Sonargaon University (SU)

Research Monograph
On

Fundamental Rights Enshrined in the Constitution of Bangladesh: A critical appraisal from the perspective of Judicial Enforcement.

Research Paper submitted in partial fulfillment of the requirements of the Honour's of Laws LL.B Under Sonargaon University

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Letter of Transmittal

05th January 2023.

To,
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Assistant Professor and Head,
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Subject: Submission of research monograph.

Dear Sir,
It is a great pleasure to submit my research paper on **"Fundamental Rights Enshrined in the Constitution of Bangladesh: A critical appraisal from the perspective of Judicial Enforcement"**. I have given my best efforts to finish the research with relevant information that I have collected from various source.

I have concentrated my best effort to achieve the objectives of the work and hope that my endeavor will serve the purpose. I shall be highly grateful and obliged if you kindly accept my research and evaluate it with your sagacious judgment.

Sincerely yours,

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ACKNOWLEDGEMENT

I am deeply gratitude to Almighty **Allah** for providing me everything that required for completing my research work.

I am thankful to **Md. Deedarul Islam Bhuiyan**, Assistant Professor and Head, Department of law, Sonargaon University, to allow me and support to prepare this research.I also want to thank my friends as well as well-wishers to me for their motivation from the beginning of my research work.

Sincerely yours,

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‘DECLARATION’

I do hereby declare that the research monograph entitled **“Fundamental Rights Enshrined in the Constitution of Bangladesh: A critical appraisal from the perspective of Judicial Enforcement”** submitted to the Department of Law in Sonargaon University in the fulfillment of the requirements for the decree of LL.B (Hon’s), is carried out by me under the guidance and supervision of **Md. Deedarul Islam Bhuiyan**, Assistant Professor and Head, Department of Law, Sonargaon University . Research method and approaches strictly have been followed during undertaking the work. The work I have presented does not breach any copyright. I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations.

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CERTIFICATE OF THE THESIS SUPERVISOR

The undersigned certify that the research paper entitled **"Fundamental Rights Enshrined in the Constitution of Bangladesh: A critical appraisal from the perspective of Judicial Enforcement",** a study has been carried out by Mohammad Yousuf Sarkar (Student ID No. LLB1901016013), under my constant supervision as per the rules regulations stipulated by the Sonargaon University in the partial fulfillment of the requirements for the degree of LL.B (Hon's).

Signature of supervisor:

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ABBREVIATIONS

AD-APPELLATE DIVISION

HCD-HIGH COURT DIVISION

ADC -APPELLATE DIVISION CASES

ASK - AIN O SALISH KENDRA

BELA-BANGLADESH ENVIRONMENT LAWYERS ASSOCIATION

BLAST-BANGLADESH LEGAL AID AND SERVICES TRUST

BLC- BANGLADESH LAW

CHRONICLES **BLD**-

BANGLADESH LEGAL

DECISIONS **DLR**-DHAKA LAW

REPORTS

PIL-PUBLIC INTEREST LITIGATION

SC-SUPREME COURT

ABSTRACT

This research is about the Fundamental Rights enshrined in the constitution of Bangladesh: a critical appraisal from the perspective of judicial enforcement. In this research paper we explore the fundamental rights enshrined in the constitution of Bangladesh and we focuses on the fundamental rights enshrined in the constitution of Bangladesh and critical appraisal from the perspective of judicial enforcement. Rights are primarily divided into two categories—moral rights and 1ega1 rights. Moral rights are those rights which have their basis on the rule of natural justice and the violation of which results in moral wrong. Legal rights, on the other hand, are those rights which are recognized by the positive law of the country and can be claimed on legal basis and the violation of which results in legal wrong. As mentioned earlier right originates in the society and remains as a moral right so long it is not recognized by law. Whenever a law recognizes it and secures its protection, it transforms into a legal right. All legal rights in this sense are moral rights and the distinction between the two is one of degree rather than of form. This dissertation is focused on the fundamental rights in the Constitution of Bangladesh. This dissertation Corley tries to analysis critically few fundamental rights like prohibition of foreign title, suspension of fundamental rights during emergency. Some cases regarding this rights also been studied in this dissertation. Finally some recommendations have been placed.

Keywords: Fundamental rights, Enforcement, Constitution, Enshrined, Protection Critically.

TABLE OF CONTENTS

Title	Page No.
Title of the page	i
Declaration	*ii*
Acknowledgement	*iii*
Abstract	*iv*
Table of Contents	*v-vii*
CHAPTER ONE: INTRODUCTION	**1-07**
1.1 Background of the Study	*1-3*
1.2 Statement of the Problem	*3-4*
1.4 Research Objectives	*5*
1.5 Research Methodology	*5*
1.6 Literature Review	*6*
1.7 Research Scope and Limitation	*7*
CHAPTER TWO : OVERVIEW OF FUNDAMENTAL RIGHTS and FUNDAMENTAL RIGHTS IN THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH	
2.1 Introduction	*8*
2.2 Definition of Rights and Human Rights	*8*
2.3 Classification of Fundamental Rights	9
2.3 Fundamental Rights in Bangladesh constitution	9-15
2.4 Modification of rights in respect of disciplinary law	16
2.5 Power to provide indemnity	16
2.6 Saving for certain laws	16-17
2.7 Inapplicability of certain Articles	18-19

CHAPTER THREE: ANALYSIS ON FUNDAMENTAL RIGHTS AND THE PERSPECTIVE OF JUDICIAL ENFORCEMENT		
		25-39
3.1 Introduction		20
3.2 Supremacy of the Fundamental Rights		21
3.3 Imposition of Restriction over Fundamental Right		22
3.4 The Enforcement of the Fundamental Rights		23
3.5 Effect of violation of fundamental rights		24-25
3.6 Prohibition of Foreign Title		26
3.7 Necessity in prohibiting foreign title		27
3.8 Suspension of Fundamental Rights during emergency		27-28
3.9 Amendment Relating to Enforceability of Fundamental Rights		29-31
3.10 Some Case studies On The Fundamental rights		32-34

CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION 35-37

4.1 Recommendations 35

4.2 Conclusion 36-37

BIBLIOGRAPHY 38-39

CHAPTER # 01
INTRODUCTION

1.1 Background of the Study

The fundamental rights of the people of Bangladesh have been guaranteed in Part III (Article 26-44) of the constitution of Bangladesh. All past laws inconsistent with these rights are made void by the Constitution, and it directs the State not to make any law inconsistent with these rights. Article 44 of the constitution 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. The jurisdiction of the High Court Division of the Supreme Court to enforce the fundamental rights is defined in Article 102 of Part Vl of the Constitution of 1972.[1]

In Chapter three of the Bangladesh Constitution there has been introduced an entrenched Bill of Human Rights known as Fundamental Rights substantially in accord with the rules of the International Bill of Human Rights. Rights enshrined in this chapter include such rights as equality of all irrespective of religion, race, caste, sex or place of birth, and entitled to equal protection of law, non-discrimination iii all matters including opportunity in public employment, right to protection of law, of life and personal liberty, safeguards as to arrest and detention, protection in respect of trial and punishment under retroactive law, freedom of movement and assembly, freedom of thought, conscience and speech, freedom of profession or occupation, freedom of religion, right to property etc.[2]

[1] Islam, Mahmudul,Constitutional law of Bangladesh, 2nd Edition, Mullick Brothers, Dhaka,2003,p-207
[2] Mohammad Ullah vs. Session Judge, Noakhali & others. (12 MLR)

What is significant to remember is this, none of these rights could be abridged by ordinary legislation and all existing laws inconsistent with the Fundamental Rights provision shall to the extent of such inconsistency become void on the commencementof the Constitution.

The second significant point remember is that the High Court Division under Article 102 has been conferred the jurisdiction to enforce any of the Fundamental Rights guaranteed under the Constitution. So, we may safely say that to the extent Fundamental Rights are in accord with human rights have been made Constitutionally enforceable by the Court, these human right have become the legal rights of the citizens of Bangladesh. It is of course to be observed that the enforcement of fundamental human rights under this Article is, as I am aware, suffers from restrictive interpretation of the Court on the expression "person aggrieved" to exclude what is known as public interest' litigation. But our neighbouring country like India has already given 2 liberal extended meaning to include such litigations. The problem is a challenge for the lawyers as a class to come forward and press this point home whichI, presume if this goal is diligently pursued, a liberal interpretation can be obtained from our Supreme Court.[3]

Mention has to be made of Part-Il of the Constitution containing fundamental principles of state policy. In Part-II the Rights given are promotional and this part of rights are not legally enforceable' Art. 8 (2) says: 'The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Construction and of other laws of Bangladesh, and shall form the basis of the work of the state and of its citizen but shall note Judicially enforceable.

[3] *Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A*
(XXI) of 16 December 1966. It entered into force on 23 March 1976 in accordance

The policies and enumeration rights set out of this part are: Promotion of local government institutions, partition of women in national life, democracy and human rights in which effective participation by the people through their elected representatives with Article 49. It may be mentioned as ICCPR in the study in administration at all levels shall be ensured, emancipation of peasants and workers: provision of basic necessities, rural development and agricultural resolution, free and compulsory education, public health and morality: work as a right and duty, and ensuring equal opportunity as given in Art. 9 (2) which says: 'The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens and of opportunities in order to attain a uniform level of economic development throughout the Republic.

1.2 Statement of the Problem

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

Rights are primarily divided into two categories—moral rights and 1ega rights. Moral rights are those rights which have their basis on the rule of natural justice and the violation of which results in moral wrong.[4] Legal rights, on the other hand, are those rights which are recognized by the positive law of the country and can be claimed on legal basis and the violation of which results in legal wrong. As mentioned earlierright originates in the society and remains as a moral right so long it is not recognized by law. Whenever a law recognizes it and secures its protection, it transforms into a legal right. All legal rights in this sense are moral rights and the distinction betweenthe two is one of degree rather than of form.

[4] Adopted by General Assembly Resolution 1514 (xv) of 14 December 1960. It may be mentioned asDGICCP in the study.

Rights and freedoms form 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 into power the government may turn itself into a dictatorial 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 sucha 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 the supreme law and the government cannot take them away except by constitution amending process which is always a rigid one. This is why insertion of a Bill of Rightsin a written Constitution is considered to be one of the safeguards of democracy.

It is important to mention here that in Britain there is no Bill of Rights; no formal declaration of any fundamental right has ever been made. It does not, of course, mean that the rights of the people are less guaranteed in Britain. What are fundamental rightsunder written constitution are all ordinary rights in Britain. There the 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 traditions. Though the British parliament, under the doctrine of parliamentary supremacy, can any time abridge, modify or abolish any right of the people, it is the deep-rooted 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 of the land. But these conditions do not prevail in other countries which are composed of diverse elements, having no deep-rooted

[5] *Sohn L. B., The Universal Declaration of Human Rights: A Common Standard of Achievement, Journal of the International Commission of Jurists, 8, 1967, 2, pp. 17-26. Also quoted by Warwick Mckean in Equality and Discrimination under International Law, 1983, p. 275.*

traditions of individual liberty. Secondly, almost all the modern countries emerging from the bondage of colonialism had a painful experience of denial of people's right. They, therefore, felt that mere custom ortradition alone cannot provide to some basic rights the same protection as their importance deserves.[5] "The unique English tradition", as Bowic says, "is not simply exportable and other nations have generally felt that their governments need the constant reminder which a bill of rights provides, while their people need thereassurance which it can supply"

1.3 Research Objectives:

The objectives of the present research are stated bellow:

(1) To explore the fundamental rights enshrined in the constitution of Bangladesh

.(2) To analyses critically few fundamental rights like prohibition of foreign title,suspension of fundamental rights during emergency

(3) To find out which human rights are yet to be incorporated in the Constitution ofBangladesh,

(4) To focuses on the fundamental rights enshrined in the constitution of Bangladeshand critical appraisal from the perspective of judicial enforcement

1.4 Research Methodology:

In this paper qualitative method has been applied; data have been collected from primary and secondary sources; existing laws, regulations, international instruments, court decisions, govt. statistics etc. are primary sources of data and different relevant books, journal articles, newspapers, govt. reports, etc. taken as the source of secondarydata in this research.

1.6 Literature Review:

During the study period I received help from various books, journals, research papers, article. I shall discuss of some previous research and mentioned their articles concept in literature.

In this article written by Faizunnessa Taru,[6] This article states that the fundamental rights which is incorporated in our constitution on the basis of international human rights law. Bangladesh is a deltaic country situated in the Bay of Bengal having over 160 million of people. In spite of ratification of many international human rights instruments, every year many peoples are deprived to exercise fundamental rights because of political unrest. The Fundamental Rights of Bangladesh Constitution themselves have no fixed content, most of them are empty vessels into which is generation must pour its content in the light of experience.

In this article written by Md. Shahjahan Mondol,[7] this article says that, The Constitution of Bangladesh incorporates, as a sequence, the noble provisions and principles of human rights as enshrined in the instruments, municipal or international, *e.g.* UDHR, ICCPR, ICESCR, DGICCP, DRD and different country constitutions. Butwhether it has been able to contain all the human rights provisions of the noble instruments and/or whether appropriate and effective measures have been taken for theproper and effective exercise and enjoyment of the rights are a big question. The main objective of the present study is, therefore, to have an idea on the incorporation of human rights, as principle rights or as fundamental rights, in the Constitution of Bangladesh

Lastly, Bangladesh Constitution have great influence on my work.

[6] *www.hrw.org/world report/2014/country-chapters/Bangladesh, viewed on 15.01.2015*
[7] *M. Shah Alam , Enforcement of International Human Rights law by domestic courts, Nerw Warsi BookCorporation, Dhaka,2007,p.118*

1.7 Research Scope and Limitation

This paper is an attempt to explore fundamental rights which is incorporated in our constitution on the basis of international human rights law. Bangladesh is a deltaic country situated in the Bay of Bengal having over 160 million of people. In spite of ratification of many international human rights instruments, every year many peoples are deprived to exercise fundamental rights because of political unrest. The Fundamental Rights of Bangladesh Constitution themselves have no fixed content, most of them are empty vessels into which is generation must pour its content in the light of experience. The study intends to examine violation of fundamental rights in the light of present situation. Furthermore.

The research has suffered certain limitation as below:

- The duration of the study was very short. More in dept investigation wouldhave resulted better outputs.
- Lack of resources has hampered the study to some extent
- Access to information is very difficult. In most cases, concerned persons werevery rigid to share adequate information.

CHAPTER # 02
OVERVIEW OF FUNDAMENTAL RIGHTS

2.1 Introduction

Fundamental rights are a group of rights that have been recognized by a high degree of protection from encroachment. These rights are specifically identified in a constitution, or have been found under due process of law. The United Nations' Sustainable Development Goal 16, established in 2015, underscores the link between promoting human rights and sustaining peace.[1]

2.2 Definition of fundamental rights

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

[1] https://en.wikipedia.org/wiki/Fundamental_rights

The six fundamental rights are:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and educational rights
6. Right to constitutional remedies

Rights literally mean those freedoms which are essential for personal good as well as the good of the community. The rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the Fundamental Law of the Land and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment. Fundamental rights for Indians have also been aimed at overturning the inequalities of independence social practices. Specifically, they have also been used to abolish untouchability and hence prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions.

2.3 Fundamental Rights of the Constitution of Bangladesh

Bangladeshi people have 23 fundamental rights under the Constitution of Bangladesh. The Fundamental Rights in Bangladesh under below:

Article 26: Laws inconsistent with Fundamental rights to be void[2]

1. All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.
2. The State shall not make any law inconsistent with any provisions of this Part,

[2] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

and any law so made shall, to the extent of such inconsistency, be void.

3. Nothing in this article shall apply to any amendment of this Constitution made under article 142.

Article 27: Equality before law[3]

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

Article 28: Discrimination on grounds of religion, etc.

1. The State shall not discriminate against any citizen on grounds only of religion, race caste, sex or place of birth.

2. Women shall have equal rights with men in all spheres of the State and of public life. No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

3. Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

Article 29: Equality of opportunity in public employment

1. There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.

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

3. Nothing in this article shall prevent the State from -

[3] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic;

b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination;

c) Reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

Article 30: Prohibition of foreign titles, etc.[4]

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

Article 31: Right to protection of law

To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Article 32: Protection of right to life and personal liberty

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

Article 33: Safeguards as to arrest and detention:

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

[4] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

3. Nothing in clauses (1) and (2) shall apply to any person-
   a) Who for the time being is an enemy alien; or
   b) Who is arrested or detained under any law providing for preventive detention.

4. No law providing for preventive detention shall authorize the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.

5. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order.

6. Parliament may be law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (4)

Article 34: Prohibition of forced labour[5]

[5] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

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

2. Nothing in this article shall apply to compulsory labour.
   a) By persons undergoing lawful punishment for a criminal offence; or
   b) Required by any law for public purpose.

Article 35: Protection in respect of trial and punishment[6]

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

2. No person shall be prosecuted and punished for the same offence more than once.

3. Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.

4. No person accused of any offence shall be compelled to be a witness against himself.

5. No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

6. Nothing in clause (3) or clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial.

Article 36: Freedom of movement[7]

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

[6] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[7] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

Article 37: Freedom of assembly[8]

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 health.

Article 38: Freedom of association[9]

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

Article 39: Freedom of thought and conscience, and of speech[10]

1. Freedom or thought and conscience is guaranteed. Freedom of thought and conscience, and of speech.
2. 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 offense-
    a) the right of every citizen of freedom of speech and expression; and
    b) freedom of the press, are guaranteed.

Article 40: Freedom of profession or occupation[11]

Subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

Article 41: Freedom of religion[12]

1. Subject to law, public order and morality-

[8] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[9] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[10] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[11] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[12] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

a) every citizen has the right to profess, practice or propagate any religion;
b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.

2. No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.

Article 42: Rights to property[13]

Subject to any restrictions imposed by law, 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.

1. A law made under clause (1) shall provide for the acquisition, nationalization or requisition with compensation and shall either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that any provision in respect of such compensation is not adequate.
2. Nothing in this article shall affect the operation of any law made before the commencement of the Proclamations (Amendment) Order, 1977 (Proclamations Order No. I of 1977), in so far as it relates to the acquisition, nationalization or acquisition of any property without compensation.]

Article 43: Protection of home and correspondence[14]

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

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

[13] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[14] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

Article 44: Enforcement of fundamental rights[15]

1. The right to move the 22[High Court Division] in accordance with 23[clause (I)] of article 102 for the enforcement of the rights conferred by this Part of guaranteed.
2. Without prejudice to the powers of the 22[High Court Division] under article 102, Parliament may be law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.

Article 45: Modification of rights in respect of disciplinary[16]

Nothing in this Part shall apply to any provision of a disciplinary law relating to members of a disciplined force, being a provision limited to the purpose of ensuring the proper discharge of their duties or the maintenance of discipline in that force.

Article 46: Power to provide indemnity[17]

Notwithstanding anything in the foregoing provisions of this Part, Parliament may be law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration of other in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area.

Article 47: Saving for certain laws[18]

1. No law providing for any of the following matters shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridge, any of the rights guaranteed by this Part-

[15] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[16] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[17] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[18] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

i. the compulsory acquisition, nationalization or requisition of any property, or the control or management thereof whether temporarily or permanently;

ii. the compulsory amalgamation of bodies carrying on commercial or other undertakings;

iii. the extinction, modification, restriction or regulation of rights of directors, managers, agents and officers of any such bodies, or of the voting rights of persons owning shares or stock (in whatever form) therein;

iv. the extinction, modification, restriction or regulation of rights of search for or win minerals or mineral oil;

v. the carrying on by the Government or by a corporation owned, controlled or managed by the Government, of any trade, business, industry or service to the exclusion, complete or partial, or other persons; or

vi. the extinction, modification, restriction or regulation of any right to property, any right in respect of a profession, occupation, trade or business or the rights of employers or employees in any statutory public authority or in any commercial or industrial undertaking;

vii. if Parliament in such law (including, in the case of existing law, by amendment) expressly declares that such provision is made to give effect to any of the fundamental principles of state policy set out in Part II of this Constitution.

2. Notwithstanding anything contained in this Constitution the laws specified in the First Schedule (including any amendment of any such law) shall continue to have full force and effect, and no provision of any such law, nor anything done or omitted to be done under the authority of such law, shall be deemed void or unlawful on the ground of inconsistency with, or repugnance to, any provision of this Constitution; Provided that nothing in this article shall prevent amendment, modification or repeal of any such law.

3) Notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any

person, who is a member of any armed or defence or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, or ever to have become void or unlawful, on the ground that such law or provision of any such law is inconsistent with, or repugnant to any of the provisions of this Constitution.

Article 47A: In applicability of certain article[19]

1. The rights guaranteed under article 31. clauses (1) and (3) of article 35 and article 44 shall not apply to any person to whom a law specified in clause (3) of article 47 applies.

2. Notwithstanding anything contained in this Constitution, no person to whom a law specified in clause (3) of article 47 applies shall have the right to move the Supreme Court for any of the remedies under this Constitution.

2.4. Definition of arrest and detention [20]

Arrest: The definition of arrest is actually determined in a court of law by a judge. If you are told by a police officer that you are under arrest, then it is safe to say that you are. However, an officer may detain someone without having placed them under arrest.

This kind of legal conflict may arise if someone is trying to countersue the arresting officer or the agency he works for having wrongly placed him under arrest. There are also other circumstances when the actual arrest of the suspect and the exact time when it occurred is important for either the prosecutor or the defence to know precisely.

Arrests are especially important and interrelated aspects of the law of criminal procedure. This chapter deals with these aspects under three headings: Arrest. Under the first heading it concentrates firstly on the meaning and method of arrest and then

[19] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html
[20] http://bdlaws.minlaw.gov.bd/act-367/section-24574.html

on the provision regarding arrest without warrant.

Detention:

Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

2.5. Conclusion

In the above mentioned facts and circumstances stated hereinabove, it can be said that some rights have been ensured after birth of human from the womb of his/her mother and the aforesaid fundamental rights are guaranteed under the Constitution of the State for the citizen of its territory.

CHAPTER # 03

ANALYSIS ON FUNDAMENTAL RIGHTS AND THE PERSPECTIVE OF JUDICIAL ENFORCEMENT

3.1 Introduction

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

Following the footsteps of the French Declaration of Rights of Man and Citizen, 1789 and the American Declaration of Independence, 1776 and then the incorporation of a Bill of Right in the US Constitution in 1791 most of the democratic countries with written constitution are including a chapter for Bill of Rights or Fundamental Rights with special sanctity.[12] Why is such a trend being followed invariably in written constitutions?

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. The object of the incorporation of fundamental rights in the US Constitution was pointed out by Justice Jackson—

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

[12] *Ridwanul Hoque and Mostafa Mahmud Naser ,Indian Journal of International law, vol.40, no. 2, 2006,pp-162-170.*

Rights and freedoms form 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 into power the government may turn itself into a dictatorial 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 sucha 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 the supreme law and the government cannot take them away except by constitution amending process which is always a rigid one. This is why insertion of a Bill of Rightsin a written Constitution is considered to be one of the safeguards of democracy.

3.2 Supremacy of the Fundamental Rights[21]

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 extentof such inconsistency become void on the commencement of this constitution.

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21 https://www.google.com/search?q=supremacy+of+the+fundamental+rights&rlz=1C1CHBD_enBD970BD970&oq=supremacy+of+the+fundamental+rights&aqs=chrome..69i57.12052j0j15&sourceid=chrome&ie=UTF-8

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.[13] 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.

3.3 Imposition of Restriction over Fundamental Right[22]

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.

[13] *Ms. Amrita Chowdhury, Democratic Deficit in Bangladesh: A Cause for Concern (2010) <www.globalindiafoundation.org/democratic%20deficit.pdf> accessed on 25 October 2014*

[22] https://www.google.com/search?q=imposition+of+restriction+over+the+fundamental+rights&rlz=1C1CHBD_enBD970BD970&sxsrf=AOaemvJYJCaMLNN8irGuzqWIrVI1FldNMw%3A1633256190816&ei=_oJZYZKvMazhz7sP19aCmA0&ved=0ahUKEwiSptK4ga7zAhWs8HMBHVerANMQ4dUDCA4&uact=5&oq=imposition+of+restriction+over+the+fundamental+rights&gs_lcp=Cgdnd3Mtd2l6EAM6BwgAEEcQsAM6BggAEAcQHjoICAAQCBAHEB46CAgAEAcQBRAeOgQIIRAKSgQIQRgAUJqhAljQ-gJghosDaAJwAngBgAGfAogBzSmSAQYwLjM3LjGYAQCgAQHIAQjAAQE&sclient=gws-wiz

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 liberty wholly free from restraint; for that would lead to anarchy and disorder. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, healthy, peace, general order and morals of the community."

3.4 The Enforcement of the Fundamental Rights

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

"Everyone has the right on an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the

constitution or by law".

3.5 Effect of violation of fundamental rights

Art. 26(1) provides that all existing law inconsistent with the provisions of Part III shall, to the extent of inconsistency, become void on the commencement of the Constitution, while art. 26(2) provides that the State shall not make any law inconsistent with any provisions of Part III, and any law so made shall, to the extent ofinconsistency, be void.[14] Questions arise as to whether a law inconsistent with the provisions of Part III becomes void *ab-initio* or simply unenforceable and whether the effect of inconsistency is the same in respect of the pre-constitution and post-constitution laws.

The American Constitution does not contain any provision similar to art.7 or art.26 of the Constitution. Applying the general principles of constitutional law the American Supreme Court held early that an unconstitutional law is in reality no law and is wholly void; it imposes no duties and creates no rights and it confers no power or authority and justifies no act performed under it.[50] But an all-inclusive statement of a principle of absolute retroactive invalidity was later found to be not justified. It was held that an unconstitutional statue is not necessarily a nullity; it may have consequences binding upon people. Proceeding on the principle that a statue declared unconstitutional is void in the sense that it is inoperative or unenforceable and remains in a dormant state or hibernation, it was held by the federal Court of Appeal that a statue once declared unconstitutional and later held to be constitutional does not require re-enactment to restore its operative force.

[14] *Tom Christiano, "Democracy", (2008) The Stanford Encyclopedia of Philosophy (Fall 2008 Edition), Edward N. Zalta (ed.),*
<http://plato.stanford.edu/archives/fall2008/entries/democracy/ > Accessed10

The Indian Constitution contains art.13 which is similar to art.26 of the Constitution. So far as the pre-constitutional laws are concerned, the Indian Supreme Court held thatthe provisions relating to fundamental rights are not retrospective in operation on the commencement of the Constitution, and any pre-constitution law, to the extent of inconsistency with fundamental rights, is void in the sense that it is unenforceable; when it was passed it was valid and with the commencement of the constitution its operation is eclipsed by the provisions of the constitution. If the constitution is so amended as to remove the inconsistency, the law becomes operative without re-enactment. But the law remains valid all the time as against those who are not entitled to fundamental rights. So far as post-constitutional law the Indian Supreme Court held the view that such a law is void *ab initio* and anything done under the unconstitutional law, whether closed, completed or inchoate, will be wholly illegal; such a law is not revived by any subsequent event. The court seems to have shifted form this position in *Gujarat v. Shri Ambica Mills* wherein it took the view that where fundamental rights have been conferred only on some persons, natural or justice, a pre-constitution or post-constitution law contravening those rights is void qua those persons on whom the rights have been conferred, but is valid qua other person on whom those rights have not been conferred and it cannot be said that such a law is still-born or *non est*; the doctrine of eclipse equally applies to pre-constitution and post-constitution laws which violate rights conferred only on some persons.

The Pakistan Constitution of 1956 contained provisions similar to art.26 of the Constitution. In *East Pakistan vs. Mehdi Ali Khan* the Pakistan Supreme Court was dealing with a pre-constitution law and following the line adopted by the American Supreme Court made a distinction between the legislatures inherent luck of power to enact a law in which case the law is void *ab initio* and a limitation put on the power of a competent legislatures which renders the law void only to the extent of inconsistency in the sense that it cannot be applied to a particular case. Art.6 of Pakistan Constitutionof 1962 contained a similar provision.[15]

3.6 Prohibition of Foreign Title

The modern State is a sovereign State. It is, therefore, independent in the face of other communities. It may infuse its will towards them with a substance which need not be affected by the will of any external power. It is, moreover, internally supreme over the territory that it controls. It issues order to all men all association within that area; it receives orders from none of them. Its will is subject to no legal limitation of any kind.What it purposes is right by the mere announcement of intention.

But such a theory of sovereignty has at least three aspects from which it demands a careful scrutiny. It needs in the first place, historical analyses. The State as it now is has not escaped the categories of time. It has become what it is by virtue of an historical evolution. That development both explains the character of its present powerand, at the last, offers hints as to its possible future. It is, secondly, a theory of law. It makes of right merely the expression of a particular will, without reference to what that will contains. Such a definition, as will be seen, has about it an unquestionable logic; but the assumptions upon which it is compelled to build make it valueless for political philosophy.

The modern theory of sovereignty is, thirdly, a theory of political organization. It insists that there must be in every social order some single center of ultimate reference, some power that is able resolve disputes by saying a last word that will be obeyed. From the political angle, such a view, as will be argued, is of dubious correctness in fact; and it is at least probable that it has dangerous moral consequences. It will be here argued that it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered.

[15] *See Tom Ginsburg and Rosalind Dixon (eds), Comparative Constitutional Law (Cheltenham: Edward Elgar Publishing 2011) 2-9; Michel Rosenfeld and AndrasSajó (eds), The Oxford Handbook of Comparative Constitutional Law (Oxford University Press 2012) 3-4.*

That, in fact, with which we are dealing, is power; and what is important in the nature of power is the end it seeks to serve and the way in which it serves that end. These are both questions of evidence which are related to, but independent of, the rights that are born of legal structure. For there is historically, no limit to the variety of ways in which the use of power may be organized. The sovereign State, historically, is merely one of those ways, an incident in its evolution the utility of which has now reached its apogee. The problem before us has become, because of the unified interests of mankind, that of bending the modern State to the interests of humanity. The dogmas we use to that end are relatively of little important, so long as we are assured that the end is truly served.

3.7 **Necessity in prohibiting foreign title**.

It's not needed to prohibit the foreign title because, all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. So every person shall have the right to move freely throughout in the world. The present civilization is not closed in any special territory. In this present era of information and technology, all types of works have fallen into the same boundary. Thought of people are not limited. As this is the time of globalization, the problem and solution of all people should be solved in the same way.

And that's why it is not necessary to prohibit the foreign title.

3.8 Suspension of Fundamental Rights during emergency.

There are emergency provisions in the constitution of some countries but nowhere it is exactly defined what emergency is. Normally emergency means an unexpected occurrence requiring immediate action.The idea of suspension of some fundamental rights in time of emergency is common to all legal systems. Somewhere the constitution itself and somewhere a special law makes provisions in legal terms for situations of crisis when states of emergency may be involved.

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

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

2. An order made under this article may extend to the whole of Bangladesh or any partthereof.
3. Every order made under this article shall, as soon as may be, be laid before parliament.

3.9 Amendment Relating to Enforceability of Fundamental Rights

Two very significant events have taken place which have had significant events taken place which have had significant consequence upon the operation and enforcement of the fundamental rights. One is the proclamation of emergency throughout the country on December 28, 1974 whose effect, however is bound to be short lived. As consequences of this proclamation an order was passed on the court of law during the continuance of the emergency. As soon as the emergency ends, these rights will be revived. The other event which is of permanent nature is the enactment of the constitution (Fourth Amendment) Act, 1975 on January 25, 1975. So far, the changes effected by the fourth amendment to the constitution related to the enforcement of the fundamental rights, its is unusualness is as attractive as it is full of significance, if not for any other reason, at least for introducing a unique and unprecedented departure from the normal constitutional pattern followed elsewhere. Under unlamented provisions of articles 44 and 102 of the constitution, any citizen or in some cases, any person aggrieved by an infraction of any of the fundamental rights could move the supreme court for the necessary relief. Besides, being in conformity with the constitutional principles followed in countries which declared similar rights in their constitutions, the provisions relating to enforcement of fundamental rights by the supreme court as originally incorporated in article 44 and 102 of the constitution were considered necessary for three reasons, namely, rights of citizens declared under the constitution should, in fitness of thing and in accord with constitutional propriety, be adjudicated upon by one of the principal organs of government, namely, the highest tribunal, the supreme court of Bangladesh, for, in many cases involving the breach of fundamental rights the respondent against whom remedy would be sought is one or the remaining two organs of the government,

namely, the executive or the legislature. Since the constitution declared the fundamental rights, they are limitation on the powers of the legislature as well as the executive and whether such limitations have been transgressed by them determination, by an independent and impartial body or tribunal, involving high policy considerations. Secondly, such adjudication by the highest tribunal in the country was preferred because it is likely to command respect both of the rulers and the governed, perhaps, quite understandably, more than any other tribunal or court set up under an act of parliament. Thirdly, such means of enforcement would ensure speedy remedy, the number of appeals against an order made by the court would be minimized; under the un amended provision of articles 44 and 102 only one appeal from such an order lay to the appellate division of the court.If leave to appeal was granted to be it under article 103(3), or a certificate to appeal was granted by the High court Division under article 103(2) of the constitution.

Changes made by the 5th Amendment:[23]

The 5th Amendment brought, inter alias, the following important changes in the constitution:

3.9.1 Part VIA of the constitution dealing with one party system as introduced by the4th Amendment was omitted.

3.9.2 The independence of judiciary which was completely destroyed by the4th Amendment was restored partially (Articles 96 and 116).

3.9.3 The jurisdiction of the High court Division of the Supreme Court to enforce fundamental rights was restored to its original position as was in the original constitution (Article 44 and 102).]

3.9.4 Provision of supreme judicial council in respect of security of tenure of the judgesof the Supreme Court was interested (Article96).

3.9.5 The provision of absolute veto power of the president introduced by the 4th Amendment was abolished (Article 80).

3.9.6 A provision of referendum in respect of amendment of certain provisions of

[23] https://en.wikipedia.org/wiki/Fifth_Amendment_to_the_Constitution_of_Bangladesh

the constitution was inserted and to that end a new clause IA was created in Article 142.

3.9.7 Religious words ‘BISMILLAHIR RAHMANIR RAHIM’ was inserted in the beginning of the constitution i.e. above the preamble.

3.9.8 In the original constitution it was provided in Article 6 that citizens of Bangladeshwould be known as ‘BANGALEES’ But this was changed and it was provided now that citizens would be known as Bangladeshis.

3.9.9 One of four major fundamental principles of state policy ‘SECULARISM’ was omitted and in its place a new one the principle of absolute trust and faith in the Almighty Allah was inserted (Article 8).

3.9.10 One of four major fundamental principles of state policy socialism was given a new explanation to the effect that socialism would mean economic and social justice (Article 8).

3.9.11 A new article 145A was created where it was provided that all international treaties would be submitted to the president who should cause them to be laid parliament.

3.9.12 Another new Article 92A was created where by the president was given power to expend public moneys in certain cases.

3.9.13 Article 58 was amended to the effect that four-fifths of the total number of minister should be taken from among the members of parliament. It was also provided that the president would appoint as prime Minister the Member of Parliament who appeared to him to command the support of the majority of the members of parliament.

3.9.14 Some Case studies On The Fundamental rights:

Case Reference No.1:- Dr. Nurul Islam v. Bangladesh

Fact of the case

The appellant Dr. Nurul Islam was appointed an assistant surgeon in 1952(in East Bengal) and by successive promotions he became the Director and professor of medicine of the Institute of post-graduate and Research in 1971(in Bangladesh).In November, 1978 the Govt. issued a notice where by the appellant was relieved of his duties as professor of Medicine; he was to continue as Director of the institute which was made a non-practicing post. The appellant challenged this notice in the High Court Division by write petition no. 571 of 197889 and a bench of the High Court Division on 6-12-79 declared the notice to have been issued without lawful authority. 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 violatedof 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:- University of Dhaka -Vs- Dr.S.Hussain and another

Fact of the case

The principle of protection as provided in Article 35 of the constitution was invoked inas much as presidents order No. 67 of 1972 does not contain any express words giving retrospective effect, but the statute is prospective in nature only. Dr. Sayed Sajjad Hossain, who was the vice chancellor of the Dhaka University during the war Liberation. His case was referred to the First screening Board constituted under the presidents order No. 67 of 1972. The screening Board found him guilty. Accordingly, the respondent was dismissed from his service. The dismissal order was challenged before the High Court Division. The High Court Division upheld the order of dismissal.

Judgment of the case

B.H.Chowdhury, J. in paragraph 45 as held as follows:

In view of the matter the opinion of the activities attributed to the respondent Dr. Sajjad Hossain and Dr. Mohar Ali allegedly were performed in 1971 do not come within the mischief of the presidents order No. 67 of the 1972. Such activities are punishable under presidents order No. 8 of 1972 which was given retrospective effect. Both the respondents were given clemency and in the write petition they quoted the statement of the prime minister as mentioned in the press note. After assurance of suchclemency, it was not permissible for initiation of any proceedings. Presidents order NO.67 of 1972, however, has no manner of application because it was not given respective effect.

CHAPTER # 04

RECOMMENDATIONS AND CONCLUSION

4.1 Recommendations

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

The ongoing confrontational politics based on diametrically opposing stands and approaches of the two major political parties, has created a serious stalemate causing threats to democracy and human rights. The political parties are apparently investing their total efforts and time for devising ways and means mainly to go to power. All the political parties, while in power, hardly make any attempt voluntarily to strengthen thebases of democracy and human rights.[16]

We 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 furthermore, the consciousness rights. So their rights cannot be violated by the ruling class for their self-interest.

[16] *Tom Christiano, "Democracy", (2008) The Stanford Encyclopedia of Philosophy (Fall 2008 Edition), Edward N. Zalta (ed.), < http://plato.stanford.edu/archives/fall2008/entries/democracy/ > Accessed 10*

4.2 Conclusion

Human rights have emerged to be one of the core fundamental rights since it gives positive rights to citizens of a state as individuals. Individual rights have to be attendedas they provide concrete human rights such as right to freedom from torture and inhuman treatment, right to liberty, right to freedom of movement, freedom of speech and more. Most importantly it provides the right to life. The above issues could also beaddressed by statutory regulation, should constitutional amendment be considered too ambitious. It will require the parliament to introduce a bill on negotiation, conclusion, ratification and implementation of treaties as well as international customary norms within domestic jurisdiction.[17] It is also possible to address the problem by making special approaches to specific categories of treaties and customs, e.g. Bill of Rights incorporating all human rights universally recognized as such as well as all rights enshrined in international human rights instruments to which Bangladesh is a party, could be adopted by the parliament to make them part of domestic law as well. This would substantially serve the cause of protection, promotion and development of human rights which has now become a credible measure of human progress and welfare.

[17] *Freedom of expression explained, < http://www.brightknowledge.org/knowledge-bank/law-andpolitics/spotlight-on-law/freedom-of-expression-explained > accessed 14 November 2014*

In conclusion we can say, attention must be drawn to some legislation which are in flagrant conflict with the basic rules of the International Bill of Rights, and the earlier they are repealed, the better for the prevalence of the Rule of law. The laws are Indemnity ordinance 1975, the Vested Property that which is nothing but the alter ego of the Enemy Properties Ordinance of Ayub's dictatorial regime, and the Special powers Act 1974.Though there are many provisions in Bangladesh constitution for protecting human rights but these right cannot protected by the state. We can see the MP's, Ministers or VIP's get special facilities in trial and jail. So we can say all are not equal in the eye of law. President can suspend the fundamental rights in emergency. So we can say fundamental rights itself is not fundamental. We hope parliament and the government should make policy for established human rights and fundamental freedom like that all the people enjoy these rights equally and none can suspend these right in any cause.[18]

[18] *David Smith, "Time line: a history of free speech". The Guardian (London, 02 Feb2006)*

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