Sonargaon University

Research Monograph On

Safeguard of fundamental rights and human rights under the constitutional mandate of Bangladesh and Intentional instruments.

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Date : 5th January 2023

Letter of Transmittal

To

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Subject: Submission of Research Monograph on "**Safeguard of fundamental rights and Human Rights under the Constitutional mandate of Bangladesh and international instruments ".**

Dear Sir,

This is a great pleasure to submit the Research Monograph on "**Safeguard of fundamental rights and Human Rights under the Constitutional mandate of Bangladesh and international instruments**" as a partial requirement

for the fulfillment of my LLM course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Yours sincerely

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Declaration

I do hereby declare that the Research Monograph Title "**Safeguard of fundamental rights and Human Rights under the Constitutional mandate of Bangladesh and international instruments"** prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B. (Hon's) Degree. This is an original work of nine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

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Supervisor Certificate

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Faculty of Arts and Humanities, Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LLM program.

Md. Abdul Alim

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Thank You

Sumi Mondal

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Chapter – 1. Introduction

1.1 Abstract

This term paper is forcing on the fundamental rights. Its tries to analysis critically few fundamental rights like prohibition of foreign title. suspension of fundamental Rights during emergency. also study some cases regarding these rights in this dissertation . Finally some recommendations have been placed.

1.2 Introduction

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

1.3 Problem statement:

The constitution of Bangladesh guarantees all the major internationally recognized human right4, however, violation of fundamental rights has been a common practice in a developing country like Bangladesh. The primary goal of the study is to assess framework of fundamental rights in constitution of Bangladesh and its paradoxes.

1.4 Literature Review:

Bangladesh has the obligations to implement international laws, with regard to human rights;

therefore the constitution of Bangladesh recognizes those rights as the fundamental rights. There are two theories regarding relationship between international law and national law: monism and dualism. According to monism theory, International Law and National Law are Concomitant aspect of the general system-law in general5 and in case of the conflict between two law, international law is said to prevail. Dualism treats international and national law as "two entirely distinct legal system.

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

2 Haque, Muhammad Ekramul, (2011), *T*he Bangladesh Constitutional Framework and Human Rights,

Dhaka University Law Journal, Volume 22, Number 1, pp-55

3 Halim, Md. Abdul, (2016), *Constitution, Constitutional law and Politics: Bangladesh perspective*, Dhaka,

CCB Foundation, pp-100

4 Islam, Md. Shariful , (2013)*Human Rights and Governance: Bangladesh*, Hong Kong: Asian Legal

Resource Center

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

6 ibed

There are some basic bases have been stated for universal human rights, from where fundamental rights have derived. Moral principles or norms7 are the basis of human rights that describe certain standards of human behavior, and these rights are protected as legal rights in municipal and international law.8 They are generally understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being,"9 and which are "inherent in all human beings"10 regardless of their nation, location, language, religion, ethnic origin or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of being the same for everyone.

"….. recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" – Preamble to the Unversal Declaration of Human Rights, 1948.

The Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly, that is viewed as the preeminent statement of international rights11. Governments commit themselves and their people to progressive measures which secure the universal and effective recognition and observance of the human rights set out in the Declaration; However, Major features of fundamental rights in the constitution of Bangladesh have been derived from this declaration. The state of human rights has been persistently criticized by Amnesty International and Human Rights Watch, especially violation of rights by Bangladeshi security forces.

1.5 Objective of the study:

To get a better understanding of fundamental rights and fundamental rights protected by Bangladesh constitution To assess the protection system of Bangladesh To find out the challenges to effective enforcement of fundamental rights in Bangladesh

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

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

9 The United Nations, Office of the High Commissioner of Human Rights, *What are human rights?*,
Retrieved August 14, 2014
10 Burns H. Weston, March 20, 2014, Encyclopedia Britannica, human rights, Retrieved August 14, 2014
11 Wikipedia, (2016), Human Rights, retrieved from
https://en.wikipedia.org/wiki/Human_rights#International_protection_and_promotion
12 Wikipedia,(2016), Human rights in Bangladesh, retrieved from
https://en.wikipedia.org/wiki/Human_rights_in_Bangladesh

1.6 Limitation of the study:

Although the study has reached its aims, there were some unavoidable limitations and shortcomings. First of all, I am an amateur researcher who is not even expert on the field of study; therefore, it was a tough task to assess the objectives perfectly within short time-limit. Secondly, all the data I used in this study is mostly self -reported that is limited by the fact that it rarely can be independently verified.

1.7 Methodology of the study

This study is generally a non-empirical analysis. The main sources of this study include secondary sources like textbooks, reports, relevant national and international legislations, case studies, some important daily newspapers, online documents and some publications. The study has also relied on decided cases of Apex Court of Bangladesh and the Subcontinent.

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13 Halim, Md. Abdul, (2016*), Constitution, Constitutional law and Politics: Bangladesh perspective*, Dhaka,
CCB Foundation, pp-96
14 Wikipedia, (2016), *Fundamental rights*, retrieved from
https://en.wikipedia.org/wiki/Fundamental_rights

1.8 Rights

Before understanding fundamental rights are should have idea about rights and human rights. Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory.[1] Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology.

Rights are often considered fundamental to civilization, for they are regarded as established pillars of society and culture, and the history of conflicts can be found in the history of each right and its development. According to the *Stanford Encyclopedia of Philosophy*, "rights structure the form of governments, the content of laws, and the shape of morality as it is currently perceived". 3 The universal Declaration of Human Rights 1948

Rights mean a claim of some interests adverted by an individual or a group of individual which has either moral or legal basis and which is essential for his development in the society4. In a sense right not created by law it originates itself as an obvious result of mutual interaction between man and society. Rights are primarily divided in to two categories- natural rights and legal rights.

1) Natural rights are rights which are "natural" in the sense of "not artificial, not manmade", as in rights deriving from human nature or from the edicts of a god. They are universal; that is, they apply to all people, and do not derive from the laws of any specific society. They exist necessarily, inhere in every individual, and can't be taken away. For example, it has been argued that humans have a natural right to life. These are sometimes called moral rights or inalienable rights.

2) Legal rights, in contrast, are based on a society's customs, laws, statutes or actions by legislatures. An example of a legal right is the right to vote of citizens. Citizenship, itself, is often considered as the basis for having legal rights, and has been defined as the "right to have rights". Legal rights are sometimes called civil rights or statutory rights and are culturally and politically relative since they depend on a specific societal context to have meaning.

Some thinkers see rights in only one sense while others accept that both senses have a measure of validity. There has been considerable philosophical debate about these senses throughout

history. For example, Jeremy Bentham believed that legal rights were the essence of rights, and he denied the existence of natural rights; whereas Thomas Aquinas held that rights purported by positive law but not grounded in natural law were not properly rights at all, but only a facade or pretense of rights.

1.9 Human Rights

The term "Human Rights" which does not mean any right is used in special sense. Human rights are those of legal and moral rights which can be claimed by any person for the very reason that is a human being5.These rights come with birth and applicable to all people throughout the world irrespective of their race, color, sex, language or political or other opinion. These are those rights, that are inherent in human person and without which they cannot live as human beings. So we can say, 'Human Rights' are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

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4 *"Stanford Encyclopedia of Philosophy"*, *Stanford University, July 9, 2007*

5 *"Sepúlveda et al. 2004", p. 3 copy", Archived from* ***the original*** *on March 28, 2012.*

Chapter 2. Constitutional Mandate of Fundamental Rights.

2.1 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.

2.2 Fundamental Rights in Bangladesh constitution

18 fundamental rights have been enumerated in the constitution commencing from Article 26 to 43. All of these rights are civil and political rights8. These 18 fundamental rights may be firstly divided into two groups:

a. Rights granted to all persons-citizens and non-citizens alike. These are six rights enumerated in Articles 32, 33, 34, 35, 41 and 44 of the constitution.

b. Rights granted to citizens of Bangladesh only, these are 12 rights enumerated in Articles 27, 28, 29, 30, 31, 36, 37, 38, 39, 40, 42 and 43.

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

6*"International Covenant on Civil and Political Rights" Article 1*

7*WEX Legal Dictionary*

8*The Constitution Of People's Republic Of Bangladesh*

Chapter – 3. International Instruments of Fundamental Rights.

3.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and

https://www.un.org/en/about-us/universal-declaration-of-human-rights

international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

3.2 International Covenant on Civil and Political Rights

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of

the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be

made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 291. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

3.3 International Covenant on Economic, Social and Cultural Rights

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

3.4 Convention on the Elimination of all forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

3.5 United Nations Charter

The Charter of the United Nations is the founding document of the United Nations. It was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The United Nations can take action on a wide variety of issues due to its unique international character and the powers vested in its Charter, which is considered an international treaty. As such, the UN Charter is an instrument of international law, and UN Member States are bound by it. The UN Charter codifies the major principles of international relations, from sovereign equality of States to the prohibition of the use of force in international relations. Since the UN's founding in 1945, the mission and work of the Organization have been guided by the purposes and principles contained in its founding Charter, which has been amended three times in 1963, 1965, and 1973. The International Court of Justice, the principal judicial organ of the United Nations, functions in accordance with the Statute of the International Court of Justice, which is annexed to the UN Charter, and forms an integral part of it. (See Chapter XIV, Article 92) Visit the UN Dag Hammarskjöld Library's collection of translations of the UN Charter.

3.6 Committee against Torture

The Committee against Torture (CAT) is the body of 10 independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its States parties. The Committee against Torture works to hold States accountable for human rights violations, systematically investigating reports of torture in order to stop and prevent this crime.

https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

https://www.un.org/womenwatch/daw/cedaw/

Chapter 4. Safeguard guaranteed of constitution

4.1 Suspension of Fundamental Rights:

The Fundamental rights guaranteed by the Constitution remain suspended, while a proclamation of Emergency is made by the President under Article 352. When a proclamation of emergency is in operation, the President may by Order declare that the right to move a court for the enforcement of any of the Fundamental Rights shall remain suspended for the period during which the proclamation remains in force.

Chapter 5. NNRC Report

5.1 **United Nations Human Rights Council** (**UNHRC**)

The **United Nations Human Rights Council** (**UNHRC**)[a] is a United Nations body whose mission is to promote and protect human rights around the world.[3] The Council has 47 members elected for staggered three-year terms on a regional group basis.[4] The headquarters of the Council are at the United Nations Office at Geneva in Switzerland. "All victims of human rights abuses should be able to look to the Human Rights Council as a forum and a springboard for action." — Ban Ki-moon, UN Secretary-General, 2007[1] The Human Rights and Alliance of Civilizations Room is the meeting room of the United Nations Human Rights Council, in the Palace of Nations in Geneva. The Council investigates allegations of breaches of human rights in United Nations member states and addresses thematic human rights issues like freedom of association and assembly,[5] freedom of expression,[6] freedom of belief and religion,[7] women's rights,[8] LGBT rights,[9] and the rights of racial and ethnic minorities.[b] The Council was established by the United Nations General Assembly on 15 March 2006[c] to replace the United Nations Commission on Human Rights (UNCHR, herein CHR).[10] The Council works closely with the Office of the High Commissioner for Human Rights (OHCHR) and engages the United Nations *special procedures*. The Council has been strongly criticized for including member countries that engage in human rights abuses.[11][12]

5. 2 BANGLADESH HUMAN RIGHTS REPORT

DHAKA, April 13, 2022 – Today, the State Department released the *2021 Country Reports on Human Rights Practices*, an annual report required by U.S. law. President Biden has put human rights at the center of his foreign policy. The United States is committed to a world in which human rights are protected, their defenders are celebrated, and those who commit human rights abuses are held accountable.

“Working together, we must commit ourselves to promoting respect for human rights. We must speak honestly about the challenges we face. Progress on human rights begins with the facts,” said Ambassador Peter Haas.

https://en.m.wikipedia.org/wiki/United_Nations_Human_Rights_Council
https://bd.usembassy.gov/bangladesh-human-rights-report/

Guided by the United Nations' Universal Declarations on Human Rights and subsequent human rights treaties, the country reports cover observance of and respect for internationally recognized human rights and worker rights. The country reports do not draw legal conclusions, rate countries, or declare whether they failed to meet standards.

President Biden is committed to a foreign policy that unites our democratic values with our diplomatic leadership, and one that is centered on the defense of democracy and the protection of human rights. In this 50th anniversary year of the U.S.-Bangladesh bilateral relationship, promoting democracy, good governance, and human rights will remain paramount.

https://en.m.wikipedia.org/wiki/United_Nations_Human_Rights_Council
https://bd.usembassy.gov/bangladesh-human-rights-report/

Chapter 6. Case Reference

6.1 Case citation: 46 DLR (AD) 1994 192

Citizenship Case: Bangladesh Vs. Professor Golam Azam and others

March 14, 2016 by Editor 1 Comment

Facts of the case:
Professor Ghulam Azam, the plaintiff in this case, became the Amir of Jamaat-e-Islami of East Pakistan in 1969. He was in this post till 1971. He was opposed to the Liberation War of Bangladesh from the start. He and his party sided with the Pakistan authorities at the time. Before Bangladesh won victory on December 16, 1971, Ghulam Azam left the country on November 22 and went to Pakistan and continued to live there.
On April 28, 1973, the citizenship of 38 pro-Pakistani political persons, including Ghulam Azam, was cancelled by the Government under Article 3 of the Bangladesh Citizenship (temporary provisions) Order, 1972. The government argued that Golam Azam had been living outside Bangladesh since before the liberation as a citizen of Pakistan. His anti-liberation role, active collaboration with the Pakistani army and voluntary residing in Pakistan made him ineligible to be a citizen of Bangladesh. On January 17, 1976 the Government invited applications from those persons whose citizenship had been cancelled by the previous Government for restoration of their citizenship. Ghulam Azam immediately applied for citizenship from London. He applied again in 1977 and 1978. In 1978 he came to Bangladesh on a Pakistani passport. He was given a visa on "humanitarian grounds", to visit his ailing mother. Then he renewed his visa three times and even after his visa expired, he continued to live in Bangladesh. He was, however, arrested and detained at the Dhaka Central Jail by an order of detention dated 24 March 1992 under section 3 of the Foreigner's Act, 1946. Ghulam Azam submitted a writ petition to the High Court, requesting for his citizenship to be restored. His petition was accepted by the High Court and his citizenship was restored. He argued that his father, grandfather and he himself were all born in this country and he was a permanent resident in Bangladesh on March 25 1971 and continued to be a permanent resident. He only went to Pakistan to attend party work and later on prohibited to enter into Bangladesh. So he

went to Saudi with a Pakistani passport and with that he entered into Bangladesh and immediately surrendered his Pakistani passport and filed an application for restoration of his citizenship. An appeal was brought against the judgment of the HCD.

6.2 Farzana Haq v Government of Bangladesh, (1991)11 BLD 553

Facts of the case:

In Farzana Haq v Government of Bangladesh, (1991)11 BLD 553 case Sanaul Huq Niru was arrested and detained first on 13th September 1987 under SPA. His detention order was challenged and the Court directed that the detention order was illegal and ordered the release of the detainee. He was not released rather a fresh detention order was passed against him under section 3 of the Special Powers Act,1974. The same drama was repeated several times and ultimately his detention came up before a Division Bench of the High Court Division. Judgment:
The Court ordered the detaining authority to pay regard to the order of the Court It decided that the detention was illegal and the detainee should be set at liberty forthwith. And this time the order war complied with by the detaining authority.

6.3 Bilkis Akter Hossain v. Government of Bangladesh, (1997) 17 BLD (HCD) 344 / 2 MLR 1997 113

Summary of the Case:

FACTS:

In 1997 four BNP leaders were arrested and detained. Dr. Khandakar Musharraf Hossain was one of them. He was detained, on the ground of delivering provocative speech, under the Special Powers Act, 1974. He was alleged to be a leader of the terrorists and also a provocateur and instigator of their terrorist acts.

Mrs. Bilkis Akter Hossain, wife of Dr. Khandakar filed a writ petition in the High Court Division against the detention under Article 102 of the Constitution, claiming that his husband's fundamental rights, namely Right to freedom of movement, Right to life and Right to liberty have been violated.

6.4 Habiba Mahmud v. Bangladesh and Others, 45 DLR (AD) (1993)

March 14, 2016 by Editor Leave a Comment

Facts of the case:

The appellant's husband, Kazi Mahmood Hossain, was arrested on August 20, 1991 in pursuance of an order of detention date August 18, 1991 under section (3) (1) (a) of the Special Powers Act, 1974. In the grounds of detention, it is stated that the detenu had been engaged in various anti-social and unlawful activities, and for that there was resentment and hatred against him in the minds of the public. The detenu was previously detained twice from April 1982 to April, 1983 and from November 1984 to March 1985. In November 1988 another order for his detention was passes, but the detenu evaded arrest by going over to India. For his oppressive and terrorist activities, the detenu was suspended form the post of chairman of kotwalipara upozila. The detenu organized an armed illegal bahini known as the Special Army and that bahini is still existing. so that nobody dares raise any objection against him. Although as the most important ground of detention the Govt. in the last affidavit disclosed that, the detenu was involved in a mission to hit 225 of highest law officer of the country. Habiba Mahmud, the wife of the detenu, filed a writ petition in the High Court Division, which was dismissed by the court. And an appeal has been made challenging the judgment given by the High Court Division.

Chapter 7. Recommendations & Concluding Remarks

Recommendations & Concluding Remarks

We have been observed that the constitution of Bangladesh has included all the basic attribute sof fundamental rights. But practically sometimes the government is compelled to violate thef undamental rights of the people in Bangladesh due to some unavoidable circumstances. Ther uling class should be truly respectful to the fundamental rights of the people. There should no t be any international barrier Created by government for political interest and to oppress theo pposite. It is the responsibility of the government to limit the events to violate the fundamenta lrights of the people. In addition, try their best respond these rights in some very rare cases, where there is no other alternative. Which is truly done for the sake of the country's overall benefit with no purpose of selfinterest of the ruling party, some more restriction andcontrollin g can be developed in the constitution of our country to regulate and prevent theindiscriminat e and whimsical violation of the rights by the ruling power furthermore, theconsciousness rig hts. Therefore, the ruling class for their self-interest can't violate their rights.

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