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Research Monograph

On

"Judicial Enforceabilty of Fundamental Rights Enshrined in the Constitution of Bangladesh: A Critical review ".

This Research Submitted for the partial fulfillment of the award of the degree in LLB (Hon's) Department of Law Sonargaon University (SU), Dhaka.

Submitted To:

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Letter of Transmittal

To

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Assistant Professor & Head of the Department
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Subject: Submission of Research Monograph on "Judicial Enforceabilty of Fundamental Rights Enshrined in the Constitution of Bangladesh: A Critical review ".

Dear Sir,

I do herby please to submit the Research Monograph on the topic "Judicial Enforceabilty of Fundamental Rights Enshrined in the Constitution of Bangladesh: A Critical review ". It is a great pleasure to work on such important topic. This Research work has been done according to the requirements of the Sonargaon University for the fulfilment of my LL.B (Hon's) course under the Department of Law.

I respectfully acknowledge your guidance, leadership and help for the preparation of this paper. It is worthwhile to mention that there might be some errors and mistakes in my report due to limited time and knowledge. I am still at learning stage. So I respect that you will pardon my unintentional mistakes in preparing this paper.

Sincerely Yours,

.....

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Solemn Affirmation

I do thereby solemnly declare that the work presented in this research has been carried out by me and has not been previously submitted to other University/College/Organization for any academic qualification, publication or a personal Degree. I hereby ensure that the work presented here not breach any existing copyright.

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Supervisor's Certificate

This is to certified that the Research Monograph on **"**Judicial Enforceabilty of Fundamental Rights Enshrined in the Constitution of Bangladesh: A Critical review**"** is prepared by Ruma Akter, ID No.: LL.B 1901016007 for partial fulfillment of the requirement of the Program: LL.B (Hon's) from Sonargaon University, Dhaka. It also certified that the research work has been carried out under my supervision and intensive guidance.

It is to be certified that this research work is original and suitable in its style and contents for submission and fulfillment of his LL.B (Hon's).

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I express my sincerest gratefulness to Almighty **'Allah'** for his kindness on me in accomplishing this research monograph. I express my heart-string gratitude to my 'Honorable' and distinguished cooperative supervisor **Deedarul Islam Bhuiyan**, Assistant Professor & Head of the Department, Department of Law, Sonargaon University, Dhaka who inspirit and guide me throughout the work. He provide me resources that I needed to carry out the work and gave me important guidelines whenever I was in a Dilemma.

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Thank you.

.....

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Abstract

This research is focusing on the fundamental rights in the Constitution of Bangladesh. It's tries to analyses critically few fundamental rights like prohibition of foreign title, suspension of fundamental rights during emergency. Also, study some cases regarding these rights in this dissertation. Finally, some recommendations have been placed. From the study it was found that the constitution of Bangladesh has included all the basic attributes of fundamental rights. But practically sometimes the government is bound to violate the fundamental rights of the people in Bangladesh due to some unavoidable circumstances like the citizens vandalize state properties of public properties. To stop anti state activities, government do so. The ruling class should be truly respectful to the fundamental rights of the people. There should not be any international barrier Created by government for political interest and to oppress the opposite. It is the responsibility of the government to limit the events to violate the fundamental rights of the people. In addition, try their best respond these rights in some very rare cases, where there is no other alternative. Which is truly done for the sake of the country's overall benefit with no purpose of self-interest of the ruling party, some more restriction and controlling can be developed in the constitution of our country to regulate and prevent the indiscriminate and whimsical violation of the rights by the ruling power furthermore, the consciousness rights. Therefore, the ruling class for their selfinterest can't violate their rights.

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CHAPTER: ONE

Introduction

1.1 Introduction

The doctrine of fundamental rights is feature of United States law under which certain human rights that enshrined in the US constitution are given a high degree of judicial deference in conflicts between individual liberty and governmental intrusion. Although many fundamental rights are also more widely considered to be human rights. The classification of a right as fundamental invokes specific legal tests used by courts to determine the carefully contained conditions under which the United States Government and the various state governments may impose limitations on this right[1].

Fundamental rights give the citizens dignity of life in an atmosphere of freedom and justice beyond the man made fetters that had constricted their physical and mental horizons. Modern judiciary is regarded as an excellent product of civilization to put the concept of justice to work in the midst of divergent force with conflicting class or individual interests. Such conflicts make is difficult to bring about equilibrium in the society for a peaceful and orderly association of citizens for their common good. An independent judiciary and strong democratic institutions are the best guarantee against assaults on the rights of the citizens[2].

This research is mainly focusing on the features of fundamental rights in the constitution of Bangladesh inspired by the Universal Declaration of Human Rights, 1948; the constitution of Bangladesh enumerated some basic civil and political rights common to most liberal democracies and also insures the rights to constitutional remedies for the protection of these rights. In addition, the fundamental rights of the constitution of Bangladesh are aimed at overturning the inequalities of past social practice. I prohibit discrimination on the grounds of religion, race, sex, color place of birth and forbid trafficking human being and forced labor[3].

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[1] Md. Abdul Halim, Constitution, Constitutional Law and Politics : Bangladesh Perspective,4th ed. (Dhaka: CCB Foundation, 2008)

[2] Mahamadul Islam, Constitutional Law of Bangladesh, 2 nd ed. (Dhaka: Mullick Brothers, 2003), p.88-99.

[3] The Constitution of the People's Republic of Bangladesh.

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

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

The universal Declaration of Human Rights 1948, which states –

Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law. Rights and freedoms from the bedrock of democracy. No democracy can function successfully in the absence of some basic freedoms. Again, modern democratic government is a party government. The party winning majority in the election form the government. But coming in to power the government may turn itself into a one violating the basic rights of people and oppressing the opposition. The aim of having a declaration of fundamental rights in the constitution is to prevent such a possible danger. In order words, they provide a restraint on the power of the government so that it can not interface with the people’s basic rights according to its whims. When rights and freedom are placed the part of the supreme law and the government can not take them away except by constitution amending process which is always a right one. This is why insertion of a Bill of right in a written constitution is considered to be one of the safeguards of democracy. Bangladesh accepted fundamental rights and incorporated the same in their constitution. Within less than a year after the emergence of Bangladesh as a new, independent, sovereign republic, the

constitution of Bangladesh was passed, though; however, it came into force on December 16, 1972, the first anniversary of the day of liberation.

1.2 Objectives of the Study

The **main objective** of this research monograph is to **"Judicial Enforceabilty of Fundamental Rights Enshrined in the Constitution of Bangladesh: A Critical review"**. In order to achieve main objective of this research there are some **specific objectives**, are as follows:

1. To find out the fundamental rights provided by the Constitution of the People's Republic of Bangladesh.
2. To find out the trends of violation of Fundamental Rights in our country.
3. To find out the measures by which the Fundamental rights are protected.
4. To find out the remedies in case of violation of their rights.
5. To find out obstacles before the enforcement of Fundamental Rights.
6. To find out the challenges to effective enforcement of fundamental rights in Bangladesh
7. To suggest in the concerned matters[4].

1.3 Research Methodology

Every research involves a method by which the desired result can be achieved. For completing this research work both primary and secondary methods have been followed. Data have been collected through Constitutional Law and Politics: Bangladesh Perspective, newspapers, websites, discussion with resource person, basic documents etc. Furthermore, I have examined with my kindred companions and seniors about the points and it assists me with enhancing my subject. In a few times I talk with my manual for get his recommendation to set up this exploration monograph and he assists me with setting up this examination work. I additionally find support from different site in the current setting of Bangladesh.

[4] Mahamudul Islam, ibid., p.67.

1.4. Limitations of the Study

The facts really confirm that each exploration has a few constraints. Thus, this exploration monograph isn't the exemption of this constraint and decreased the extent of the concentrate in certain progressions constitutionalism is Bangladesh.

1. In perspective on my examination subject designated time is sparse and short.
2. The fundamental limit of the review is the restricted works and distributions on the worry point and greatest are with political perspectives behind. These give me data as well as disarray.
3. My examination subject is legal power and essential construction regulation. In any case, I attempted.

CHAPTER: TWO

General Concept of Fundamental Rights

2.1 Definition and characteristics of Fundamental Rights

"Rights" occupy a significant place in books of Jurisprudence, having many facets and connotations. Briefly speaking, a right is an advantage, benefit or interest conferred upon a person by law, including the common law, statute or the Constitution of the land[5]. A legal right is one which is protected or enforced by law, as distinguished from a moral right or a convention which has no legal sanction so long as it is not adopted by legislation, when it becomes enforceable by means of a legal proceeding in the Courts.

A right is a relative concept. When the law recognizes a right, it imposes a duty on some other person or persons to do something or to omit to do something in relation to the right of the person on whom the right has been conferred by law. In private law, the person who owes the duty is a private person or individual. But in public law, to which Constitutional appertains, the duty is owed by and the right is enforced against the State itself, when the right is necessary for the existence and dignity of a person as a human being, irrespective of any other consideration, it is called a human rights. Rights are either substantive or procedural. That part of law which creates or extinguishes a right is called substantive law and that part of law which prescribes the method of enforcing that right is called procedural or remedial law. When a legal right is created and guaranteed by the Constitution, it is called a "fundamental right" because it is secured by the fundamental law, i.e., the Constitution of the State.

Natural rights are such as appertain originally and essentially to man, are inherent in his nature, and which he enjoys as a man, independently of any particular act on his side. They grow out of the nature of man and depend upon personality as distinguished from such as are created by law. These rights are necessarily inherent and innate, and come from the very elementary laws of nature. Fundamental rights are those natural rights which are personal to the individual as a citizen of a free and civilized community and belong alike to every man, woman and child. The mere statement of such rights in the enacting part of a Constitution is a prohibition by necessary

[5] Durga Das Basu, Constitutional Remedies and Writs, Second Edition, 1999, p,3

implication of legislation inconsistent therewith, making such legislation void. They are, however not absolutely indefeasible, but are so unless or until the Government, acting in pursuant there to, requires their surrender for considerations of public welfare or safety.

The essential characteristic of fundamental rights is that they impose limitations, express or implied, on public authorities, legislative, executive and judicial, prohibiting them from interfering with their exercise. No right can be properly described as fundamental if the Legislature can take it away by a law not involving an amendment of the Constitution, or unless its suspension or surrender in a national emergency is specifically provided by the Constitution itself. A right to be fundamental must be such as is enforceable by judicial or some other process. Any action taken by the Legislature or the Executive in violation of a fundamental right is void in law and the Courts are bound to make a declaration accordingly and to give suitable relief to the aggrieved party.

This duty is the very essence of what is called judicial review of legislation. And since such rights amount to restrictions on legislative power, they cannot exist where the Legislature is supreme and not subject to limitations, as for instance, in the United Kingdom, or where the Government takes the form of an absolute monarchy. The power of judicial review can, therefore, exist only where the Legislature functions under limitations imposed on it by the Constitution and not where, unhampered by any constitutional restrictions; it acts as a sovereign body[6].

2.2 What is Rights

Before understanding fundamental rights are should have idea about rights and human rights.

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

[6] M. Munir, Constitution of the Islamic Republic of Bangladesh, Lahore,1965 p, 83

2.3. Human Rights

The tern 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, color, sex, language or political or other opinion. These are their fore those rights that are inherent in human person and without which they can't live as human being[7]. The human person possesses rights because of the very fact that it is a person, a whole, a master of itself and its act and which consequently is not merely a means to an end but an end which must be treated as such these are things which are owed to man because of the very fact that he is man[8].

2.4. Fundamental Rights

The term fundamental right is a technical one, for when certain human rights are written down in a constitution and protected by constitutional guarantees they are called fundamental rights. They are called fundamental rights in that sense that they are placed in the supreme or fundamental law of the land which has a supreme society over all other law of the land. Article 26 to 47 of Bangladesh constitution confers a number of substantive fundamental rights on every citizen of Bangladesh e.g. the right to freedom of expression, assembly, association, movement and profession

2.5 Enforcement of Fundamental Rights

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

[7] Bari, Dr. M. Ershadul, Ibid, P. 19
[8] Ibid., p 93

legislative. If the executive does anything in violation of fundamental rights, the citizens must have a remedy. 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 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[9]. 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 rights to an effective remedy by the competent national tribunal for acts violation the fundamental rights granted him by the constitution or by law. To this respect the Pakistan Supreme Court in Mondovi V. Government held- "The basic principle underling 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[10]." Eighteen fundamental rights have been guaranteed in the Constitution and constitutional arrangement for their effective enforcement has been ensured in Article 44 and 102. The Supreme Court of Bangladesh is responsible for enforcing the fundamental rights conferred by the constitution (Article-44). Under Article 102 the High Court Division of the Supreme Court is empowered to give such directions or orders to any person or authority as may be appropriate for the enforcement of any of the fundamental rights. The Supreme Court is thus constituted as the protector and guarantor of fundamental rights and it is the constitutional responsibility of the Supreme Court to protect them in case of infringement. Thus for enforcement of rights pertaining to human security under the constitution, one has to go the High Court Division of the Supreme Court of Bangladesh[11].

2.6 Distinction between Human Rights and Fundamental Rights

There are some Fundamental distinction between directives and fundamental rights:

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

[9] Article 8 of the Constitution of the People's Republic of Bangladesh.
[10] Ibid., p.90.
[11] Mahamadul Islam, ibid, p.88-99.

the other hand, are polices relating to social, economic and cultural rights which are to be followed in governance of the country.

Second, fundamental rights are enforceable in a court of law and they create justiciable rights in favour of individuals. And the courts can enforce them against the government. Again, the courts are competent to declare as void any law that is inconsistent with any of the fundamental rights. The directives, on the other hand, are not enforceable in a court of law and they do not create any jucticiable rights in favour of individuals. The court cannot compel the government to carry out any of the directives. Again, the courts cannot declare any void, which is otherwise valid, on the ground that it contravenes any of directives principles.

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

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

Fifthly, fundamental rights are largely applicable to the citizens while human rights are universally applicable to all human being[12].

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

2.7 Fundamental Principles of State Policy

Modern states are welfare states and the principle purpose of such a states is public welfare this term of public welfare is being to such states to some extent reflected in most of the written constitutions of states when they adopt of some directive principles in their constitutions. The underlying philosophy behind the adoption of such principles is that they will obligate the states to take positive people and achieve economic democracy[13].

[12] Ibid., p.98.
[13] Ibid., p.75.

2.8 Nature of Fundamental Rights

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

1. to prevent the Executive from acting arbitrarily;

2. to ensure some amount of security and protection to various types of minorities; and

3. to promote and foster social revolution by establishing the conditions necessary for achieving justice, social, economic and political.

The immutability and permanence of the Fundamental Rights were sought to be established first on the reasoning that these rights are rooted in the doctrine of natural law and were, therefore, natural rights as expressed in the traditional parlance and secondly, on the ground that they have been given a place of permanence by the constitution within its scheme. But the Fundamental Rights as contained in part III of the constitution, are neither rooted in the doctrine of natural law nor did they base on the theory of reserved rights. They are conferred rights and embody the social values of the present generation. As the social values are not static, the Fundamental Rights are subject to changes and modifications in order to fulfill the aspirations of man in the context of his changed conditions and environment in which he lives.

2.9 Classification of Fundamental Rights

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

A. Absolute Rights:

1. Equality before law, (Art. 27).

2. Discrimination on grounds of religion etc (Art.28).

3. Equity of opportunity in public employment (Art.29).

4. Prohibition of foreign titles etc (Art.30).

5. Safe guards as to arrest and detention (Art.33).

6. Prohibition of forced labour (Art.34).

7. Protection in respect of trial and punishment (Art.35).

8. Enforcement of Fundamental Rights (Art.44).

B. Rights on which reasonable restriction can be imposed:

1. Freedom of movement (Art.36).

2. Freedom of Assembly (Art.37).

3. Freedom of Association (Art.38).

4. Freedom of thought and conscience and of speech (Art.39).

5. Freedom of religion (Art. 40)

6. Protection of home and correspondence. (Art. 43)

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

1. Right to protection of law (Art.31)

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

3. Right to lawful profession, occupation or business (Art.40)

4. Protection of property right (Art.42

Chapter-3

Fundamental Rights in Bangladesh constitution

3.1 Basis of the Fundamental Rights

Fundamental Rights The fundamental rights of the people of Bangladesh have been enshrined in the Constitution of the country. 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.

3.2 Fundamental Rights:

The term fundamental rights 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 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.

The French declaration of Rights of Man and Citizen 1789, and the American Declaration of Independence 1776, and the Incorporation of a Bill of Rights in the U S constitution 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 cannot 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. Justice Jackson pointed out the object of the incorporation of fundamental rights in the US Constitution —-

"The very purpose of Bill of Rights is to withdraw certain subjects from the vicissitude of political controversy; to place them beyond the reach of majorities and officials and establish them as legal principles to be applied by the courts.

In Jibendra V.The Province of East Pakistan PLD 1957SC (PAK) , The Supreme Court of Pakistan held that,

" The very conception of a fundamental right is that it being a right grunted 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[14].'

The Pakistan Supreme court in reaffirmed the same view in the case –State V. Dosso[15].

The Indian Supreme court in Golak Nath Vs State of Punjab[16], held-

"The declaration of the fundamentals 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."

Rights and freedoms from the bedrock of democracy. No can function successfully in the absence of some basic freedoms Again, modern democratic government is apart government .The party winning majority in the election from the government. But coming into power the government may turn itself into a dictatorial one violating the basic rights for the people and oppressing the opposition. The aim of having a declaration of fundamental rights in the constitution is to prevent such a possible danger. In other words, they provide a restraint on the power of the government so that it cannot interfere with the peoples basic rights according to its whims. When rights and freedoms are placed in the constitution they become the part of 5 the supreme law and the government cannot take them away except by constitution amending process, which is always rigid one. This is why insertion of a bill of rights in a written constitution is considered to be one of the safe guards of democracy.

It is important to mention here that in Britain there is no Bill of rights; no formal declaration of any fundamental rights has ever been made, it neither does nor, of course mean that the rights of the people are less granted in Britain what are fundamental rights under written constitution are all ordinary rights in Britain. There protection of rights and freedoms rests not on constitutional guarantees but on supremacy of law, i.e. the rule of law, public opinion and strong common law

[14] PLD 1957 SC (PAK) 9.
[15] PLD 1958 SC (PAK) 533
[16] AIR 1967 SC 1643

tradition s. though the British parliament , under the doctrine of parliamentary supremacy ,can any time abridge ,modify or abolish any rights of the people , it is the deep rotted democratic traditions and vigilant public opinion which act as a constant check on the parliament to do that and the power of the executive is limited in the sense that it cannot interfere with the rights of the people without the sanction of law and it is , under the doctrine of rule of law , answerable to the courts for any action which is contrary to the law.

3.3 Bangladesh law, constitution and its characteristics

Bangladesh having written constitution there are two kids of law (1) Constitutional law i.e. the law relating to and having its source in the written constitution made by the Constitutional Assembly and (2) Ordinary law made by the Legislative Assembly (i.e. parliament) in the ordinary process of legislation. Bangladesh has been characterized in the Constitution as a unitary, independent and sovereign republic to be known as the People's Republic of Bangladesh and is governed by a written constitution which determines the framework and functions of the organs, the principles governing operations of these organs and relationship between them and

the citizens[17]. The Constitution of Bangladesh states 'rule of law' as one of the objectives to be attained. The Constitution proclaims sovereignty derived from the people and is the supreme law of the Republic and if any other law is inconsistent with it, that other law shall be void to the extent of the inconsistency (Article-7). It incorporates entrenched Bill of Rights known as the 'Fundamental Rights' and any law inconsistent with those right passed by the legislature shall be void to the extent of the inconsistency(Article-26). The fundamental rights in Bangladesh are listed under Articles 27 to 44 of Part III, 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.

[17] Article 8 of the Constitution of Bangladesh.

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

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

1. Laws in consistent with Fundamental rights to be void

Article, 26 Provides that all existing laws inconsistent with the fundamental rights as provided in part III shall to the extent of the inconsistency become void on the commencement of the constitution and the state shall not make any law inconsistent with those rights. In our jurisdiction, the case of Anwar Hossain v. Bangladesh, popularly known as the constitution (Eight Amendment) case has also expressed the same view.

In that decision, Shahabuddin Ahmed, j. held at paragraph 381, as under: "As to the constituent power, that is power to make a constitution, it belongs to the people along. It is the original power. It is doubtful whether it can be vested in the parliament, though opinion differ, people after making a constitution give the parliament power to amend it in exercising its legislative power strictly following certain special procedures constitutions of Anwar Hossain v. Bangladesh popularly known as the constitution (Eight Amendments) case has also expressed the same view. In that decision, Shahabuddin Ahmed, j. held at paragraph 381, as under "As to the constituent power, that is power to make a constitution, it belongs to the people along. It is the original power. It is doubtful whether it can be vested in the parliament, though opinion differ, people after making a constitution give the parliament power to amend it in exercising its legislative power strictly following certain special procedures constitutions of some countries may be amended like any other status following

the ordinary legislative procedure. Even if the constituent power is vested in the parliament the power is a derivative one and the mere fact that an amendment has been made in exercise of the derivative constituent power will not automatically make the amendment immune from challenge. In that sense there is hardly any difference whether the amendment is a law, for it has to pass through the order in validity test my considered opinion therefore is that an amendment of the constitution is not included in law" within the meaning of Article 7 in the same way as it is not law in Article.

2. Equality before law

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

"Equality before law" means that among equals law shall be equal and shall be equally administered. There shall not be any special privilege by reason of birth, creed etc. "Equal protection of law" means that all persons in like circumstances shall be treated alike and no discrimination shall be made in conferment of privileges or imposition of liabilities. The first part is negative while the second is positive in approach. Equality before law is involved in the enforcement of law, while equal protection of law involves the validity of a law. But these are not independent or severable concepts in their application and will often be found to overlap each other this article more than others firmly embodies the concept of rule of law the establishment of which is one of the prime objectives of the constitution.

3. Discrimination on grounds of religion etc

Art. 28 has been introduced to make classification only or grounds of religion, race, caste, sex or place of birth parse unreasonable except when a provision is made in favor of women, children and backward section of citizens. As a matter of fact, this article projects the citizen against discrimination. The state cannot discrimination only on the grounds as mentioned in Article 28, but with some other national factor, the discrimination would be valid. The crucial word in this Article is discrimination which means making an adverse destination with regard to or distinguishing unfavorably from others.

4. Equality of opportunity in public employment

Clause (1) of Article 29 of the constitution guarantees equality of opportunity for all citizens in the matter of employment or office in the service of the Republic. The expression "the service of the Republic" means any service, post or office whether in a civil or military capacity, in respect of the government of Bangladesh and any other service declared by law to be a service of the Republic. Equality of opportunity in respect of employment under this clause means equality as between members of the same class of employees and not equality between members of separate classes. This clause gives effect to the doctrine of equality in respect of appointment as well as promotion. Inequality of opportunity for promotion between holders of posts in the same grade may be an infringement of this clause, but those who hold post in different grades are not entitled to invoke it. When an application for a post has been made, it must be considered on merits. Clause (2)

Prohibits discrimination in respect of employment an office in the service of Bangladesh on the grounds only of religion, race, caste, sex or place of birth. Where selection for promotion to the next higher grade is on the "basis of seniority cum-merit" a public servant is entitled to claim relief under this clause if he is placed in the placed in the list of seniority contrary to the rules governing seniority. Clause (3) provides an exception by restricting the operation of clauses (1) and (2) of Article 29. A provision an exception can not be so interpreted as to nullify or destroy the main provision.

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

5. Prohibition of foreign titles, etc

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

6. Right to protection of law

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

7. Protection of Right to life and personal liberty

No personal shall be derived of life on personal liberty saved in accordance with law. In the case of Islam Mahmud v. Bangladesh, H.m.Habibur Rahman, j. held that the detaining authority must have some jurisdictional facts for detaining an individual, since the detaining authority is curtailing the liberty of a citizen by detaining him on preventive detention; it is exercising a non-judicial authority. To curtail fundamental rights of personal liberty enshrined in the constitution it is essential that the detaining authority. Must have report and materials that is jurisdictional facts for exercising power to detain the detune under the special power Act.

8. Safeguards as to arrest and detention

Article 33 consists of two parts: Clauses (1) and (2) relate to persons otherwise than a preventive detention of law. Clauses from (3) to (6) apply to person arrested or detained under preventive detention. This Article provides for protection against unreasonable arrest and detention. This Article provides for some specific procedural safeguard as in clause (1) of 33, a person in detention is entitled to know the grounds of his arrest and he cannot be denied the right to consult or be defended by a lawyer of his/her choice. In clause (2) a person arrested must be produced before the nearest magistrate within twenty four hours excluding the tie for such journey.

The Article provides for certain substantive and procedural safeguard in respect of deprivation of life and personal liberty as a matter of fact, disclosure of grounds of arrest and detention before a magistrate even mandatory, under clause (1) of Article 33. There are

numerous judicial decisions of the supreme court of Bangladesh on the question of preventive detention and the safeguards to be observed have become a highly specialized subject. Clause (4) provides that no person can be detained at the first place exceeding six months and during this time he must be given an opportunity to be heard by an Advisory Board. This clause also speaks of the constitution of the board. Clause (5) of Article 33 provides for early communication of grounds of detention of such person, the provision of this clause also authorizes the detaining authority for not disclosure of facts in public interest.

In the case of professor Ghulam Azam v. Bangladesh, Md. Abdul jalil, j. held at paragraph 25 asunder: From the facts and circumstances as discussed above we are of the opinion that the petitioner having been living in Bangladesh is entitled to the protection under Article 33(5) of the constitution and as such the detaining authority was under constitutional obligation to communicate grounds of detention as soon as may be, but no grounds were communicated within such long period of more than 1 year and 3 months

9. Prohibition of forced labour

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

10. Protection in respect of trial and punishment

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

11. Freedom of movement

Rights of locomotion is an important part of liberty, the right of a person to move freely to reside where he will and to work where he will is connected with his livelihood and pursuit of happiness. Even though this right may be protected by the due process clause of art, 31, as an important segment of liberty, the frames of the constitution made special provision to protect the freedom of movement of citizens, Art.36 provides that subject to reasonable restrictions imposed by law in the public interest, every citizen has the right to move freely throughout Bangladesh, to reside and settle in any place in Bangladesh, and to leave and re-enter Bangladesh. In the case of Dr. Mohiuddinfarooque v. bangldesh and others, Mustafa Kamal, j. held at paragraph 31 as under: These rights, attached to a citizen are not local. They pervade and extend to every inch of the territory of Bangladesh stretching up to continental shelf.

12. Freedom of assembly

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

13. Freedom of Association

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

14. Freedom of thought, conscience speech and press

Freedom of thought and conscience is essential to the development of human personality and every person should be free in his thought and conscience. On the other, freedom of speech is essential for the development and functioning of democracy. Without freedom of speech there cannot be any democracy and the first thing and autocrat does is to curb the freedom of speech. In the case of Bangladesh National curriculum and Text Board v. A.Msamsuddin and

others, A.T.M.Afzal, c.j. held at paragraph 32 while interpreting Article 32(2) as under: The right to freedom of speech and expression as claimed by the writ petitioners does not extend to the right of printing and publishing of note books or textbook prepared and published by the textbook board under stationary authority the court was not justified in declaring the impugned Act to be ultra vires of Article 39(2) of the constitution.

15. Freedom of profession or occupation

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

16. Freedom of religion

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

17. Rights to property Article

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

18. Protection of home and correspondence

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

19. Enforcement of fundamental rights

Article 44(1) provides that the right to move the Supreme Court for enforcement of any of the fundamental rights is itself a fundamental right. Art. 44(2) enables parliament to confer the jurisdiction to enforce fundamental rights on any other court, but such conferment cannot be in derogation of the power of the Supreme Court under Art. 102(1) which means that such other court may be given concurrent, but not exclusive, power of enforcement of fundamental rights. The Supreme Court must always have the power of enforcement of fundamental rights[18]. Some specified fundamental rights and enforcement of all fundamental rights may, however, remain suspended by issuance of proclamations under arts. 141A, 141B and 141C of the Constitution[19].

3.5 Modification of rights in respect of disciplinary law

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

3.6 Power to provide indemnity

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

3.7 Saving for certain laws

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

[18] For further discussion see Para 5.18-5.27
[19] See Para 3.43, 3.43A 3.43B

3.8 Inapplicability of certain Articles

The persons in respect of whom Clause (3) of Article 47 applies shall be precluded from moving the Supreme Court for any remedy under the constitution. It provides for inapplicability of certain Article of this part mentioned in Article 47(A) of the constitution. In the above-named the Article basis starting from the preamble, Security for the fundamental rights in Bangladesh constitution.

3.9 Supremacy of the Fundamental Rights

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

3.10 Imposition of Restriction over Fundamental Rights

The enjoyment of rights can now where be seen in an absolute position, for the enjoyment of one's right in the society is subject to the enjoyment of other's 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 are jeopardizes the liberty of others. Civil liberties as guaranteed by the constitution imply the existence of an organized society maintaining public order without liberty it sells 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 Gopolan v. State of Madras. There cannot be any such thing as absolute or uncontrolled libert 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, healthy, peace, general order and morals of the community.

Chapter- 4

Judicial Enforceabilty of Fundamental Rights

4.1 Nature of the remedy

Like art.32 of the Indian Constitution, art.22 of the Pakistan Constitution of 1956 conferred power on the Supreme Court to enforce fundamental rights and made the right to apply to the Supreme Court for enforcement of fundamental rights itself a fundamental right. The High Courts of the provinces had also power to enforce fundamental rights, but this power was discretionary, while the power of the Supreme Court was not discretionary and once a law or an administrative action was found to be violative of a fundamental right, it was obligatory for the Supreme Court to grant relief to the aggrieved person. In the Constitution of Pakistan of 1962, the original jurisdiction of the Supreme Court was omitted and the aggrieved persons were to move the provincial High Courts for redress and the Supreme Court had risdiction to hear appeals from the judgments of the High Courts.

The power of the High Courts to enforce fundamental rights emained a discretionary power as the right to move for enforcement of fundamental right was no longer a fundamental right. Under the Constitution, the High Court Division has power under art.102(1) to pass necessary orders to enforce fundamental rights and under art.44(1) the right to move the High Court Division under art.102(1) is itself a fundamental right. The position of the High Court Division in respect of enforcement of fundamental rights is the same as that of the Indian Supreme Court with the difference that its decision is not final and is subject to appeal under art.103. Thus it is not discretionary with the High Court Division to grant relief under art. 102(1). Once it finds that a fundamental right has been violated, it is under constitutional obligation to grant the necessary relief[20].'

In Chairman RAJUK v. Abdur Rouf Chowdhury, the Appellate Division held that when any violation of fundamental right enumerated in the Constitution was alleged as the only ground and no violation of legal right or law has been alleged without reference to any provision of law protecting the right of a citizen, only then resort may be taken to fundamental right to protect any

[20] Kochuni v. Madras, AIR 1959; Romesh Thaper v. Madras, AIR 1950 SC 124

citizen of such right[21]." It is submitted that this observation is not borne out by the language, scheme and of Part III of the Constitution and is open to exception. Under the Indian Supreme Court entertains only disputes involving breach of the fundamental rights. If a person wants to challenge any State action on various grounds including breach of the fundamental he shall have to seek the remedy under art.226 which is discretionary. Under our constitutional dispensation, a petitioner does not have this problem; he can by one petition enforce his right under art. 44 and at the same time press other grounds of ultra vires in respect of a State action.

4.1A The expression "give such direction or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic" may impression that fundamental right can be enforced against any private person or body. However, no expression in any provision should be interpreted in isolation without regard to the context. If we take into consideration the scope of the Constitution and constitutional law it becomes clear that the Constitution seeks to delineate the powers and functions of the important branches of the government, the relationship between those branches and the relationship of the government with the individuals and the Constitution does not in the remotest way seek to define the relationship between individuals so that the question of an individual seeking to enforce a fundamental right against another individual or private body cannot arise. It becomes further clear if we look at the provision of art.26 which speaks of violation of fundamental right by law and an individual cannot be adversely affected without the backing of a law. Thus, the mandate of Part III of the Constitution is directed against the departments which are entrusted with the power and duty of enacting and enforcing the law.

4.1B A question arises as to the extent of application of art.102(1) in relation to the enforcement of the right under art.31. Art.31 makes it a fundamental right for the citizens and residents of Bangladesh to be treated in accordance with law. This article is attracted an illegality is committed. It may be contended that whenever an authority acts illegally or commits an error of law a person's fundamental right to be treated in accordance with law is violated and the remedy under art.102(1) can be availed. If this contention is accepted, the provisions of art.102(2)(a) virtually become redundant as all cases covered by art. 102(2)(a) may be dealt with under art. 102(1). None of the provisions of the Constitution can be interpreted in a way which renders some other provision redundant and in such a situation it is necessary to give a

[21] (2009) 61 DLR (AD) 28

harmonious interpretation which will not create any redundancy. It has to be seen that when an authority acts 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 right is not necessary. Enforcement of fundamental right 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[22]. In relation to art.31, the question of enforcement of fundamental right under art. 102(1) will arise when a law is found to be unreasonable and thus violative of art.31.

4.2 Disputed questions of fact

In view of the provision of art.44, the High Court Division cannot refuse to entertain an application under art. 102(1) on the ground that the petition involves resolution of disputed question of fact[23]; if necessary, in appropriate cases, the court will have to take evidence, either itself or by issuing commission, to resolve any disputed question of fact to determine whether a fundamental right has at all been violated[24]. It may be noted that the Rules of the High Court of East Pakistan was amended in 1956 after the commencement of the Constitution of Pakistan, 1956 making provision for taking evidence in the writ jurisdiction and the said Rules are applicable in respect of the proceedings before the High Court Division[25].

4.3 Nature of the relief to be granted

The Constitution does not stipulate the nature of the relief which may be granted. It has been left to the High Court Division to fashion the relief according to the of a particular case." It need not be confined to the injunctive relief of preventing the infringement of a fundamental right and in an appropriate case[26]. it may be a remedial one providing relief against a breach already committed[27]. Speaking about the power of the court under art.32 of the Indian Constitution (which corresponds to our art.44), the Supreme Court said that in granting relief in case of a violation of fundamental rights. the court is not helpless and it should be prepared to forge new

[22] See Bangladesh v. Mohammad Faruque, (1999) 51 DLR (AD) 112, 116 (Violation of all kinds of laws are not violative of fundamental right)
[23] Kochuni v. Madras, AIR 1959 SC 725
[24] Ibid: Nilabati Behera v. Orissa, AIR 1993 SC 1960 (Supreme Court caused an inquiry to be held by a District Judge to settle the disputed questions of fact and on the basis of inquiry report granted damages for violation of the fundamental right to life).
[25] See Para 5.140 & 5.142
[26] Bangladesh v. Ahmed Nazir, (1975) 27 DLR (AD) 41
[27] Mehta v. India, AIR 1987 SC 1086, 1091

tools and devise new remedies and, if necessary, to develop new principles of liability for the purpose of vindicating those precious fundamental rights[28].

4.4 Procedure and practice:

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 and those rules have been discussed in Para 5.140 5.152. Here we discuss some rules of procedure which are particularly applicable in respect of writ petitions for the enforcement of fundamental rights.

4.5 In matters of enforcement of fundamental right the person aggrieved

In matters of enforcement of fundamental right the person aggrieved[29] has to apply and it is the obligation of the High Court Division to adjudicate upon and enforce fundamental rights. The only limitation placed by the Constitution is that the High Court Division cannot suo motu declare any law or action violative of fundamental right[30]. Article 44 of the Constitution makes the right to seek enforcement of fundamen In matters of enforcement of fundamental right the person aggrieved' tal right itself a fundamental right and as such the court has no discretion in the matter. Though it is the obligation of the court to enforce fundamental rights, it will not, in exercise of the jurisdiction, ignore the laws of procedure, evidence, limitation, res judicata, and the like[31]. The Indian Supreme Court held that the doctrine of waiver is not applicable in respect of fundamental rights[32]. The court will not allow any person to agitate stale claims[33] and may refuse to entertain an application filed after an inordinate delay[34].

[28] Khatri v. Bihar, AIR 1981 SC 928; Union Carbide Corp. v. India, AIR 1992 SC 248; Nilabati Bahera v. Orissa, AIR 1993 SC 1960
[29] See Para 5. 115-5. 164
[30] See Para 5. 140A
[31] Tilokchand v. H.B. Munshi, AIR 1970 SC 898; Amalgamated Coal Fields v. Janapad Sabha, AIR 1964 SC 1013
[32] Basheshar Nath v. CIT, AIR 1959 SC 149; Olga Tellis v. Bombay, AIR 1986 SC 180; see also Para 2.237
[33] Deodhar v. Maharashtra, AIR 1974 SC 259
[34] Rabindra v. India, AIR 1970 SC 470; See Para 5.122 for discussion as to when delay is fatal

4.6 When application for enforcement of fundamental right can be maintained

A person may apply for enforcement of a fundamental right when there is a threat to infringe it[35] and need not wait till the threat is carried out[36]. The threat must be real and mere apprehension that the petitioner may be deprived of his fundamental right is not sufficient to invoke the jurisdiction of the court[37]. A distinction is made between a statute which immediately on enactment affects the right and a statute which does not so affect, but requires some steps to be taken by the executive under the statute to affect the right. In the former case the affected person may immediately apply to the court', but in the latter case the court will not entertain a petition unless the executive has taken some step to enforce the statute. The court generally does not pass on the constitutionality if in the meantime the threat to the right is over or the petition becomes infructuous in any other way, but this is merely a rule of the court and the court has often decided the question of constitutionality having regard to the nature of the right, the frequency of the violation or the possibility of repetition of the violation.

4.7 Pleadings and burden of proof

In view of the presumption of constitutionality of laws and State actions, the burden of proof of showing that a provision of law or a State action is violative of a fundamental right is on the person who alleges it. In discharging the burden, the allegation of the person aggrieved in the writ petition must be specific, clear and unambiguous, disclosing how a right has been infringed[38] and he must adduce evidence in support of the allegations made. Once the petitioner succeeds in showing that the impugned law or action constitutes a denial or restriction of his fundamental right, he has no further onus of showing negatively that the legal provision putting the restriction on the exercise of the right is not reasonable[39]. Then the burden of showing that there has been no denial of the fundamental right or that the restriction is on a permissible ground, within permissible limits and is reasonable is on the respondent. The harsher the the heavier is the burden of proving that the restriction is reasonable.

[35] Kochuni v. Madras, AIR 1959 SC 725
[36] D.A.V. College v. Punjab, AIR 1971 SC 1731
[37] Maganbhai v. India, AIR 1969 SC 783
[38] Bank of Baroda v. Nagachaya Debi, AIR 1989 SC 2105; Amritlal v. Collector, AIR 1975 SC 538; see also Secretary of Aircraft Engineers v. Registrar, Trade Union, (1993) 45 DLR (AD) 122, 128
[39] Saghir Ahmed v. U.P., AIR 1954 SC 728, 738;

4.8 Exhaustion of efficacious remedy

Previously, the superior courts used to refuse to entertain a writ application if the petitioner did not avail of an alternative remedy. This was a self-imposed rule of the court. Now it is a constitutional requirement of art.102(2) that 4 writ petition for judicial review of any action shall not be entertained if the petitioner does not, before coming to the High Court Division, exhaust any efficacious remedy available to him under any law. But there is no requirement of exhaustion of efficacious remedy for enforcement of fundamental right under art. 102(1) and a petition under art. 102(1) cannot be turned down on the ground of non-exhaustion of efficacious remedy[40].

4.9 Alternative forum for enforcement of fundamental rights

Art.44(1) provides that the right to move the High Court Division under art.102(1) is itself a fundamental right and provides that without prejudice to the powers of the High Court Division under art.102, Parliament may provide for any other court to exercise any or all of those powers. As per art. 152 'court' means 'court of law' and it does not include a tribunal[41]. Hence, in addition to the High Court Division, Parliament is authorised by the Constitution to set up any other court, not tribunal, for the enforcement of fundamental Court Division" shows that any such court cannot be granted rights. The expression "without prejudice to the powers of the High Court Division" shows that any such court cannot be granted exclusive jurisdiction, nor can finality be attached to the decision of such court.

[40] Bangladesh v. Syed Chand Sultana, (1999) 51 DLR (AD) 24: HM Ershad v. Bangladesh, (2002) 7 BLC (AD) 67
[41] Jamal Shah v. Election Tribunal, (1966) 18 DLR (SC) 1, Para 57

Chapter- 5

Implementation of fundamental rights in Bangladesh perspective

5.1. Implementation of International Human Rights Law:

Apart from constitution of Bangladesh regarding human rights, Bangladesh now incurs obligations under international human rights law with regard to human rights. It acceded to the ICCPR in 2000 and the ICESCR in 1998 and therefore it has the obligations to implement rights recognized in there treaties. The UN Charter contains some important provisions regarding human rights. Thus interim Constitution through above declaration ultimately recognized human rights[42]. Article 152 of the constitution gives the definition of "Law" in Bangladesh and it does not include international law.

5.2. Fundamental rights in Bangladesh constitution

Part three 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

5.2.1 Right to equality

Articles 27 and 28 of the Constitution states that all citizens are equal before law and 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. In the Constitution, Article 31 and 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 property of any person shall be taken except in accordance with law.

5.2.3 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 Article 29.

[42] Md. Abdul Halim, (2016), Constitution, Constitutional law and Politics: Bangladesh perspective, Dhaka, CCB Foundation, pp-96

Nothing in this article shall impede the State from making special provision in favor of any specific backward section of citizens.

5.2.4 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.

5.2.5 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.

5.2.6 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.

5.2.7 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.

5.2.8 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.

5.2.9 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

5.2.10 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.

5.2.11 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

5.3. Institutional mechanism for the protection system of fundamental rights

National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) was established in 2009 under the National Human Rights Commission Act 2009 15 with aim to contribute to the embodiment of human dignity and integrity as well as to the safeguard of the basic order of democracy. NRHC consists of three members, one chairman and other two members. However, the 2009 Act itself may not inspire confidence in the efficacy, independence or transparency of the institution. The reasons are to be found in formation of the selection committee, the size of the Commission, in restraints on its investigative powers, and limited mandate to try perpetrators.

5.4. Paradoxes of fundamental rights:

5.4.1. Emergency provisions and fundamental rights

Rights concerning liberty, freedom of movement, freedom of thought, conscience and speech and freedom of assembly are curtailed during the period of an emergency, for if these rights are allowed to be enjoyed in an unrestrained manner, they might interfere with a government's effort to contain the threat posed to the life of the nation and thereby restore peace. However, experience demonstrates that emergency situations are commonly characterized not only by the suspension of the abovementioned fundamental rights, but also the dispensation of the core fundamental rights, such asthe right to life and prohibition on torture6. The functioning of the national courts in securing the unhindered enjoyment of the core human rights during emergencies has often been unsatisfactory 19

5.4.2. Violation of fundamental rights

RAB (Rapid Action Battalion) and other security agencies have been accused of using torture during custody and interrogation. One allegation of such came from a young man who was arrested in Dhaka for protesting against the assault of an old man by plainclothes RAB agents. He was later severely tortured.[6] On 27 July 2005, two brothers from Rajshahi, Azizur Rahman Shohel and Atiquer Rahman Jewel, were arrested on fabricated charges, beaten with batons and subjected to electric shocks.It is alleged that this brutality

stemmed from the brothers' family being incapable of paying a sufficient bribe. The brothers were tortured to such an extent that they were hospitalised at the Rajshahi Medical School Hospital under police custody.[8] The most thorough account of torture in Bangladesh was the May 2007 case of torture against Tasneem Khalil, a journalist and blogger. He was tortured while in the custody of Directorate General of Forces Intelligence during the interim government, and after his release, Khalil wrote a report published by Human Rights Watch. Sweden granted Khalil asylum after he fled Bangladesh

5.5 Violation of right to life and personal liberty

5.5.1 Extra Judicial Killing

Extra judicial killing is unethical. Because every person have right to get proper judgment. Although extra judicial killing reduce crime but it is not acceptable. Because many general people are killed for this type of killing. Another name of extrajudicial killings is Crossfire. Killings by law enforcement agencies are common in Bangladesh. In 1972, the paramilitary group Jatiya Rakkhi Bahini came into force and had become renowned for its extrajudicial executions until it was engaged into the army in 1975. Now, since the formation of the selected Rapid Action Battalion (RAB) in March 2004, such killings are again on the rise and are being categorized under a new terms of "crossfire," "extrajudicial killings," "encounters," etc[43]. The government tries to justify the killings by using the term "crossfire," which it refers to as gunfights between any suspected criminal group or "unsentimental"

criminals and the RAB or police. The term "death in an encounter" is worn in other countries to mean the same thing, but the term "crossfire" is favored by law enforcement agencies in Bangladesh. The evil suggestion associated with the word demonstrates the total weakness of the people facing extrajudicial killings that are taking place in Bangladesh. Though there is no legal definition of an extrajudicial killing, if a death is caused by a law enforcement official without following the legal rules or due judicial process, it can be measured extrajudicial[44]. "Crossfire" is an extrajudicial execution that is in deliberate defiance of Bangladesh's constitution and the international human rights conventions of which the country is a party.

Although some people believe that extrajudicial killing of cynical criminals helps ease the problem of "terrorism," in reality, it encourages lack of control and aggravates "state terrorism." In different countries across the world, people in power have created a feeling

[43] www.extrajuducial kiling.com
[44] Ibid.

that killing "terrorists" without bringing them to justice can help curb "terrorism," but such extrajudicial killings, in fact, can neither bring peace nor eradicate "terrorism[45]."

5.5.2 Example of some extra judicial killing

By Jahangir Alam Akash, More two people were killed in extra judicially by RAB at Keranigonj of Dhaka. On 28th February, 2010 early in the morning it was happened. The killed are Pappu (27) and Abdus Sattar (26). With this killing, 155 people were killed extra judicially in Bangladesh under the present Awami League government. Extra judicial killings were started by RAB during BNP-Jammat government in 2004. Another person was killed in extra judicially in Bangladesh. Today on 24th February, 2010 it happened by police at Pangsha of Rajbari. (Source: the daily Star, internet edition, 24-2-2010). The killed was identified as Ramzan Ali. With this killing, 153 people were killed extra judicially in Bangladesh under the present Awami League government.

On 23rd February, 2010 another person was killed by RAB-police in extra judicially. he killed is Saidul Islam in Kushtia. Before this killing on 15 February, 2010 another was killed by RAB at Kafrul in Dhaka. The killed was famous as Parvez. Osman Goni was killed by RAB-police on 30 January of this year at Dakshin Rangamatia village in Fatikchhari upazila of Chittagong.

The power of RAB is stronger than government in our country. The term "extrajudicial killing" means execution without justice[46].

5.5.3 Rape

Rape is another from of violence perpetrated against women is Bangladesh. In most cases, the victims or their family members remain silent due to the social stigma or in fear of the rapist. The rape victims have to undergo severe mental and social problems.

From January to December, 2010 total of 454 women and girls were reportedly raped, where 211 were adults and 243 were children59. Of the 211 adult women, 64 were killed after being raped and 94 were subjected to gang rapes, Of the 243 female children raped, 33 were killed after being raped and 79 were victims of gang rape. Furthermore, 4 women and 4 children committed suicide after being raped.

[45] Ibid.
[46] Ibid.

From January to March, 2011 a total of 122 females were allegedly raped, where 53 were adults and 69 were children. From the adult female, 11 were killed after raped and 26 were gang raped. From the 69 female children who were raped, 05 of them were killed after being raped, 24 were victims of gang rape and 01 committed suicide after rape. Amongst these women and children, it is alleged a housewife from Chuadanga was rapes by assistant Sub Inspector of Police, a housewife from jessore was raped by an Ansar member while an 8 year old girl from Joypurhat was raped by a member of the village police[47].

5.6 Violation of right to arrest and detention

5.6.1 Arrest without Warrant

When police may arrest without warrant-(1)

Any police officer may without an order from a magistrate and without warrant, arrest.

Firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received on a reasonable suspicion exists of his having been concerned.

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house- breaking.

Thirdly, any person who has been proclaimed as an offender either under this code of by order of the government.

Fourthly, any person in whose possession anything is found which may reasonable is suspected tube stolen property and who may reasonable be suspected of having committed an offence with reference to such thing.

Fifthly, Any person who obstructs a police – officer while in the execution of his duty or who has execution or attempts to escape, from lawful custody.

Sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh[48].

[47] w.w.w the daily star. net
[48] Ibid.

5.6.2 Custody

The Guardianship of Infants Act (cap.144) is the principal legislation in this area. Child under this Act is an unmarried person be –low is years of age. Parent includes the father, mother or any other person appointed by the court to maintain the child or to be responsible for custody but father does not includes the natural father of a child born to of wedlock and an unmarried father is not liable to maintain the child if one parent dies , the surviving one becomes guardian, but if the deceased parent had appointed a guardian, then the appointee and the surviving parent become joint guardians. If the appointee is dead or refuse to comply with the terms of appointment the court may appoint a new guardian. Such an appointment is made only if it is in the best interest of the child. In Philemon jumbo Manse vs. public trustee (Civil Appeal No. So of 1983) the brother of deceased's man applied under cap.144 for custody care and control of the deceased's infant child stating that /he was able to maintain to take care of the said infant. Both parents have equal rights to apply to court for custody or divorce. In such case; the court will consider the following:

- The welfare of the child
- The conduct of the parents
- The wises if any of the both parents[49]

5.7. Remedies for the protection of fundamental rights

Our constitution guarantees to every citizen the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights. And for that purpose the Supreme Court is given general powers to safeguard the Fundamental Rights as well as the power to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo-warrantor and certiorari, whichever may be appropriate, for the enforcement of any of the Fundamental rights. A right without remedy is a meaningless formality.

Under the constitution of Bangladesh, the High Court Division of the Supreme Court has power under article 102(1) to pass necessary orders to enforce fundamental rights. The position of High Court Division in respect to the enforcement of fundamental rights. Under the Bangladesh Constitution, the petitioner does not have the problem he can by one petition enforce his right and at the same time pass other grounds of ultra virus in respect of a state of

[49] www.bangla right.com [Last visited on 10 September 2012]

a state action. Point to be noted, in the constitution of Bangladesh for the enforcement of fundamental rights under Article 102(1) an application can not be turned down on the ground of non-exhaustion of efficacious remedy. But where a writ petition is filed for judicial review of any action under Article 102(2) it shall not be entertained if the petitioner does not, before coming to the High Court division, exhaust any efficacious remedy available to him under any other law[50].

5.8 Writ Jurisdiction of the high Court Division

Writ jurisdiction: The constitution has conferred on the HCD original jurisdiction only in one case and this is the field of writ matters. The basis of writ jurisdiction is Article 102 of the constitution. Writ jurisdiction means the power and jurisdiction of the HCD under the provisions of the constitution whereby it can enforce fundamental rights, as guaranteed in part III of the constitution and can also exercise its power of judicial review.

Writ means a written document by which one is summoned or required to do or refrain from doing something. Historically writ originated and developed in British legal system. As defined by Blackstone, Writ is a mandatory letter from the king-in- parliament

They were called prerogative writes because they were conceived as being intimately connected with the rights of the court of chancery. The prerogative writes were five in number-

1. Habeas Corpus

2. certiorari

3. Prohibition

4. Mandamus

5. Quo-Warrantor

[50] Abdul Halim Ibid., p. 381

5.8.1. Writ of Habeas Corpus

The word 'Habeas Corpus' means 'have his body' to have the body before the court. So it is a kind of order of the court that commands the authorities holding an individual in custody to bring that person into court. The authorities must then explain in the court why the person is being held. The court can order the release of the individual if the explanation is unsatisfactory[51].

5.8.2. Writ of Mandamus

Literally the term 'mandamus' means 'we command' and reminds one of the times when the king of England " as the autocratic head of a vast administrative system had occasion to mandamus his subjects many times in the course of the day " In Hapsburg's Laws of England mandamus is described as follows:

The order of mandamus is an order of a most extensive remedial nature, and is in form, a command issuing from the High Court of Justice directed to any person, corporation or inferior tribunal, requiring him or those to do some particular thing therein specified which appertaining to his or their office and is in the nature of public duty[52].

5.8.3. Writ of Prohibition

Prohibition is an original remedial writ, as old as the common law itself. Originally the primary purpose of prohibition was to limit the jurisdiction of the ecclesiastical courts. Prohibition as a writ means one which prevents a tribunal possessing judicial or quasi-judicial power from exercising jurisdiction over matters not within its cognizance[53].

[51] Ibid, p. 381.
[52] Ibid, p. 382.
[53] Ibid p. 383

5.8.4. Writ of Certiorari

The term ‘certiorari’ means ‘to be certified’ or ‘to be more fully informed of’. The writ of ‘certiorari’ is so named because in its original from it required the King ‘should be certified’ of the proceedings to be investigated[54].

5.8.5. Writ of Quo Warrantor

The term “quo- Warrantor “means “by what warrant or authority.” Quo- Warrantor is a writ by which any person who occupies or usurps an independent substantive public office or franchise or liberty, is asked to show by what authority he claims it, so that title to the office, franchise or liberty may be settled and unauthorized occupants be ousted by judicial order[55].

Article 102 of our constitution to see how the true contents of each of the major writs have been set out in self- contained proposition. As Article 102 proceeds- “ The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law-(a) on the application of any person aggrieved, make, an order-

(I) “ directing a person performing any function in the affairs of the Republic or of a local authority to refrain from doing that which be is not permitted by law to do.”

This italic part of the section contains the true idea of prohibition. H\ere “Which he is not permitted by law” means that he may be about to misuse or abuse his power or to act in excess of his jurisdiction prescribed by law. In such a case the High Court division, on application, may issue the writ of prohibition with a view to prohibition with a view to prohibition or refraining the person concerned from doing that act.

The same sub- Article continues-

“ to do that which be is required by law to do.”- This part of the Article contains the true concept of mandamus. “To do that which he is required by law to do” means that the person concerned is under statutory obligation to do something but he has refused or failed to

[54] Ibid, pp. 383 & 384
[55] Ibid, p. 384.

perform his obligations. In such a case the HCD by issuing the writ of mandamus, can compel the person or authority to perform his statutory obligation.

Now the sub-Article 102(2) (a) (ii) proceeds-

"Declaring that any act done or proceeding taken by a person performing functions in connection with affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect." Here lies the concept of certiorari.

Now the sub-Article 102(2) (b) (I) proceeds-

"On the application of any person, make an order-

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner" Here the very concept of the writ of habeas corpus is hidden.

Lastly sub-article 102(2) (b)

(ii) states-"requiring a person holding or purporting to hold a public office to show under what authority he claims it hold that office" – this part contains the concept of quo-warrantor[56].

[56] Ibid., p. 385.

5.9 Some Case studies On The Fundamental rights:

Case Reference no.1

Dr. Nurul Islam v. Bangladesh 1 BLD (AD) 140

Fact of the case

The appellant Dr. Nurul Islam was appointed an assistant surgeon in 1952(in East Bengal) and by successive promotions he became the Director and professor of medicine of the Institute of post-graduate and Research in 1971(in Bangladesh).In November, 1978 the Govt. issued a notice where by the appellant was relieved of his duties as professor of Medicine; he was to continue as Director of the institute which was made a non-practicing post. The appellant challenged this notice in the High Court Division by write petition no. 571 of 197889 and a bench of the High Court Division on 6-12-79 declared the notice to have been issued without lawful authority. The government as found by the Supreme Court , reacted to the High Court declaration by ordering the retirement of the appellant from service under sub- section(2)of section 9 of the public servants Retirement Act, 1974 which is to the effect that the Govt. is empowered to retire a govt. servant on the completion of 25 years service . The appellant again challenged this order in a fresh write petition to the High Court Division on the ground, amongst others, that the retirement order is just a measure of punishment on him for his successful challenge of the Governments previous notice declared to have been issued without lawful authority. The High Court Division in the present instance refused with the Govt.'s decision in retiring the appellant 4/s 9(2) of the public service retirement Act and gave him no relief where upon the appellant move the Appellate Division as against the aforesaid decision of the High Court Division alleging, inter alia,malafide in the Government in causing his premature retirement; he further stated that there are in the cadre as many as 34 doctors who have completed 25 years service and many of whom were senior to the appellant in service but none of them had been retired . It was therefore contended that the impugned notification issued on June 5, 1980 was issued for collateral purposes the provisions of Article 27 and 29 of the constitution appellant was not given any opportunity of being heard before the impugned notification was issued it was violated of Article 135 of the constitution.

Judgment of the case

Article 27 of the constitution which speaks of entitled to equal protection of law interpreted by R.Islam, J.at paragraph 87 as under: "The principle on which the doctrine of equal protection of laws is founded is that persons in similar circumstances must be governed by the same laws. The legislative classification by itself does not offend against the principle of equal protection of the laws provided the laws operate equally in all members of the said class or group. For valid legislation, classification must be reasonable for the purpose of legislation, should be based on proper and justifiable distinction, should not clearly arbitrary and should have all reasonable relation to the objects and to the public purpose sought to be achieved by the legislation

Case Reference no.2

Oli Ahad v. Govt. of Bangladesh 26 DLR (1974) 376

Section 144 CrPC empowers the District or Local Authority, representing the executive organ of the State, to make prohibitory orders having the effect of restricting the exercise of a fundamental right in an emergency as a temporary measure. This may be for preventing certain nuisance, danger to human life or health, disturbance of the public tranquility, a riot or an affray.

The Sarbadaliya Oikya Front decided to hold a meting on 30 June 1974 in Paltan Maidan. The Government declared Section 144 in the area prohibiting all public procession, meeting and gathering until further order. Oli Ahad, a leader of the Front, challenged the order on the ground of mala fide. Dr. Aleem-Al-Razee appearing on behalf of Oli Ahad made a 'half-hearted' attempt to challenge the constitutionality of Section 144 CrPC itself[57]. The Court comprising Justice DC Bhattacharya and Justice AR Chowdhury held:

> Having regard to the fact that the object of prevention of the apprehended danger to human life, disturbance of the public tranquility, riot or an affray is closely allied to the interests of public order, we are of opinion that the restriction on the individual right as

[57] Oli Ahad v. Govt. of Bangladesh 26 DLR (1974) 376, PARA 4

> contemplated in...section 144(1) cannot be said to be unreasonable and as such the aforesaid provision of the Code cannot be held to unconstitutional[58].

However on the specific incident of declaring Section 144 CrPC in Paltan Maidan, the Court tested whether it was a reasonable restriction or not:

> The Magistrate charged with the duty of exercising such power is therefore required to state the material facts on the basis of which the formation of the opinion has been made, and it is for the court to see whether the preventive action curbing the fundamental right 18 is reasonable in the interest of the Public Order[59].

[58] Ibid, Para 50
[59] Ibid, Para 59

Chapter- 6

Recommendation and Conclusion

I have been observed that the constitution of Bangladesh has included all the basic attributes of fundamental rights. But practically sometimes the government is compelled to violate the fundamental rights of the people in Bangladesh due to some unavoidable circumstances. The ruling class should be truly respectful to the fundamental rights of the people. There should not be any international barrier Created by government for political interest and to oppress the opposite. It is the responsibility of the government to limit the events to violate the fundamental rights of the people and try their best respond these rights in some very rare cases where there is no really no other alternative and which is truly done for the sake of the country s overall benefit with no purpose of self interest of the ruling party some more restriction and controlling can be developed in the constitution of our country to regulate and prevent the indiscriminate and whimsical violation of the rights by the ruling power further more, the consciousness rights. So their rights can not be violated by the ruling class for their self interest.

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