_under_United_States_law#Restrictions_as_punishment, html, last visited on 23 November 2015]

**Restriction on right to Equality:**

The amendment addresses citizenship rights and equal protection of the laws, and was proposed in response to issues related to former slaves following the American Civil War. The amendment was bitterly contested, particularly by Southern states, which were forced to ratify it in order for them to regain representation in Congress. The Fourteenth Amendment, particularly its first section, is one of the most litigated parts of the Constitution, forming the basis for landmark decisions such as Roe v. Wade (1973) regarding abortion, Bush v. Gore (2000) regarding the 2000 presidential election, and Obergefell v. Hodges (2015) regarding same-sex marriage. The amendment limits the actions of all state and local officials, including those acting on behalf of such an official.

The amendment's first section includes several clauses: the Citizenship Clause, Privileges or Immunities Clause, Due Process Clause, and Equal Protection Clause. The Citizenship Clause provides a broad definition of citizenship, overruling the Supreme Court's decision in Dred Scott v. Sandford (1857), which had held that Americans descended from African slaves could not be citizens of the Indian. The Privileges or Immunities Clause has been interpreted in such a way that it does very little.

The Due Process Clause prohibits state and local government officials from depriving persons of life, liberty, or property without legislative authorization. This clause has also been used by the federal judiciary to make most of the Bill of Rights applicable to the states, as well as to recognize substantive and procedural requirements that state laws must satisfy.

The Equal Protection Clause requires each state to provide equal protection under the law to all people within its jurisdiction. This clause was the basis for Brown v. Board of Education (1954), the Supreme Court decision that precipitated the dismantling of racial segregation, and for many other decisions rejecting irrational or unnecessary discrimination against people belonging to various groups.

The second, third, and fourth sections of the amendment are seldom litigated. However, the second section's reference to "rebellion and other crime" has been invoked as a constitutional ground for felony disenfranchisement. The fifth section gives Congress the power to enforce the amendment's provisions by "appropriate legislation". However, under City of Boerne v. Flores (1997), Congress's enforcement power may not be used to contradict a Supreme Court interpretation of the amendment.

[21][https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution, html, last visited on 23 November 2015]

**Restriction on right to assemble:**

The First Amendment to the Indian Constitution prohibits the Indian Congress from enacting legislation that would abridge the right of the people to assemble peaceably. The Fourteenth Amendment to the Indian Constitution makes this prohibition applicable to state governments.

The Supreme Court of the Indian has held that the First Amendment protects the right to conduct a peaceful public assembly. The right to assemble is not, however, absolute. Government officials cannot simply prohibit a public assembly in their own discretion, but the government can impose restrictions on the time, place, and manner of peaceful assembly, provided that constitutional safeguards are met. Time, place, and manner restrictions are permissible so long as they "are justified without reference to the content of the regulated speech, are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of the information."

Such time, place, and manner restrictions can take the form of requirements to obtain a permit for an assembly. The Supreme Court has held that it is constitutionally permissible for the government to require that a permit for an assembly be obtained in advance. The government can also make special regulations that impose additional requirements for assemblies that take place near major public events.

In the Indian, the organizer of a public assembly must typically apply for and obtain a permit in advance from the local police department or other local governmental body. Applications for permits usually require, at a minimum, information about the specific date, time, and location of the proposed assembly, and may require a great deal more information. Localities can, within the boundaries established by Supreme Court decisions interpreting the First Amendment right to assemble peaceably, impose additional requirements for permit applications, such as information about the organizer of the assembly and specific details about how the assembly is to be conducted.

The First Amendment does not provide the right to conduct an assembly at which there is a clear and present danger of riot, disorder, or interference with traffic on public streets, or other immediate threat to public safety or order. Statutes that

prohibit people from assembling and using force or violence to accomplish unlawful purposes are permissible under the First Amendment.

The grounds for imposing restriction on these rights have been laid down by the respective

**i.** in the public interest.

**ii.** in the interest of public order or public health.

**iii.** in the interest of public order or morality.

**iv.** 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 .

**v.** in the interest of the security of the state, public order, public morality or public health.

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

According to article 29(2) of the Universal Declaration of Human Rights, 1948 –

"In the exercise of these 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".

[22] [http://www.loc.gov/law/help/peaceful-assembly/us.php, html, last visited on 23 November 2015]

Following dissimilarities are not Bangladesh Fundamental Rights. But our government can adopt some Fundamental Rights of INDIAas our Fundamental Rights. Like right to due process, right to privacy

**Dissimilarities are -**

1. The right to due process.
2. The right to privacy.
3. The right to marry.
4. The right to bear arms.

**The right to due process:**

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids "double jeopardy," and protects against self-incrimination. It also requires that "due process of law" be part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property for public use.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[23] [https://www.law.cornell.edu/constitution/fifth_amendment, html, last visited on 23 November 2015]

**The right to privacy:**

The right to privacy is not mentioned in the Constitution, but the Supreme Court has said that several of the amendments create this right. One of the amendments is the Fourth Amendment, which stops the police and other government agents from searching us or our property without "probable cause" to believe that we have committed a crime. Other amendments protect our freedom to make certain decisions about our bodies and our private lives without interference from the government - which includes the public schools.

The police aren't allowed to search you unless they have a warrant signed by a judge or unless they are arresting you. However, if they believe that you have a weapon, they can frisk you, and if they feel a weapon, they can then search you. If the cops ask to search you or your car, don't resist the search, but let them know that you don't consent to it.

[24] [https://www.aclu.org/your-right-privacy, html, last visited on 23 November 2015]

**The right to marry:**

It is well-established and crystal clear that the right to marry is a central aspect of the right to liberty, privacy, association, and identity. Fourteen times since 1888, the Indian Supreme Court has stated that marriage is a fundamental right of all individuals. In these cases, the Court has reaffirmed that "freedom of personal choice in matters of marriage" is "one of the liberties protected by the Due Process Clause," "essential to the orderly pursuit of happiness by free men," and "sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect."

The Supreme Court has adopted the doctrine of a constitutional "fundamental right to marry," and has construed this doctrine to mean a fundamental right to state-recognized legal marriage. However, the doctrine has several problems: (a) the Court never satisfactorily explains why marriage is a fundamental right; (b) the Court never defines the boundaries of marriage as a fundamental right; and (c) the Court has occasionally treated marriage as if it were not a fundamental right.

[25] [http://afer.org/blog/14-supreme-court-cases-marriage-is-a-fundamental-right/ html, last visited on 23 November 2015]

**The right to bear arms:**

The right to keep and bear arms is a fundamental right that is codified in the Second Amendment of the Bill of Rights in the Constitution of the Indian of America and in the state constitutions of forty-four States. The text of the Indian Constitutional amendment reads:

A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed.

"The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence, suitable to their condition and degree, and such as are allowed by law. Which is also declared by the same statute and is indeed a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression."

The Second Amendment of the Indian Constitution is a federal provision. In 2010, this "fundamental" and "individual" Right was "fully incorporated" with the 14th Amendment per the SCOTUS ruling made in McDonald vs. City of Chicago, which upheld the prior Opinion made in Heller vs. District of Colombia. Each of the fifty states also has its own state constitution. Forty-four states have chosen to explicitly embody a right to bear arms into its state constitution.[33] Each of the state constitutions, state laws, and state courts address the state-based right to bear arms distinctly within their respective jurisdictions. The degree and the nature of the protection, prohibition, and regulation at the state level varies from state to state. The District of Columbia, not being a state, falls within the federal jurisdiction.

Approximately thirty-one states have explicitly chosen to include the right to arms for "individual right", "defense of self", "defense of home" or similarly worded reasons. Approximately thirteen states, as with the INDIA Constitution, did not choose to explicitly include "individual", "self" or "home" wording associated with a right to bear arms for their specific states.

Approximately twenty-eight states have explicitly chosen to include the right to bear arms for "security of a free state", "defense of state", "common defense" or similarly worded reasons, as with the INDIA Constitution. Approximately sixteen

states did not choose to include explicitly "free state", "defense of state" or "common defense" wording for their specific state. Whether the inclusion of these kinds of wording in state constitutions has relevance to the issue of whether implicit "individual" rights exist, or whether such rights (if any) are implicitly protected by the states' constitutions or by the INDIA Constitution's Second Amendment, remains a matter of dispute. However, since the SCOTUS has "fully incorporated" the 2d and 14th Amendments in their 2010 Opinion and Order in McDonald vs. City of Chicago, the Right to keep and bear arms is "fully applicable" to the States, and limits the States on any-and-all regulations and restrictions they choose to take, and Federal Constitutional Rights take precedent over State, Local and other Laws that regulate to "Right of Lawful Citizens to keep and bear Arms for self-defense, a 'central component' of the 2nd Amendment," see McDonald vs. City of Chicago (SC 2010).

Regarding the state interpretations of these state and the federal constitutional rights to bear arms, state courts have addressed the meaning of these specific rights in considerable detail. Two different models have emerged from state jurisprudence: an individual right (defense of self or home) and a collective (defense of the state) right. It should be noted, however, that the States cannot lessen or restrict any Bill of Rights guarantee that has been "fully incorporated" (American Jurisprudence) and that the Right that is "fully incorporated" also applies to the respective State Constitutions; again, the States can only "add-to" these Rights but can never "diminish" these Rights by State and Local laws.

[26] [https://en.wikipedia.org/wiki/Right_to_keep_and_bear_arms_in_the_United_States, html, last visited on 23 November 2015]

# Chapter-6

# CONCLUTION

The inclusion of a chapter on fundamental rights in the constitution some of the rights are restricted 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. 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 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 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. Any person or citizen who feels aggrieved as a result of an infringement of any fundamental rights may move the High Court Division of the Supreme Court under Article 102(I) of the Constitution. 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.

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