

**Features of Fundamental Rights in the Constitution of  
Bangladesh: A critical Analysis**

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**Submission Date: 10 April 2010**

**DEPARTMENT OF LAW**

**STAMFORD UNIVERSITY BANGLADESH**

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A dissertation presented to the Department of Law in partial  
fulfillment of the requirements for the Degree of Bachelor of Laws (Honours)

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## DECLARATION

I hereby do solemnly declare that the work presented in this dissertation has been carried out by me and has not been previously submitted to any other institution.

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**CERTIFICATION**

This is to certify that the dissertation on “Features of fundamental rights in the constitution of Bangladesh: A critical analysis” is done by Tasnuva Hossain in partial fulfillment of the requirements for the degree of LL.B (Honours) from Stamford University Bangladesh. The dissertation has been carried out under my guidance and is a record of the *bona fide* work carried out successfully.

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.....

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## **ABSTRACT**

This dissertation focuses on the features of fundamental rights in the constitution of Bangladesh. Accordingly, it deals with the definition, nature and classification of fundamental rights and finds out its reflection in the constitutional provisions of Bangladesh. Further the paper scrutinizes the drawbacks relating to the proper implementation of the fundamental rights in our country. Several paragraphs denote the stipulations under which these fundamental rights can be suspended under the constitution. Some case references have been provided to understand the real nature of the suspension of these rights and also to recommend some possible solutions.

## Chapter 1

### INTRODUCTION

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 rights. That among these are life, liberty and the pursuit of happiness. That to secure these rights, government are instituted among men, deriving their just powers from 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”.<sup>1</sup>

This essay is merely focusing on the features of fundamental rights as have been preserved in the constitution of Bangladesh. The Framers of Bangladesh have been discussed in Article basis starting from the preamble of the constitution. The Framers 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

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<sup>1</sup> Lan LoveLand, *Constitutional Law, Administrative Law and Human Rights*, 4th ed , (New York: Oxford University press, 2003), p.1.

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.<sup>2</sup>

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.<sup>3</sup> 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 forms 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 such a possible danger. In other words, they provide a restraint on the power of the government so that it can not interfere with the people's basic rights according to its whims. When rights and freedoms are placed as 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 rights in a written constitution is considered to be one of the safeguards of democracy.<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup> F.K.M.A.Munim, *Rights of Citizens under the constitution and Law*, 1<sup>ST</sup> ed, (Dhaka: Bangladesh Institute of Law and International Affairs, 1975), p.12.

<sup>3</sup> Md. Abdul Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective*, 2<sup>nd</sup> ed., (Dhaka: Md. Yousuf Ali Khan, 2003), p.95.

<sup>4</sup> *Ibid*, p.92.

The right to equal protection of the law, freedom from punishment under an *ex post facto* legislation the religious safe guards in educational institutions and the freedom of thought and conscience are stated in absolute terms without reference to restriction. But all the other rights are set out in language which provides for their restrictions. Such phrases as “save in accordance with law”. “Reasonable restrictions” and subject to law, public order and morality have been used qualify the absoluteness of the words granting these rights. Two rights, it may be observed, have suffered diminution, if not total eclipse. These are rights relating to property and the right to carry on any lawful trade or business. Any restrictions may be imposed upon the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. Sometimes the judges will undoubtedly be confronted with difficulties in interpreting the words qualifying the rights which leave considerable room for legitimate difference of opinion. In interpreting the scope of the restrictions placed upon them, the court will be faced with the problem of constantly balancing the interests of the individual against the collective interests of the state. Not always will the individual win, nor should the state be always the victor, for the courts in Bangladesh shall have to endeavor to hold the balance fairly between these two conflicting interests. For, they may be supposed to know what has been said by an eminent judge that each man should be free to develop his own personality to the full and the only duties which should restrict this freedom are those which are necessary to enable every one else to do the same. Whenever these interests are nicely balanced, the scale goes down on the side of freedom.<sup>6</sup>

Formulations of natural rights began from the middle of the eighteenth century. An early attempt to record some rights in a written document was made in the American Declaration of Independence. The French Declaration of the Rights of Man promulgated by the Assembly of 1789 prefaced the

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<sup>5</sup> F.K.M.A.Munim, *Rights of the Citizen under the Constitution and Law*, 1<sup>st</sup> ed., (Dhaka: Bangladesh Institute of Law and International Affairs, 1975), p.1.

<sup>6</sup> *Ibid*, p.12.

constitution of 1791. It contained a set of fundamental or natural rights which proclaimed liberty of conscience liberty of the press, the right of public meeting and the responsibility of government officials. These are still regarded by the French constitutional lawyers as valid, either as principles of natural law, or as essential principles of political action in a free and democratic country. In dealing with the problem of a declaration of rights the framers of the constitution of the Fifth French Republic placed it in the preamble to the constitution and were satisfied by proclaiming, "their attachment to the Rights of man and the principles of National Sovereignty". The Irish constitution of 1937 contains declarations of fundamental rights. Article 40 of that constitution declares equality before the law, the guarantee to vindicate personal rights, personal freedom, free expression of convictions and opinions, the right of peaceable assembly and association. Article 42 guarantees rights to education. Article 43 protects rights to private property. Article 44(2) includes freedom of conscience and the free expression and practice of religion. The Bangladesh constitutions have also, in following the Irish constitution made a clear cut separation of fundamental rights from directive principles. Freedom from discrimination, the rights to personal liberty, freedom of expression, assembly, association, residence to acquire property and to follow an avocation, freedom of conscience, protection against expropriation without compensation are all guaranteed by the Burma constitution of 1948, which also provides for the enforcement of these rights by the English prerogative writs. The constitution of Canada, Australia and Union of South Africa, being Acts of British parliament do not provide any "comprehensive statement of human rights". Their resemblance in the respect to the United Kingdom constitution is quite obvious. They follow the British pattern in so far as they neither affirm nor guarantee the liberties of the subject. Many of the new and newly emerging states in Africa and elsewhere are seen to have guaranteed some fundamental right in their constitutions. Several authors of International repute have discussed the problem whether the United Nations charter has put any legal obligations on the Member states to respect human rights and fundamental freedoms. The European convention for the protection of Human rights and Fundamental

Freedoms was signed in Rome on November 4, 1950. The latter provided that “the High contracting parties shall secure to every one with in their jurisdiction the rights and freedoms defined in section I of this convention”. These rights are a more detailed version of those contained in the universal Declaration of rights, 1948.<sup>7</sup>

Part III of the constitution enumerates a host of rights called fundamental rights. In 1650, Grotius, the Dutch political thinker propounded a theory that when a sovereign of a state infringes the basic human rights of his subjects, it becomes an international question and the sovereign forfeits his right to rule under the law of nations and other nations may be justified in intervening. Though the theory had no immediate impact, it drew the attention of the contemporary political thinkers and by the next century it was being considered that every man has certain natural and inalienable rights necessary for the development of his personality which should be inviolable. The American constitution adopted in 1787 did not guarantee the enjoyment of any such right. The reaction that followed led to the inclusion of a Bill of Rights in 1789 in the form of ten amendments. More than a century there after, the American Supreme Court observed. The very purpose of a Bill of Rights was to with draw certain subjects from the vicissitudes of political controversy to place them beyond the reach of majorities and of legal principles to be applied by courts. The Second World War saw the worst trampling of the basic rights of man. In 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights. The European Convention for the protection of Human Rights and Fundamental freedom was signed in 1950.<sup>8</sup> The importance of fundamental rights in the third world countries, where the democratic tradition has yet to take root, can not be over-emphasized Majority rule is accepted because there is no better alternative to it. But there are certain aspects of the liberty of individuals which must be kept beyond the political decision of persons having majority support for the time being. Even in Britain where common law

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<sup>7</sup> *Ibid*, p.2-5.

<sup>8</sup> Mahmudul Islam, *Constitution Law of Bangladesh*, 2<sup>nd</sup> ed, (Dhaka: Mullick Brohers, 2003), p. 87.

recognized many of the rights mentioned in the Universal Declaration of Human Rights. Parliament's competence to pass laws in derogation of these rights led to the comment that civil liberties in Britain are extremely precarious legal concepts. We have just to remind us that keeping in mind the question of access to justice, the framers of the constitution have made provision in article 44 for courts other than the High court Division for enforcement of fundamental rights and parliament may pass necessary law to enable the poor people seek enforcement of the rights the constitution has given them. <sup>9</sup>

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<sup>9</sup> *Ibid*, p.87.

## Chapter 2

### GENERAL CONCEPT OF THE FUNDAMENTAL RIGHTS

#### 2.1 Definition of Right

Right means 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 state. Right means in particular (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law and (c) no person shall be compelled to do which the law does not require him to do.<sup>10</sup>

#### 2.2 Definition of 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.<sup>13</sup> Fundamental rights are enforceable in a court of law and they create justifiable rights in favor of individuals and the courts can enforce them against the Government. Again the courts are

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<sup>10</sup> Sharifuddin Pirzada, *Fundamental Rights and Constitutional Remedies in Pakistan*, 1<sup>st</sup> ed, (Lahore: All Pakistan Legal Decisions, 1966), p.113.



competent to declare as void any law that is inconsistent with any of the fundamental rights. Fundamental rights are mandatory in nature. The fundamental rights create negative obligation on the state i.e. the state is required to refrain from doing something. If there is any conflict between directives and fundamental rights, fundamental rights will prevail over the directives. Fundamental rights are primarily aimed at assuring political freedom to citizens by protecting them against excessive state action.<sup>11</sup>

### **2.3 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 they are based 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.<sup>12</sup>

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<sup>11</sup> Md. Abdul Halim, *Constitution, Constitution Law and Politics: Bangladesh Perspective*, 2<sup>nd</sup> ed, (Dhaka: Md. Yousuf Ali Khan, 2003), p.76.

<sup>12</sup> A.C. Kapur and others, *Select Constitutions*, 15<sup>th</sup> ed, (New Delhi: S. Chand and Company Ltd, 2002), p.109.

## 2.4 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. Equality 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).<sup>13</sup>

### 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.<sup>14</sup>

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<sup>13</sup> Md.AbdulAlim, *Constitution, Constitution Law and Politics: Bangladesh perspective*, 2<sup>nd</sup> ed., (Dhaka: Md.Yousuf Ali Khan, 2003), p.98.

C. Fundamental rights which have 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).<sup>15</sup>

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<sup>14</sup> *Ibid*, p. 99.

<sup>15</sup> *Ibid*, p.100.

## Chapter 3

# CONSTITUTIONAL PROVISIONS OF FUNDAMENTAL RIGHTS IN BANGLADESH

### 3.1 Fundamental Rights in Bangladesh constitution

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.<sup>16</sup>

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

#### 1. Laws in consistent with Fundamental rights to be void

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<sup>16</sup> Md.AbdulAlim, *Constitution, Constitution Law and Politics: Bangladesh perspective*, 2<sup>nd</sup> ed., (Dhaka: Md.Yousuf Ali Khan, 2003), p.96.

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.<sup>17</sup> 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 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 some countries may be amended like any other statues 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 ordeal in validity test .my considered opinion therefore is that an amendment of the constitution is not included in law ”with in the meaning of Article 7 in the same way as it is not law in Article.<sup>18</sup>

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<sup>17</sup> Mahmudul Islam, *Constitutional Law of Banladesh*, 2<sup>nd</sup> ed., (Dhaka: Mullick Brothers, 2003), p.90.

<sup>18</sup> 41 DLR (AD) 165.

## **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.<sup>19</sup>

“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.<sup>20</sup>

## **3. Discrimination on grounds of religion etc**

Art. 28 has been introduced to make classification only on grounds of religion, race, caste, sex or place of birth unreasonable except when a provision is made in favor of women, children and backward section of citizens.<sup>21</sup>

As a matter of fact, this article projects the citizen against discrimination. The state can not discriminate only on the grounds as mentioned in Article 28, but with some other national factor, the discrimination would be valid. The crucial

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<sup>19</sup> F.K.M.A.Munim, *Rights of the Citizens under the Constitution and Law*, 1<sup>st</sup> ed. , (Dhaka: Bangladesh Institute of Law and International Affairs , 1975) , p.249.

<sup>20</sup> Mahmudul Islam, *Constitutional Law of Bangladesh*, 2<sup>nd</sup> ed., (Dhaka: Mullick Brothers, 2003), p.104.

<sup>21</sup> *Ibid*, p.94.

word in this Article is discrimination which means making an adverse destination with regard to or distinguishing unfavorably from others.<sup>22</sup>

#### **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 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 proviso on an exception can not be so interpreted as to nullify or destroy the main provision.<sup>23</sup>In the case of *Bangladesh v. Azizur Rahman*, Rahman, j. will interpreting Article 29 of the constitution, Equal opportunity held at paragraph

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<sup>22</sup> Justice Latifur Rahman, *The Constitution of the People’s Republic of Bangladesh*, 1<sup>st</sup> ed., (Shahidul Hosain Mullick, 2004), p. 60.

<sup>23</sup> F.K.M.A.Munim, *Rights of the Citizens under the Constitution and Law*, 1<sup>st</sup> ed., (Dhaka: Bangladesh Institute of Law and International Affairs, 1975), p.283-285.

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 writ 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<sup>24</sup>.

## **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.<sup>25</sup>

## **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,

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<sup>24</sup> 46 DLR (AD) 19.

<sup>25</sup> *The Constitution of the People's Republic of Bangladesh, 1972, Article. 30.*



reputation and property. the term in accordance with law is akin to American concept.<sup>26</sup>

## **7. Protection of Right to life and personal liberty**

No person shall be deprived of life or personal liberty saved in accordance with law.<sup>27</sup> In the case of *Islam Mahmood v. Bangladesh*, H.m.HabiburRahman, 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 detainee under the special power Act.<sup>28</sup>

## **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 time for such journey. The Article provides for certain

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<sup>26</sup> Mahmudul Islam, *Constitutional Law of Bangladesh*, 2<sup>nd</sup> ed., (Dhaka: Mullick Brothers, 2003), p.94.

<sup>27</sup> *The Constitution of the People's Republic of Bangladesh, 1972*, Article 32.

<sup>28</sup> 44 DLR 1.

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 proviso of this clause also authorizes the detaining authority for not disclosure of facts in public interest.<sup>29</sup> 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 1year and3 months.<sup>30</sup>

## **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 sentences 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

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<sup>29</sup> Justice Latifur Rahman, *The Constitution of the People's Republic of Bangladesh*, 1<sup>st</sup> ed., (Shahidul Hosain Mullick , 2004 ) , p.65.

<sup>30</sup> 46 DLR 29.

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.<sup>31</sup>

## **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 (3) ensures 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.<sup>32</sup>

## **11. Freedom of movement**

Right 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 framers 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 through out Bangladesh, to reside and settle in any place in Bangladesh, and to leave and re-enter Bangladesh.<sup>33</sup>In the case of *Dr. Mohiuddinfarooque v.*

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<sup>31</sup> F.K.M.A.Munim, *Rights of the Citizens under the Constitution and Law*, 1<sup>st</sup> ed., (Dhaka: Bangladesh Institute of Law and International Affairs, 1975), p. 80.

<sup>32</sup> Mahmudul Islam, *Constitutional Law of Bangladesh*, 2<sup>nd</sup> ed., (Dhaka: Mullick Brothers, 2003), p.207.

<sup>33</sup> *Ibid*, p.222.

*Bangladesh 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.<sup>34</sup>

## **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.<sup>35</sup>

## **13. Freedom of Association**

The very existence of democracy is dependent on the right to form associations, Without the right there can not 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. <sup>36</sup>

## **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

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<sup>34</sup> 49 DLR 1.

<sup>35</sup> *The Constitution of the People's Republic of Bangladesh*, Art .37.

<sup>36</sup> Mahmudul Islam, *Constitutional Law of Bangladesh*, 2nd ed., (Dhaka: Mullick Brothers, 2003), p.230.

first thing and autocrat does is to curb the freedom of speech.<sup>37</sup> 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 statutory authority the court was not justified in declaring the impugned Act to be *ultra vires* of Article 39(2) of the constitution .<sup>38</sup>

### **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.<sup>39</sup>

### **16. Freedom of religion**

Article 41 ensures that every citizen has the right to profess, practice or propagate any religion and every religious community or group can establish, maintain and manage its religious institutions subject to reasonable restriction imposed by law on the ground of public order and morality.<sup>40</sup>

### **17. Rights to property**

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<sup>37</sup> *Ibid*, p. 239.

<sup>38</sup> 44 DLR (AD) 184.

<sup>39</sup> F.K.M.A.Munim, *Rights of the Citizens under the Constitution and Law*, 1<sup>st</sup> ed., (Dhaka: Bangladesh Institute of Law and International Affairs, 1975), p.286.

<sup>40</sup> Justice Latifur Rahman, *The Constitution of the people's Republic of Bangladesh*, 1<sup>st</sup> ed., (Dhaka: Shahidur Hosain Mullick, 2004), p.75.

Article 42 guarantee 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.<sup>41</sup>

### **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.

Restrictions 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.<sup>42</sup>

### **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 Court must always have the power of enforcement of fundamental rights.<sup>43</sup>

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<sup>41</sup> *Ibid*, p. 76.

<sup>42</sup> *Ibid*, p. 78.

<sup>43</sup> Mahmudul Islam, *Constitutional Law of Bangladesh*, 2<sup>nd</sup> ed., (Dhaka: Mullick Brothers, 2003), p .280.

## **20. 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.<sup>44</sup>

## **21. Power to provide indemnity**

Article 46 grants indemnity by law in respect of acts done during the national liberation struggle or the maintenance or restoration or order in any area in Bangladesh.<sup>45</sup>

## **22. Saving for certain laws**

Article 47 certain laws have been saved and Clause (1) of this Article grants immunity from 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.<sup>46</sup>

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<sup>44</sup> Justice Latifur Rahman, *The Constitution of the people's Republic of Bangladesh*, 1<sup>st</sup> ed., (Shahidur Hosain Mullick, 2004), p. 79.

<sup>45</sup> *Ibid*, p .81.

<sup>46</sup> *Ibid*, p .82.

### **23. Inapplicability of certain Articles**

The persons in respect of whom Clause (3) of Article 47 apply 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.<sup>47</sup>

In the above-named the Article basis starting from the preamble, Security for the fundamental rights in the Bangladesh constitution.

### **3.2 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

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<sup>47</sup> *Ibid*, p . 83.



Mukharjee in *Gopalan v. State of Madras*. There cannot be any such thing as absolute or uncontrolled liberty wholly free from restraint; for that would lead to anarchy and disorder. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community'.<sup>48</sup>

### **3.3 Supremacy of the Fundamental Rights**

Supremacy of the Fundamental Rights are 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 duty to safeguard protect 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 effected 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 this 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

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<sup>48</sup> Md.AbdulAlim, *Constitution, Constitution Law and Politics: Bangladesh perspective*, 2<sup>nd</sup> ed., (Dhaka: Md.Yousuf Ali Khan, 2003), p.97.

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.<sup>49</sup>

### **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 executive does 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 that they are endowed by their creator with certain inalienable rights, that among these are life, liberty, and pursuit of happiness; that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is right of the people to alter or abolish it and to institute a new one. The declaration, therefore, has laid the utmost emphasis on the enforcement of rights that if the peoples rights for the protection of which the government is formed, can not 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 –

“Every one 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”.<sup>50</sup>

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<sup>49</sup> *Ibid*, P. 60-61.

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<sup>50</sup> Md.AbdulAlim, *Constitution, Constitution Law and Politics: Bangladesh perspective*, 2<sup>nd</sup> ed, (Dhaka: Md.Yousuf Ali Khan, 2003), p. 94.

## Chapter 4

### **SOME CASE STUDIES ON THE FUNDAMENTAL RIGHTS**

#### **4.1 Case Reference 1**

*Dr. Nurul Islam v. Bangladesh*<sup>1</sup>

#### **Fact of the case**

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<sup>1</sup> 33 DLR 201

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 1979 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 servants Retirement Act and gave him no relief where upon the appellant moved 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 and the order amount to the appellant's compulsory retirement and is *ultra vires* of 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 court**

Article 27 of the constitution which speaks of entitled to equal protection of law was 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 be clearly arbitrary and should have all reasonable relation to the objects and to the public purpose sought to be achieved by the legislation.<sup>2</sup>

## **4.2 Case Reference 2**

### ***University of Dhaka v. Dr. S. Hussain and another*<sup>3</sup>**

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<sup>2</sup> Justice Latifur Rahman, *The Constitution of the people's Republic of Bangladesh*, 1<sup>st</sup> ed, (Shahidur Hosain Mullick, 2004), p.57.

<sup>3</sup> 34 DLR (AD) 69.

### **Fact of the case**

The principle of protection as provided in Article 35 of the constitution was invoked in as much as president's order No. 67 of 1972 does not contain any express words giving retrospective effect, but the statute is prospective in nature only. Dr .Syed Sajjad Hossain, who was the vice-chancellor of the Dhaka University during the war of Liberation in 1971, was charged with having collaborated with Pakistan occupation order Army during the war of liberation. His case was referred to the First screening Board constituted under the president's 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 court**

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

In view of the matter the opinion is all 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 president's order No. 67 of 1972. Such activities are punishable under president's order No.8 of 1972. As a matter of fact, both of them were prosecuted under president's 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 such clemency, it was not permissible for initiation of any proceedings. President's order No. 67 of 1972, however, has no manner of application because it was not given retrospective effect.

### 4.3 Case Reference 3

#### *Asaduzzaman v. Bangladesh*<sup>4</sup>

##### **Fact of the case**

The appellant Asaduzzaman Challenged the validity of certain Amendment made in the Bangladesh Red Crescent Society order , 1973 (P.O.NO.26 of 1973 ) on the ground that those amendments are void being inconsistent with Article 38 of the Constitution . The fact of that the Bangladesh Red cross society was constituted by p.o.No.26 of 1973, that order was given retrospective effect from December 16,1971. It was also provided that the first members were the members who were life members on members of any grade of the Pakistan Red Cross society immediately before the commencement of that order and were resident in Bangladesh. Section 9 of the amending Act provided that on the commencement of that Act all existing executive committees and the general body be dissolved and till the reconstitution of the executive committees under the order and the rules framed there under all powers and actions in case of a district unit be performed by the chairman of Zillah punished or by such persons acting as the chairman , and in case of each of the municipal corporations of Dhaka, Chittagong, Khulna, Rajshahi by its mayor or by the person performing the functions of the mayor. It was further provided there that all executive committees and the general body be reconstitution respectively by 30<sup>th</sup> April 1989 and by 31<sup>st</sup> may, 1989 and that under clause (a) of the amended Article 9A the term of the reconstituted executive committees be determined from 1<sup>st</sup> January, 1989.

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<sup>4</sup> 42 DLR (AD) 144.



## **Judgment of case**

M.H.Rahman, J. held in that decision at paragraphs 37, 38 and 39 held under:

“The right under 38 implies that several individuals having a community of interests can join together to form a voluntary association for furtherance of a common lawful object. This right along with other rights , described as fundamental rights under part III of the constitution , have been guaranteed in this sense that the state shall not make any law inconsistent with any provision of that part III of the constitution , and any law so made shall , to the extent of such inconsistency , be void . The rights are fundamental for civil life so that citizens may borrow three very significant words from the preamble, “prosper in freedom”. Under Article 102(1) of the constitution the High Court Division has been made the guardian for enforcement of fundamental rights not only against the executive but also against the legislature. The judicial review with regard to the vires of a law passed by the legislature from the court’s constitutional duty to enforce a fundamental right.

The word ‘term’ in Article 38 does not limit the exercise of that right to the formation of an association. The right to form an association must of necessity imply the right to continue and carry on the activities of the association as well .

Article 38 cannot, however, be involved for support, sustenance of fulfillment of every object of an association”.<sup>5</sup>

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<sup>5</sup> Justice Latifur Rahman , *The Constitution of the people’s Republic of Bangladesh* , 1st ed , (Shahidur Hosain Mullick ,2004) , p. 72.

## Chapter 5

### **DRAWBACKS RELATING TO FUNDAMENTAL RIGHTS**

#### **5.1 Courts jurisdiction regarding the enforcement of fundamental rights**

The constitution of Bangladesh, as already seen, has defined, in part III, those rights generally regarded as fundamental in modern countries with representative and responsible governments. Realizing that the mere

declaration of such rights would prove ineffective against enforcement by the legislature and the executive, the framers of the constitution provided remedies for any such violation. A person complaining of abridgement of his rights could, under clause (1) of Article 102, move the High Court Division for an appropriate writ on order, and if successful, could be granted a declaration that the impugned provision of law is unenforceable and such consequential relief as the case demands. The combined effect of articles 44(1) and 102(1) of the constitution is to make the guarantee of the constitutional rights a reality and not a mere expression of noble sentiments.

The courts duty in relation to the interpretation of the imposed by a superior law on the legislative and executive powers has been stated in the past by the courts in this country. As early as 1878, the judicial committee of the Privy Council expressed the view that it is the court's function to consider the impugned law and ascertain the degree of inconsistency between it and any other provision which restricts such law.

The established courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively they are restricted. The circumstances under which a legislative enactment may be declared unconstitutional and which are clearly expressed in the following words by an American writer are worth considering:

“The courts may declare legislative enactments unconstitutional and void in some cases, but not because the judicial power is superior in degree or dignity to the legislative being required to declare what the law is in the cases which come before them, they must enforce the constitution as the paramount law, whenever, a legislative enactment comes in conflict with it. but the courts sit, not to review or revise the legislative action, but to enforce the legislative will and it is only where they find that the legislature has failed to keep within its

constitutional limits, that they are at liberty to disregard its action; and in doing as they only do what every private citizen may do in respect to the mandates of the courts when the judges assume to act, and to render judgment or decrees without jurisdiction. Nevertheless in declaring a law unconstitutional, a court must necessarily cover the same ground which has already been covered by the legislative department in deciding upon the propriety of enacting the law, and they must indirectly overrule the decision of that co-ordinate department the task is, therefore, a delicate one and only to be entered upon with reluctance and hesitation. Courts in this sub- continent have, in reviewing an Act of the legislature, developed rules of construction".<sup>6</sup>

## **5.2 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 a consequence of this proclamation an order was passed on the same day suspending most of the fundamental rights and also their enforcement in a 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 a permanent nature is the enactment of the constitution (Fourth Amendment) Act, 1975 on January 25, 1975. So far, however, the changes effected by the forth amendment to the constitution relate 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 unamended provisions of articles 44 and 102 of the constitution, any citizen or in some cases, any person aggrieved by an

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<sup>6</sup> F.K.M.A.Munim, *Rights of the Citizens under the Constitution and Law*, 1<sup>st</sup> ed., (Dhaka: Bangladesh Institute of Law and International Affairs, 1975), p. 18-22.

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 other of 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 unamended 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.<sup>7</sup>

Changes made by the 5<sup>th</sup> Amendment:

The 5<sup>th</sup> Amendment brought, inter alias, the following important changes in the constitution:

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<sup>7</sup> *Ibid*, pp.332-334.

1. Part VIA of the constitution dealing with one party system as introduced by the 4<sup>th</sup> Amendment was omitted.
2. The independence of judiciary which was completely destroyed by the 4<sup>th</sup> Amendment was restored partially (Articles 96 and 116).
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).
4. Provision of supreme judicial council in respect of security of tenure of the judges of the Supreme Court was inserted (Article 96).
5. The provision of absolute veto power of the president introduced by the 4<sup>th</sup> Amendment was abolished (Article 80).
6. Provisions of referendum in respect of amendment of certain provisions of the constitution was inserted and to that end a new clause IA was created in Article 142.
7. Religious words 'BISMILLAHIR RAHMANIR RAHIM' was inserted in the beginning of the constitution i.e. above the preamble.
8. In the original constitution it was provided in Article 6 that citizens of Bangladesh would be known as 'BANGALEES'. But this was changed and it was provided now that citizens would be known as Bangladeshis.
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).
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).
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.
12. Another new Article 92A was created where by the president was given power to expend public moneys in certain cases.

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.<sup>8</sup>

### **5.3 Suspension of Fundamental Rights during Emergency**

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 the order .
2. An order made under this article may extend to the whole of Bangladesh or any part thereof.
3. Every order made under this article shall, as soon as may be, be laid before parliament.<sup>9</sup>

### **5.4 Legal loopholes regarding Fundamental Rights in Bangladesh**

The fundamental rights have been criticised for many reasons. Political groups have demanded that the [right to work](#), the right to economic assistance in case of [unemployment](#), old age, and similar rights be enshrined as constitutional guarantees to address issues of poverty and economic insecurity, though these provisions have been enshrined in the [Directive Principles of state policy](#). The

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<sup>8</sup> Md.AbdulAlim, *Constitution, Constitution Law and Politics: Bangladesh perspective*, 2<sup>nd</sup> ed., (Dhaka: Md.Yousuf Ali Khan, 2003), p. 153.

<sup>9</sup> *The constitution of the people's Republic of Bangladesh, Art. 141C.*

right to freedom and personal liberty has a number of limiting clauses, and thus have been criticized for failing to check the sanctioning of powers often deemed "excessive". There is also the provision of preventive detention and suspension of fundamental rights in times of [Emergency](#). The provisions of acts are a means of countering the fundamental rights, because they sanction excessive powers with the aim of fighting internal and cross-border [terrorism](#) and political violence, without safeguards for [civil rights](#). The phrases "security of State", "public order" and "morality" are of wide implication. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly stated in the constitution, and this ambiguity leads to unnecessary litigation. The freedom to assemble peaceably and without arms is exercised, but in some cases, these meetings are broken up by the police through the use of non-fatal methods. "[Freedom of press](#)" has not been included in the right to freedom, which is necessary for formulating [public opinion](#) and to make [freedom of expression](#) more legitimate. Employment of child labour in hazardous job environments has been reduced, but their employment even in non-hazardous jobs, including their prevalent employment as domestic help violates the spirit and ideals of the [constitution](#).<sup>10</sup>

There are other draw breaks as stated below:

1. Constitutionally Fundamental Rights are existed in Bangladesh But practically people can not enjoy due to administrative drawbacks.
2. Emergency period is another breakdown of Fundamental Rights.
3. Martial law is also violations of Fundamental Rights.
4. Some laws are enacted for the interest of the public which is problems of the Fundamental Rights individual.
5. In democratic countries opinion of the majority are obeyed by the constitution where as opinion of the minority are restricted.
6. Sometime Fundamental Rights are not executed for the interest of the country.

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<sup>10</sup> [<http://www.banglarights.net/HTML/HR-Situation-4.html>, last visited 13 Feb 2010]



7. Unethical activities of the citizen are also restricted by the law of the country.

## Chapter 6

### **CONCLUSION**

#### **6.1 Recommendations**

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 intentional barrier Created by the government for political interest and to oppress the opposition. It is the responsibility of the government to limit the events to violate the fundamental rights of the people and to try their best suspend these rights in some very rare cases where there is really no other alternative and which is truly done for the sake of the country's overall benefit with no purpose of self interest f the ruling party .some more restrictions 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 of the common people needs to be

increased regarding their fundamental rights. So that their rights can not be violated by the ruling class for their self interest.

## **6.2 Concluding Remarks**

Fundamental Rights are to be enjoyed by the people of the democratic countries where rule of law is established by the constitution. Fundamental rights are restricted in the society where undemocratic government prevails. So, in a modern democratic society, it is usually expected that the government will not go for whimsical suspension of the fundamental rights and would maximize the chances for these rights to be availed by its citizens.

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