UGC & Govt. Approved
Sonargaon University (SU)
সোনারগাঁও ইউনিভার্সিটি (এসইউ)

Research Monograph

On

"Judicial Enforceability of Fundamental Principles of State Policy in Bangladesh Constitution: An Appraisal"

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

Prepared For:
Department of Law
Sonargaon University (SU), Dhaka

Supervised By:
Deedarul Islam Bhuiyan
Assistant Professor & Head of the Department
Department of Law
Sonargaon University (SU), Dhaka

Submitted By:
Md. Nur Jamal Haque
ID: LL.M 2203027010
Program: LL.M
Batch: 27th
Department of Law,
Sonargaon University (SU), Dhaka.

Date of Submission: 11th September, 2023

Dedication

This thesis is dedicated to my parents and my all Law Department Instructor specially my supervisor Md. Deedarul Islam Bhuiyan Sir.

LETTER OF TRANSMITTAL

To
Deedarul Islam Bhuiyan
Assistant Professor & Head of the Department
Department of Law
Sonargaon University (SU), Dhaka.

Subject: Submission of research paper on **"Judicial Enforceability of Fundamental Principles of State Policy in Bangladesh Constitution: An Appraisal"**

Dear Madam,

It is a great pleasure for me to submit the thesis on **"Judicial Enforceability of Fundamental Principles of State Policy in Bangladesh Constitution: An Appraisal"** While I doing this thesis, I have tried my level best to make this project paper to the latest standard. I think that thesis paper will fulfill your requirement and pleased you. I, therefore, hope that you would be kind enough to go through this thesis paper for evaluation.

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

Thanking you

Md. Nur Jamal Haque
ID: LL.M 2203027010
Program: LL.M
Batch: 27th
Department of Law
Sonargaon University (SU), Dhaka.

CERTIFICATION

This is to certify that the thesis on "**Judicial Enforceability of Fundamental Principles of State Policy in Bangladesh Constitution: An Appraisal**" is done by Md. Nur Jamal Haque in partial fulfillment of the requirements for the degree of LL.M. from Sonargaon University, Dhaka. The thesis has been carried out under my guidance and is a record of the bonafide work carried out successfully.

……

Deedarul Islam Bhuiyan
Assistant Professor & Head of the Department
Department of Law
Sonargaon University (SU), Dhaka

DECLARATION

I do hereby that this Research Monograph on the **Judicial Enforceability of Fundamental Principles of State Policy in Bangladesh Constitution: An Appraisal** have been done by me and this Research is free from all plagiarism and without help of other. I further declare that this monograph is prepared with my own effort and it was not and never submit to any institute for any academic reason.

_____

Md. Nur Jamal Haque
ID: LL.M 2203027010
Program: LL.M
Batch: 27th
Department of Law
Sonargaon University (SU), Dhaka.

ACKNOWLEDGEMENT

At first, I would like to thank Almighty Allah for his kindness on me in accomplishing the report. I would like to express my deep sense of gratitude to my honorable and distinguished supervisor Deedarul Islam Bhuiyan, Assistant Professor & Head of the Department, Department of Law, Sonargaon University (SU), Dhaka for her individual suggestions, valuable time, important information and guidance during the study period that has greatly inspired me in preparing this report successfully.

It could not possible to think all those people who have contributed for the preparation of this report of course there are some very special names that cannot be forgotten. I am also grateful to the Department of Law, Sonargaon University (SU), Dhaka for providing me such an opportunity to come closer to real situation. Finally, I want to express my deep gratitude to my family members and all well wishers whose enormous helps assisted me to complete this report.

Md. Nur Jamal Haque
ID: LL.M 2203027010
Program: LL.M
Batch: 27th
Department of Law
Sonargaon University (SU), Dhaka.

Abbreviations

UNESE- Universidade do Extreme Sul Catarinense.

DPSP- Deferred Profit Sharing Plan.

FPSP- Fundamental Principles of State Policy.

DLR- Dhaka Law Report.

AIR- All Indian Reporter.

ATM- Automated Taller Machine.

AD- appellate division.

MR.- Mister.

DR.- Docter.

SC- Supreme Court.

UK- United Kingdom.

KC- Professor Kamanio Chattopadhyay.

CJ- Chief Justice **.**

List of Cases

- Kudrat E-Elahi V. Bangladesh
- State of Madras v. Champakam
- Golak Nath and org. vs State of Panjab and Anrs case
- Minerva Mills v. Union of India case
- Comptroller and Auditor General Vs. Jagannath
- Mukesh Vs. State of Madhyapradesh,
- Sheela Vs. State of Maharashtra
- Laxmi Kant Vs. Union of India
- Anwar Hossain Vs. Bangladesh
- Sheikh Abdus Sabur V. Returning Officer, District Education Officer-in-Charge, Gopalganj and others
- Saleemullah V. Bangladesh
- Aftabuddin V. Bangladesh and others
- Dr. Mohiuddin Farooque V. Bangladesh, represented by the Secretary, Ministry o f Irrigation, Water Resources and Flood Control and others
- Saiful Islam Dilder V. Government of Bangladesh and others
- Secretary, Ministry of Finance, Government of Bangladesh V. Mr. Md.Masdar Hossain & others

Abstract

Constitution of the People‘s Republic of Bangladesh is the supreme law of the country that explicit the laws, rules and regulations, by which the State and its citizen shall be ruled. Aside from Part III of the Constitution of Bangladesh, and also some other human rights principles are found in Part II, as fundamental principles of state policy. Judicial hands are open in protecting those fundamental rights that are assured under Part III of the Constitution of Bangladesh. However, this rule is not apposite for the principles laid down in Part II of the Constitution. Judicial hands are tagged in respect of implementing those Fundamental Principles of State Policy. The ruler should also keep in mind that, those principles are the political pledges to the public at large, and should not be protected unimplemented for a long term of time. There is no one knows when the government will acquire the destination of complete implementation of the fundamental principles, as there are still a few unavoidable problems existent in the State. However, if the judiciary‘s hands cadavers tied in keeping human rights, government might not be willing to assure the fundamental rights, which might go in opposition to their own benefits, and the goal to acquire access to justice and support rule of law will be stay as dream. Why Economic Social and Cultural Rights are Enumerated in the Directive Principles State Policy? Nature and judicial enforceability of the Fundamental Principles of State Policy-

Table of Contents

SI. No.	Title	Page No
i	Letter of Transmittal	2
ii	Acknowledgement	3
iii	Declaration	4
iv	Certification of the thesis supervisor	5
v	Abbreviations	6
vi	List of Cases	7
vii	Abstract	8

Chapter I

Introduction

1.1	Introduction…… ……..….	11-13
1.2	Purpose of Study……..…	14
1.3	Objectives of the Research…….....14	
1.4	Research Methodology…….....…….....14	

Chapter II

Fundamental principles of state policy and fundamental rights

2.1	Definition of fundamental principal of state policy ……	15
2.2	Bangladesh constitution and fundamental principles of state policy..	15-16
2.3	Fundamental principles of state policy and human right's……...…	16-22
2.4	Fundamental Rights ……..….....	22

Chapter III

Main part or body of the research

3.1 Nature of Directive Principles……..……. 23-24

3.2 Why Economic Social and Cultural Rights are Enumerated in the Directive Principles State Policy……..... …… 24-25

3.3 Distinction between Fundamental Rights and Directive Principles 25-26

3.4 Decisions on Fundamental Principles of State Policy Indian Jurisdiction..... 26-27

3.5 Directive Principle under the Constitution of Bangladesh……..... 27

3.6 ` Nature and judicial enforceability of the Fundamental Principles of State Policy……..... ……. 27-50

3.7 Opinion……..... 51

Chapter-IV

Concluding chapter

4.1 Conclusion……..... ……. 52

Bibliography……..... ……. 53

Chapter-I

1.1 **Introduction**

The Constitution of Bangladesh embodies in its part II certain directions to the State terming them as 'Fundamental Principles of State Policy'. The Constitution itself terms these a Principles', not 'laws'.[1] Apart from setting certain ideological objectives, interestingly, this part II contains also the provisions regarding basic necessities which says that 'It shall be a fundamental responsibility of the State to attain, through planned economic outgrowth, a constant increase of productive forces and a firm improvement in the material and cultural standard of breathing of the people, with a view to securing to its citizens'[2] the basic needs and rights, like food, clothing, shelter, education, medical care, right to work etc. This part in fact contains certain basic duties of the State and certain basic needs of the type of economic human rights of the people are dependant on the performance of the above duties perfectly by the state. With the development of the concept of 'welfare state' in fact this trend has been developed on political grounds to confer more duties on the state without assessing the fact whether the State has the authentic ability to perform it or not based on its economic capability. The prime characteristic of these principles is that these are not judicially enforceable and act as guidelines to the state; and many Constitutions of the modern world also contain such principles. An attempt has been made in this article to assess the nature, importance and the enforceability of the Fundamental Principles of State Policy as provided in the Constitution of Bangladesh in the light of different juristic explanation given by the judiciary.

Directive or maybe Fundamental Principles of State Policy being a term of constitutional jurisprudence have not got any universal explanation. But as the term indicates it indicates primarily those principles which are considered fundamental in matter of policy formulating by the government. From the view of Bangladesh Constitution it might be said that fundamental principles of state policy usually are those principles which behave as fundamental guide to the Policy making whether it be social, economic, administrative or maybe international, governance of the united states, making laws and interpreting the Constitution and legislation. Directive

1 *Article 8 of the Constitution of Bangladesh.*

2 *Article 15 Ibid.*

Principles of State Policy are available as instructions or guidelines for the governments at the center in addition to states. Though these rules are non-justifiable, they are fundamental from the governance of the region. The idea of fundamental principles of state policy has been taken from the Irish Republic.[3]

The doctrine of fundamental rights is feature of United States law under which particular human rights that enshrined in the US constitution are provided a high degree of judicial deference in conflicts between individual liberty and governmental intrusion. Although many fundamental rights are also more broadly considered to be human rights. The classification of a right as fundamental invokes earmarked legal tests used by courts to determine the gingerly contained conditions under which the United States Government and the several state governments may impose limitations on this right. Fundamental rights provide the citizens dignity of life in an atmosphere of freedom and justice beyond the man create fetters that had constricted their physical and mental horizons. Modern judiciary is regarded as an excellent product of civilization to put the idea of justice to work in the midst of divergent force with conflicting class or individual interests .Such conflicts create is difficult to bring about equilibrium in the society for a peaceful and orderly association of citizens for their general good. An independent judiciary and strong democratic institutions are the best guaranty against assaults on the rights of the citizens. This dissertation is mainly focusing on the features of fundamental rights in the constitution of Bangladesh inspired by the Universal Declaration of Human Rights, 1948; the constitution of Bangladesh calculated some basic civil and political rights common to most liberal democracies and also insures the rights to constitutional remedies for the protection of these rights. In addition, the fundamental rights of the constitution of Bangladesh are purposed at overturning the inequalities of past social practice. I interdict discrimination on the grounds of religion, race, sex, color place of birth and forbid trafficking human being and forced labor. Thomas Jefferson said, ―We hold these truths to be self-evident. That all men are created equal. That they are endowed by their creator with certain inalienable secure these rights, government are instituted among men, deriving their just powers form the consent of the governed. That whenever any form of government becomes destructive of those ends, it shall be the right of the people to alter or abolish it and to institute new government, laying its foundations upon such

3 *Article 15 Ibid.*

principles, and organizing its power in such forms, as shall seem to them most likely to effect their safety and happiness‖.

This simple is merely focusing on the features of fundamental rights as have been conserved in the constitution of Bangladesh. The frames of Bangladesh have been argued in Article basis starting from the preamble of the constitution. The frames of these constitutions practically display concern for needy of protecting human rights and ensuring fundamental freedoms. In the preamble of the constitution they declared that it shall be a fundamental object of the state to realize through the democratic procedure 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 insured for all citizens.

The universal Declaration of Human Rights 1948, which states –Everyone has the right to an effective redress by the competent national tribunal for acts violating the fundamental rights permitted him by the constitution or by law. Rights and freedoms from the bedrock of democracy. No democracy can act successfully in the absence of some basic freedoms. Again, modern democratic government is a party government. The party winning majority in the election form the government. But coming in to power the government may turn itself into a one ravishing the basic rights of people and oppressing the opposition. The aim of having a announcement of fundamental rights in the constitution is to protect such a possible danger. In order words, they provide a restraint on the power of the government so that it can not interface with the people‘s primary rights according to its whims. When rights and freedom are settled the part of the supreme law and the government can not catch them away except by constitution amending process which is always a right one. This is why arraying of a Bill of right in a written constitution is discussed to be one of the safeguards of democracy. Bangladesh received 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.[4]

[4] *ibid*

1.2 Purpose of Study

The purpose of the study is to identify and focus on the on going Fundamental Principles of State Policy and Fundamental Rights.

1.3 Objectives of the Research

The purpose of the research is to define fundamental principles of state policy and fundamental rights. Examining the possible role of fundamental principles of state policy and fundamental rights in the development of Bangladesh and its position Fundamental rights of disadvantaged and vulnerable groups in society, Proceed to the legal system and the court. It is important to ask Whether this is a valid guess. Sometimes it is suggested that reliance on the court Decreases the democratic system. However, as far as fundamental principles of state policy and fundamental rights are concerned, this is a mistake Argument. It does not involve the courts in particular, but rather assists in the broad definition of fundamental principles of state policy and fundamental right. For the disadvantaged and weak people to have input in the democratic process. For example, participating in the law reform process or participating in a more complete part of it Becoming more aware of the consequences (i.e. rights and responsibilities) of the legal process Created by law).

1.4 Research Methodology

This research is predominantly qualitative in nature. Now Fundamental Principles of State Policy and Fundamental Rights a very touchable issue in judiciary. As my research topic is ***—Fundamental Principles of State Policy and it's enforcement mechanism***‖, I have an opportunity to collect data from various sources. It has no specific Act or any statue. It has been interpreted by judge to consider the intent of public at large. So various types of books, articles and cases are primary data collected source of this research and I have collected data from that source. It is a legal research, so international and national judicial decisions, related on this work are enumerated. Several books, articles in book, or articles in journal, internet source are taken as reference.

Chapter-II

Fundamental principles of state policy and fundamental Rights

2.1 DEFINATION OF FUNDAMENTL PRINCIPLE OF STATE POLICE

Directive or maybe Fundamental Principles of State Policy being a term of constitutional jurisprudence have not got any universal explanation. But as the term indicates it indicates primarily those principles which are considered fundamental in matter of policy formulating by the government. From the view of Bangladesh Constitution it might be said that fundamental principles of state policy usually are those principles which behave as fundamental guide to the policy making whether it be social, economic, administrative or maybe international, governance of the united states, making laws and interpreting the Constitution and legislation. Directive Principles of State Policy are available as instructions or guidelines for the governments at the center in addition to states. Though these rules are non-justifiable, they are fundamental from the governance of the region. The idea of fundamental principles of state policy has been taken from the Irish Republic.

2.2 BANGLADESH CONSTITUTION AND FUNDAMENTAL PRINCIPLES OF STATE POLICY

In the original Constitution of 1972 there were 4 basic principles, they were- Nationalism, Secularism, Socialism and Democracy. However, another principle namely ―Absolute trust and faith in the Almighty Allah shall be the basis of all actions‖ has later replaced the principle of Secularism. The principle of Secularism has been reincorporated by the 15th Amendment of the Constitution. Article 8 (1) of Part II of the Constitution provides that the principles of nationalism, socialism, democracy and secularism, shall constitute the fundamental principles of state policy. For making laws and for the interpretation of the Constitution and other laws of Bangladesh these principles shall play a controlling role. Moreover, Article 9 provides that, the unity and solidarity of the Bangle nation is the basis of Bangalee nationalism, which has been

attained through sharing common language and culture and attaining independence and sovereignty of Bangladesh through a determined struggling war of independence.[5]

2.3 FUNDAMENTAL PRINCIPLES OF STATE POLICY AND HUMAN RIGHTS

The principles of Socialism and freedom from exploitation have been discussed in Article 10 of the constitution. This Article says that, in terms of economic system, socialism shall be established to ensure justice and equality of all people, where there will be no exploitation of man by other man. To ensure justice, equality and human rights for all people and to stop exploitation of man by man, socialism is a fundamental principle of state policy, which assures an economic method based on state ownership of capital. By the exact implementation of this fundamental principle, justice and equality as well as un-exploitation of man can be ensured, thus the constitutional protection of the human rights can also be achieved. But the State has not yet achieved this goal through the proper implementation of this principle. big work has to be done for the entire implementation of this principle.

The principle of Equality of scope, as a fundamental principle of state policy, has been ensured in Article19 of the Constitution. It is ensured that, it is the responsibility of the State to assure equal opportunity for all of its citizens. The principle of equality is one of the basic principles of the human rights regime; and without assuring the equality it is not possible to upheld rule of law and human rights in the society. It is the obligation of the State to take all essential initiatives for removing social and economic inequality among its citizens. It is the duty of the State to ensure equitable distribution of wealth and opportunities to acquire uniform level of economic development of the Republic. In addition to that, it is the burden of the State to assure equal opportunity and participation of female citizens of the State in all spheres of national life. In most of the sectors of the State the equal opportunity for male and female citizens has been ensured but the expected level has yet not been achieved. However, in the current philosophical literature on equality and neoteric practice of Bangladesh, a mystifying connection can be found as the modern human rights movement, is one of the most powerful manifestations of the commitment to equality. The new philosophical doctrine of egalitarianism has proceeded as, if

5 *www.iosrjournals.org*

there were no human rights movement or as if the idea of human rights was not an important expression of the commitment to equality. Thus the minimalist egalitarianism of human rights and the more strong egalitarianism of contemporary philosophical views of equality can be reconciled. But the concerning issue of this idea is the failure to anxiety about global inequalities and abandon the assumption, that one can develop an adequate theory of equality for the national case without theorizing about global justice.

An important principle of Emancipation of peasants and workers is considered in Article 14 of the Constitution of the Peoples Republic of Bangladesh. This Article of the Constitution affirms this principle as a fundamental responsibility of the state to emancipate the toiling masses, the peasants and workers and behindhand sections of the people from whole forms of exploitation. This Article of the Constitution governs as a safeguard principle for the toiling masses, the peasants and workers and backward sections of the society. As per this Article, it is a obligation of the State to emancipate all sort of exploitation of peasants, workers and backward sections of the people. This fundamental principle has also not been completely performance as there is still exploitation of the workers and trouble section of the society, and the malison of child labour. The State is still striving for the implementation of this principle through other laws and mechanisms.

Article 20 of the Constitution, however, deals with the fundamental principle of Work as a right and duty. According to this Article, work is assured as a right and duty as well as a matter of honour for all citizens. Payment for the work of each townee according to his abilities and according to his work has been confirmed by this significant Article. In this Article the principle of work has been given significant importance, as the enjoyment of unearned incomes has been discouraged and all sorts of human labour, intellectual and physical efforts has been given much more importance.

Dwelling in village development and agricultural revolution as a principle of state policy has been talked in Article 16 of the Constitution. Article 16 of the Constitution provides, the state is under duty to remove the inequality in respect of standard of living between dwelling in village and urban areas, the State shall take effective dimensions for ensuring radical improvement in the rural areas through agricultural revolution. Moreover, for the purpose of rural development: educational improvement, rural electrification, development of cottage and other industries,

public health and communication in those fields should also be ensured by the State. Without development of the rural areas, the development of the country cannot imagine. As the fundamental principles are enforceable by the State, it is the responsibility of the State to take all needy initiatives for the development of rural fields in order to upheld human rights among the people of Bangladesh. The State has taken magnificent steps and still striving for the implementation of this principle but this principle has not been completely implemented because of several obstacles.

The concept of freedom of religion or believe has been well recognised as one of the international human rights instruments. Though, recently, there is controversy regarding its status as a human right by undermining the principles of universalism, freedom, and equality; for example: fighting defamation of religions, protecting a state imposed interreligious harmony, or promoting ideological versions of state secularism. However, the main thought of the freedom of religion is that, individuals are free about their faiths on religious matters against a wide, secure background regime of freedom of speech and expression and should be free to join together or not to join. The principle of Secularism and freedom of religion has been considered in Article 12 of the Constitution of Bangladesh. Considering Article 12 of the Constitution, secularism can be acquired by eliminating all sort of communalism, by not granting political status in favour of

any particular religion, by blocking abuse of religion for political purposes, by non-discrimination against any person practicing a individual religion. However, this Article of the Constitution confirms the removal of communalism and no particular religion shall be given political status. Moreover, misuse of religion for political purposes has been closed and the freedom of the citizen to perform any religion has been guaranteed by this significant Article of the constitution. This fundamental principle has not also been fully implemented as there is still religion based political parties in the State and the religion is being abused for political purposes. Politicization of religion should be closed for the exact implementation of this principle. Thus, secularism understood about the approach of the mutual understanding among the religious groups, which comprise the nation to respect one another without any discrimination that can lay bare the human rights and peace in the society.

The failure of the social and economic system to achieve a basic minimum condition of life, securing the access to basic social and economic goods and services, for millions of people in the

third world became the concerning issue to the economists, philosophers and human rights advocates. However, Article 15 of the Constitution of Bangladesh deals with the provision of basic necessities. Article 15 confirms that, it is the responsibility of the Sate to attain constant increased production forces and to raise the material and cultural standard of living of the people through a planned economic accrual. In this regard the State shall also assure the primary necessities of life including food, clothing, shelter, education and medical care. In respect of quantity and quality of work, the right to work that includes the right to have guaranteed employment at a reasonable salary should also be protected by the State for its citizens. Respecting laborers, the State shall protect the right to reasonable rest, recreation and leisure of the laborers. According to this principle, the State shall protect for its citizens the right to social safety and public assistance in case of unemployment, illness or disablement, or suffered by widows or orphans or in old age or in other such cases. However, it is the fundamental responsibility of the State to ensure the basic necessities of the citizens, ensure job for its people, and to service social security and public assistance in case of poverty of the citizens. The State has taken remarkable steps for the implementation of this fundamental principle through enforcing different laws and regulations but could not acquire the hoped destination yet, thus the destination to save the human rights of the citizens has not been acquired.

Moreover, free and necessary education, which is different principle of state policy, is observed in Article 17 of the Constitution. According to Article 17 of the Constitution, it is the responsibility of the State to take necessary steps to ensure uniform, universal way of education, and assure free and necessary education to all children to a certain stage as determined by law. Moreover, the State shall also relate the education to the need of the society and also make initiatives to produce trained and motivated people to serve those needs. In addition to that, as per Article 17, it is the responsibility of the State to take necessary steps for removing illiteracy within a prescribed period of time. The state has caught tremendous steps for assuring free and necessary primary education and is very near to achieve the hoped goal but the curse of illiteracy has not yet been defeated.

Furthermore, Public Health and Integrity as a fundamental principle of state policy has been organized into Article 18 of the Constitution. As per this Article, it is a primary duty of the State to raise the level of nutrition and improve public health. Moreover, speaking useful measures to

protect consumption of alcohol and other intoxicating drinks and drugs which are dangerous to health, except for medical purposes and prescribed lawful purposes, is another important duty of the State. Furthermore, in terms of morality, it is the duty of the State to adopt efficient measures to prevent prostitution and gambling. For proposing nutrition level and to increase public health, the mechanisms caught by the State cannot be denied but this principle also has not achieved the hoped level yet. Moreover, the problems respecting abuse of drugs should also be removed through the proper implementation of laws. Additionally, the protection and improvement of environment and biodiversity is another fundamental principle of State policy, which is ensured in Article 18A of the Constitution. It is stated that, it is the duty of the State to take initiatives to protect and improve environment for present and future citizens of the country. It is a responsibility of the State to protect and safeguard natural resources, bio-diversity, wetlands, forests and wild life. The State has adopted several laws and has caught different steps for the protection of environment and the increase of biodiversity but the State has not yet achieved the hoped level.

Article 23 of the Constitution lids National culture as a fundamental principle of state policy. This Article confirms a duty upon the State to preserve cultural traditions and heritage of the citizens and to improve the national language, literature and the arts. Moreover, it is confirmed

that, for the enrichment of national culture, all section of the people may have the opportunity to contribute and participate .Nevertheless the United Nations dak for universal human rights in order to save the heritage and culture of society, as individuals includes to cultural groups. In this regards, Elazar Barkan trust that although a universal at least of human rights subsists, ―many „universal‟ rights have meaning mostly as they are applied within endemic variation.‖ However, Article 23A of the Constitution deals with the kultur of tribes, minor races, ethnic sects and communities. This important Article sures that it a fundamental responsibility of the State to take importance measures for the protection and development of singular local culture and tradition, the tribes, minor races, ethnic sects and communities. As such the culture of tribes, infant races, ethnic sects and communities has been significantly protected by this Article of the Constitution. Moreover, UNESC‟s Declaration on the International Destruction of Cultural Heritage 2003 mentioned that ―cultural heritage is an important component of the cultural identity of communities, groups and singulars, and or social cohesion; so that it‘s intentional destruction

may have hostile consequences on human dignity and human rights.‖ Moreover, Article 24 of the Constitution deals with National monuments. This Article of the Constitution confers a duty upon the State to ensure the protection of national monument, so that none can disfigure or damage or remove such monuments. The purpose or places of particular artistic or historic importance have also been provided protection by this Article.

Article 25 of the Constitution lids the Promotion of International peace, safety and solidarity as a fundamental principle of Sate policy. This Article gives that, it is a responsibility of the State to parade respect for national sovereignty and equality and not to interfere in the internal affairs of other countries and to settle international disputes peacefully and to show respect for international law and rules enunciated in the United Nations Charter, where the first object is to establish rule of law and uphold human rights. In this regard, the State shall not exercise zing in international relations and shall fight for simple and complete disarmament. Moreover, the right of each people to freely determine and build up its own social, economic and political system by ways and means of its own free select has been protected by this Article. In addition to that, a just fight against imperialism, colonialism or racialism may also be supported by the State. Duties of citizens and of public servants, as a fundamental principle of state policy, have been calculated in Article 21 of the Constitution of the Peoples‟ Republic of Bangladesh. Individual responsibilities are conferred to the citizens and public servants by this Article, which also related with the human rights of the citizens. According to this Article, each citizen of the State also has a responsibility to show respect towards the Constitution and other laws of the State and to maintain discipline and to perform public duties as well as to protect public property. Moreover, this Article confirms that it is the duty of every person in the service of the Republic to give full effort to serve the people all time.

However, the separation of judiciary from the executive, a fundamental principle of State policy, is assured in Article 22 of the Constitution. In this Article it is ensured that, it is a fundamental responsibility of the State to assure separation of judiciary from the executive parts of the State in order to uphold rule of law and human rights. The historical Masder Hossain case, which is also known as ―judicial independence‖ or the ―separation of judiciary‖ case has given significant guidelines to the government for ensuring separation of judiciary from the executive. As the Supreme Court is the guardian of the Constitution and the fundamental principles are not

enforceable by the judiciary, the Appellate Division provided directions to the State for its enforceability.[6]

2.4 Fundamental Rights

Before understanding fundamental rights one should have concept about rights and human rights. Right means a domination of some interests adversed by a particular or a group of particulars which has either ethical or legal basis and which is needy for his development in the society. In a sense right is not made by law; it originates itself as an evident result of mutual interaction between man and society. Rights are initially separated into two categories-moral rights and legal rights. Ethical rights are those rights which have their basis on the rule of natural justice and the violation of which results in ethical wrong. Legal rights, on the other hand, are those rights which are considered by the positive law of the country and can be demanded on legal basis and the violation of which results in illegal right. As indicated earlier right originates in the society and remains as a ethical right so long it is not recognised by law. Whenever a law recognizes it and saves its protection, it transforms into a lawful right. All lawful rights in this sense are ethical rights and the difference between the two is one of degree rather than of form.[7]

[6] *ibid*

[7] *Halim, M. A. (2018). Constitution, constitutional law and politics : Bangladesh (11th ed.). Dhaka: CCB Foundation*

Chapter-III

Main part or body of the research

3.1 Nature of Directive Principles

A distinguishing characteristic of directive principles which is invariably found in all constitutions taking these principles is that these are not enforceable in a court of law. This non-justiciability of these principles have paved the way for critics to potrait them in variety of illustrations.

First, these are described as 'beau ideal'[8] in the Constitution, i.e.,the highest value of excellence in the Constitution. Because they embody the principles of high models like economic emancipation, eradication of poverty, illeteracy etc.

Second, these are described as 'veritable dustbin of sentiment,[9] for they are the best idealistic words written down in the Constitution without supplying anything for their enforcement. They are, therefore, nothing but the sheer expression of good sentiment of the Constitution makers.

Third, these are sometimes described as 'decoratives in the Constitution.' Tushar Chatterjee, a communist member of Indian parliament being very harsh in measuring the utility of the directives, commented that he could not but sense that these solemn declarations in the Constitution were not directives but mere decoratives in the constitution.[10]

Professor K.C. Wheare has described them as 'paragraphs of generalities' into the Constitution. He has severely criticised arrat of such decoratives in the Constitution. He has doubted"whether there is any conquest, on balance, from introducing these paragraphs of generalities into a Constitution anywhere at all, if it is intended that the Constitution should order the respect and the affection of the people. If the Constitution is to be catch seriously, the interpretation and fulfillment of these simple objects of policy will raise great difficulties for courts and for

---

8 *Kapoor, A.C, Select Constitutions, 12th ed, (New Delhi : S. Chand & Co. 1989) P 93 (Part II)*

9 *Krishnamachari, T.T, a member of the Indian Constituent Assembly. Quoted by Kapoor, A.C.*

10 *Quoted by Kapoor, A.C.*

legislatures into conflict and calumny. If these declarations are, however, to be ignored, if they are to be considered as 'words', they will bring discredit upon the Constitution also.[11] "

Professor Ivor Jennings has also questioned the reasonableness of implanting such directives in a Constitution when he describes them as "the ghost of Sidney and Beatric Webb Stalk through the pages of the text" and "expression of Febian Socialism without socialism.[12] "

3.2 **Why Economic Social and Cultural Rights are Enumerated in the Directive Principles State Policy**

It has been almost a general feature of all the constitutions bearing directive principles that the organ of these directives of the Constitution bears economic, social and cultural rights whereas the portion of fundamental rights bears civil and political rights. Economic, social and cultural rights have established their origin primarily in the Socialist and Marxist revolution of the shortly 20th century. Following the Socialistic October revolution this new category of citizens' rights primary got their constitutional recognition in the Soviet Constitution of 1918. Thenceforth they are being softly covered in most recent constitutions as 'programme' or 'manifesto' rights of a promotional nature.[13] They are rights of promotional nature in the feel that their implementation and enforcement trusts on the economic progress and availability of resources in the country. If these rights are settled in the part of fundamental rights of the Constitution, then the state would be lawfully bound to force them and the citizens would have a legal right to find them enforced through the courts and it would virtually command a developing state with limited resources into a precarious problem. This is why all economic, social and cultural rights are settled in the part of directive principle as rights of a promotional nature not with a bit constitutional guarantee to enforce them immediately but with pledge to accept steps to the maximum of available resources with a view to acquiring progressively the full realisation of these rights. On the other hand, the

[11] Wheare, K.C, Modern Constitutions (London : Oxford University Press, 1975), P.47
[12] Quoted by Kapoor, A.C.
[13] Bari, Dr. M. Ershadul, International Concern for the Promotion and Protection of Human Rights, (The Dhaka University studies, Part-F Vol. II, No.I. 1991), P.24

enforcement of civil and political rights are not essentially connected with the economic betterment and natural resources; they can be enforced in almost each of circumstances.[14]

3.3 Distinction between Fundamental Rights and Directive Principles

There are some fundamental distinctions between directives and fundamental rights.

First, when particular human rights are written down in a Constitution, a highest law, and are protected by constitutional guarantees they are named fundamental rights. Directive Principles, on the other hand, are policies relating to social, economic and cultural rights which are to be pursued in governance of the country.

Second, fundamental rights are enforceable in a court of law and they make justifiable rights in favour of singulars. And the courts can enact them against the government. Again, the courts are suitable to declare as invalid any law that is inconsistent with any of the fundamental rights. The directives, on the other hand, are not enforceable in a court of law and they do not make any justifiable rights in support of singulars. The courts cannot propel the government to carry out any of the directives. Again, the courts cannot allege any law invalid, which is otherwise valid, on the ground that it contravenes any of the directive principles.

Third, fundamental rights are charged in nature whereas directives are declaratory 1n nature as they have expressly been lopped from the preview of the courts.

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

Fifth, if there is any conflict between directives and fundamental rights, fundamental rights Will prevail over the directives.

Sixth, the directive principles may be said as inchoate fundamental rights while the fundamental rights are full-fledged i.e. the former requires legislation to become workable while the latter need not need such legislation. And so long there is no law carrying out the policy placed down

[14] Halim, M. A. (2018). Constitution, constitutional law and politics : Bangladesh (11th ed.). Dhaka: CCB Foundation.

in directives neither the state nor a particular can violate any subsisting law or legal right below the colour of directive principles.

Seventh, fundamental rights are primarily aimed at assuring political freedom to citizens by protecting them against excessive state action while directive principles are aimed at securing social and economic freedoms by appropriate state action.[15]

3.4 Decisions on Fundamental Principles of State Policy

Indian Jurisdiction

In Indian jurisdiction there has been a quite good number of decisions on the relationship between Fundamental Rights and Fundamental Principles of State policy A frowzy observation of some of these decisions will provide an idea that the Indian Supreme Court has caught the following two approaches regarding the Directive Principles.[16]

In the case of State of Madras v. Champakam, the Supreme Court held the Fundamental rights are upper to the DPSP saying that the Fundamental Rights under Part III prevails over DPSP in case of any quarrel between them.

In the landmark judgment conferred by the Supreme Court in the Golak Nath case, it was occupied that the provisions uttered under Part III as Fundamental Rights cannot be undermined just to implement the provisions conferred under Part IV which enlists some necessary guidelines for the State in the form of the DPSP.

The Constitution was amended in the year 1971 and through this amendment, Article 31C was organized in the Constitution. It confers wider necessary on the DPSP.

In the Minerva Mills case, the Supreme Court limited this mass scope which was given on the DPSP under Article 31C by making the following changes:

[15] ibid
[16] ibid

It recovered Article 31C to its pre-1976 position. A law would be defended by Article 31C only in the case if it has been formed to implement the Article 39 (b) and Article39 (c) of the DPSP and not any of the other directive covered in Part IV.

There is a awesome balance in the Constitution between the DPSP and the Fundamental Rights, which should be adhered by the Courts without placing any of them as superior.[17]

3.5 Directive Principle under the Constitution of Bangladesh

Unlike other written constitutions the directive principles in the Bangladesh Constitution have caught their space under the heading of "Fundamental Principles of State Policy". Articles 8-25 of part II of the Constitution hold all the principles. Under article 8 of the original Constitution of 1972 (i) Secularism, (ii) Nationalism, (iii) Socialism; and (iv) Democracy- these 1our principles were designed to be major fundamental principles and all other principles derived from these four as set out 1n part 1l were to constitute the whole body of fundamental principles of state policy. Articles 9, 10, 11 & 12 extended those four chief principles. But during the first element law regime a drastic transfer was made in these four major principles. Under this change the term socialism meaning economic and social justice was substituted for the principle' Socialism' and absolute trust and faith in the almighty Allah' was substituted for the principle 'secularism. The elaboration under articles 9, 10, 1 8& 12 were omitted and some new principles have been introduced in the place. Article 8, however, as it stops now deals with the following four chief fundamental principles: (i) Absolute trust and faith in the Almighty Allah, (ii) Nationalism, (iii) Democracy, and (iv) Socialism meaning economic and social justice.[18]

3.6 Nature and judicial enforceability of the Fundamental Principles of State Policy-

Article 8(2) of the Constitution of Bangladesh makes clear the nature of the Fundamental Principles of State Policy in the way that however important these principles are these will not be judicially enforceable which says:

[17] www.blog.ipleaders.in

[18] Halim, M. A. (2018). Constitution, constitutional law and politics : Bangladesh (11th ed.). Dhaka: CCB Foundation, P. 82

"The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable."

Thus, article 8(2) fixed four impacts of these Principles and lastly bars clearly the judicial enforcement of these Principles of State Policy. Let us now analyse this issue in the light of different cases decided by the High Court Division and the Appellate Division of the Supreme Court of Bangladesh.[19]

Kudrat E-Elahi V. Bangladesh, 44 DLR (AD) 319

Kudrat E-Elahi V. Bangladesh[20] is an elaborate authority on this issue where the nature and the question of judicial enforceability of these principles have been discussed thoroughly both in the High Court Division and in the Appellate Division. For the convenience of analysis and to get a clear idea about the judicial position regarding this issue the case will be examined here in a detailed manner. In this case,[21] the petitioners before the High Court Division challenged the constitutional validity of the Bangladesh Local Government (Upazila Parishad and Upazila Administration Re-organization) (Repeal) Ordinance, 1991, on the ground, inter alia, that this Ordinance is inconsistent with articles 9, 11,59 and 60 of the Constitution and as such it is void in terms of Article 7(2) of the Constitution. It appears that the petitioners in this case'[22] tried to enforce Articles 9 and 11, two fundamental principles of state policy, judicially enforceable along with Articles 59 and 60, but they could not succeed before the Court. Before the High Court Division, Respondents-State defended the vires of the impugned Ordinance saying that Fundamental Principles of State Policy are not "judicially enforceable",that these Principles are not laws but are simply guide-lines for the State including Parliament and that even if any law is inconsistent with the Fundamental Principles that cannot be challenged in court.[23] The High Court Division in this case unanimously held that the Upazila Parishad was not Local

[19] www.journal.library.du.ac.bd
[20] 44 DLR (AD) 319
[21] ibid
[22] ibid
[23] Ibid. at p.324 para 6.

Government as the Upazila was not an administrative unit, but the judges differed as to the inconsistence of the said ordinance with the Constitution. Here two contrary opinions are found:

1.Fundamental Principles of State Policy are not judicially enforceable: It was held by one of the judges in the High Court Division that there was not any inconsistency and, even if any, the Repeal Ordinance could not be declared void in view of Article 8(2) of the Constitution, which says that the Fundamental Principles of State Policy are not enforceable by the Court.

2. Judicial enforceability of Fundamental Principles of State Policy:A new interpretation: The other judge held that though Fundamental Principles of State Policy are not judicially enforceable but a law which is directly contrary to any Fundamental Principle or which negates such a principle then the law may be declared void in spite of the provision in Article 8(2). Thus this opinion is a new interpretation which is in favour of judicial enforceability of the principles, and this view apparently seems to be in conflicting with the provision of Article 8(2).

In the above case'[24]Shahabuddin, CJ, before the Appellate Division, created the constitutional position of Fundamental Principles regarding their enforceability in obvious terms that these are not enforceable. He talks in paragraph 22 of the judgment;

The Repeal ordinance has been challenged mainly on the base of its being inappropriate with Articles 9,11 and 59 of the Constitution. Article 7(2) of the Constitution says that any law inappropriate with the Constitution shall be void. Learned Counsels for the appellants are seeking a declaration of insufficient of the Repeal Ordinance on this ground. A law is inappropriate with another law if they cannot stand together at the same time while leading on the same field. Article 9 requires the state to cheer the local Government institutions but the Ordinance has abolished a local Government, namely the Upazilla Parishad. Similarly, Article 11, they have pointed out, supplies that the Republic shall be a democracy in which, among other things, "efficient participation by the people in administration" at all levels shall be asssured; but

[24]ibid

the Ordinance has finished away with such participation in the administration at the Upazilla level.These two Articles as already quoted are Fundamental Principles of State Policy, but are not judicially capable of being done. That is to say, if the State does not or cannot implement these principles the Court cannot oblige the State to do so. The other such Fundamental Principles also stand on the same footing. Article 14 says that it shall be a fundamental duty of the State to emancipate the toiling masses—the peasants and workers— and backward sections of the people from all forms of absorption. Article 15(a) says that it shall be a fundamental duty of the State to make provision of basic necessities of life together with food, clothing, shelter, education and medical care for the people. Article 17 says that the State shall adopt effective measures for the purpose of establishing a uniform mass-oriented and universal method of education diffusing free and compulsory education to all children, for removing illiteracy and so on. All these Principles of State Policy are, as Article 8(2) says, fundamental to the governance of the country, shall be applied by the State in creating of laws, shall be guide to the interpretation of the Constitution and of other laws and shall form the basis of the work of the state and of its citizen, but shall not be judicially capable of being done.[25]

Shahabuddin CJ then caused the reason for not creating these Principles as judicially enforceable. In his words:

> The reason for not making these principles judiciary enforceable is obvious. They are in the nature of People's programme for socio-economic development of the country in peaceful manner, not overnight, but gradually. Implementation of these Programmes requires resources, technical know-how and many other things including mass-education. Whether all these pre-requisites for a peaceful socio-economic revolution exist is for the State to decide.[26]

[25] Ibid, pp. 330-331.
[26] ibid

The lawyers on behalf of the petitioners tried to create the Principles capable of being done in the Court at least from a other way though not directly. They contended following an interesting and dodgy approach that the state may not enact the Principles directly, i.e., can not force the government for the implementation of the policies, but the court can allege a law nullity if it is inconsistent with the Fundamental Principles under Article 7(2), Shahbuddin CJ summarized this argument in his judgment in paragraphs 24, 25 and 26 in the following words:

24. Mr. Amirul Islam contends that Article 13 of the Indian Constitution, resembling to Article 26 of our Constitution, makes any law inappropriate with any fundamental rights void; but in the Indian Constitution there is no provision like Article 7(2) of our Constitution. Article 7(2) makes void any law inappropriate with any provision of the Constitution besides fundamental rights. It is true that Article 8(2) of our Constitution has been couched in foreigner language than Article 37 of the Indian Constitution and that Article 7(2) has no corresponding Article in the Indian Constitution. But the primary position is the same in both the Constitutions—namely Principles of State Policy are not judicially capable of being done. In view of this position the learned Attorney-General argues that the Court cannot declare any fundamental principle invalid on the ground of inconsistency with a fundamental principle for, in that case declaration of nullity of a law will result in implementation of the fundamental principle by the Court. Mr. Amirul Islam has tried to create a distinction between the idea of enforceability of a provision of the Constitution and the idea of inconsistency between a provision of the constitution and another law and has mooted that while the Court cannot enact a fundamental principle, it can declare a law void on the ground of manifest inappropriate with any provision of the Constitution including a fundamental principle.

25. Supporting this view Dr. Kamal Hossain has mooted that if a law is directly opposed to and negates any fundamental principle the Court has got power to declare the law invalid, he has mentioned to some of the fundamental principles and tried to show that gibing of these principles may be prevented by the Court by issuing proper directions learned Counsel has cited Article

18(2) which provides that the State shall adopt efficient measures to "prevent prostitution and gambling" and contends that though the Court cannot direct the State to implement this principle, it can for a certainty declare a law void if the law supplies for encouragement of prostitution and gambling. In support of this argument he has mentioned to certain decisions of the Indian Supreme Court, which in the face of the bar to judicial enforceability of directive principle, has issued proper directions to the Government to take positive action so as to reduce the grievances of people caused by non-implementation of some Directive Principles.

26. In Comptroller and Auditor General Vs. Jagannath, AIR 1987 (SC) 537, Article 46 was engaged. It requires the State to "promote with special care economic and educational interest of weaker sections of the people"—particularly the Scheduled Caste and Schedule castes. Government issued instructions to supply adequate opportunity, special discretion and relaxation of qualification in the cases of candidates from weaker sections of the people for appointment and promotion in government services. The Office-Memo containing these Instructions was challenged under Article 226 on the ground of infraction of Fundamental right as to same opportunity for public service. The High Court, in spite of Article 37, which creates directive principles unenforceable, upheld the Office-Memo and dismissed the Writ Petition. In Mukesh Vs. State of Madhyapradesh, AIR 1985 (SC) 1363, Bonded Labour System (Abolition) Act, 1976 came up for discretion. It was a public interest litigation on the allegation that this law was not being completed to stop exploitation of labour in stone quarries. In Sheela Vs. State of Maharashtra, AIR 1983 SC 378, a petition of complaint of custodial ferocity to women prisoners in police custody came up before the Supreme Court, which then laid down particular guide-lines for ensuring protection against torture and mal-treatment to prisoners in police custody. Direction for legal aid, as provided in the directive principle under Article 39-A of the Constitution, was also issued by the Supreme Court. In Laxmi Kant Vs. Union of India, AIR 1987 SC 232, the Supreme Court issued particular directions as to adoption of destitute and abandoned children rearing in view Articles 15 and 39(f) of the Constitution. In all these cases the State and other authorities worried were themselves proceeding to create needy legislation for implementing the directive principles, and in some cases they issued directions to appropriate persons to catch needy action. In some of these cases as cited above the authorities, instead of

opposing the writ petitions, sought needy instructions and directions from the Court. In those cases no law was made in contravention of any directive principles and as such there was no occasion for the Court to declare any such law invalid.

But Shahabuddin CJ did not colonize the issue of enforceability of the Fundamental Principles of State Policy, that may be because of the reason that that was not necessitated to colonize the case, as the case was settled on other ground that the Upazilla was not calculated as Local Government at all, so no question of infraction of the Fundamental Principles of State Policy arose. In fact, though the enforceability of the Fundamental Principles of State Policy has been argued by the judges, it was not the issue in this case. But Justice Naimuddin Ahmed in the High Court Division solved this issue affirmatively catching it as a hypothesis, which has been discussed in the Appellate Division by ATM Afzal J. in the following words:'[27]

58. Naimuddin J. in his judgment found that the Upazilla Parishad was not a native Government institution within the meaning of Articles 59 and 9 of the Constitution and as such Article 9 cannot be invoked for revealing the repealing Ordinance/Act void under Article 7(2) on the ground of contradiction with Article 9. He has not also found that the impugned Ordinance / Act is in combat with any other provision of Part II of the constitution bearing Fundamental Principles of State policy. That being so, it was wholly unnecessary to decide whether in view of the Provision in sub-article (2) of Article 8 that the principles set out in Part II can be declared invalid under Article 7(2). Having replied this hypothetical question in the affirmative after takiiig hypothetical facts into discretion in a lengthy discussion, the learned Judge addressed himself to the genuine question thus;

"Consequently, if it is found that the impugned rejecting Ordinance is violative of Article 9 of the Constitution it is responsible to be struck down as void in view of article 7(2) of the Constitution".

59. Then the finding was created that the repealing Ordinance was not violative of Article 9 with which we have agreed. Therefore the capacious decision that a law can be declared void in case

[27] Ibid. pp. 339-340 paras 58 & 59.

of a friction with any provision of Part II of the Constitution was uncalled for and created on hypothetical facts. This, as a rule, the Courts always abhor. The Court does not reply merely academic question but confines itself only to the point/points which are strictly needy to be decided for the disposal of the matter before it. This should be more so when Constitutional questions are involved and the Court should be ever alert in such matters. Unlike a civil suit, the practice in Constitutional cases has always been that if the matter can be decided by deciding one issue only no other point need be decided.

In concurring with the judgment rescued by the learned Chief justice Mustafa Kamal J. posed the following question:[28]

> Is the Repealing Ordinance/Act inconsistent with Articles 9 and 11 of the constitution and if so, can it be declared void on that ground under Article 7(2) of the Constitution?

Then he summarized the bending of the lawyers of the petitioners regarding above question in the following words:[29]

> Mr. Amirul Islam submitted that the Repealing Ordinance/Act is liable to be declared void wholly, first, for being violative of the Preamble of the Constitution and secondly, for being inconsistent with Articles 9 and 11. He submits that the Fundamental Principles of State Policy may not be "judicially enforceable" but inconsistency therewith renders a law liable to be declared void under Article 7(2), there being a distinction between "enforceability" and "inconsistency". Dr. Kamal Hossain submits that a law which negates a clear directive of the Fundamental Principles of State Policy is liable to be declared void as being inconsistent with the constitution, the learned Attorney-general submits that a law is not liable to be declared void on the ground of inconsistency with the Fundamental Principles of State Policy, that Article 8(2) of the Constitution is an exception to Article 7(2) and that to declare a law as void is another way of enforcing a different state of things so that there is no real distinction between "enforceability" and "inconsistency".

[28] Ibid, p 341
[29] Ibid, p 341 para 63

Finally, Justice Mustafa Kamal denied above contention and said that these principles may be passed through the public opinion. He answered the above question through the following stages of observations.[30] Firstly, he confirmed that these principles are not laws. In his words:

> Article 7(2) provides that this Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law, to the extent of the inconsistency, be void. (Underlines are mine). Therefore, this constitution taken as a whole is a law, albeit the supreme law and by 'any other law" and "that other law" the Constitution refers to the definition of "law" in Article 152(1), including a constitutional amendment. It is the Law of the Constitution itself that the fundamental principles of state policy are not laws themselves but "principles". To equate "principles" with "laws" is to go against the Law of the Constitution itself. These principles shall be applied by the State in the making of laws, i.e., principles of policy will serve as a beacon of light in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the state and of its citizens. Not being laws, these principles shall not be judicially enforceable.[31]

Then he compares the provisions regarding the status of these 'principles' with the provisions describing the status and impact of the 'fundamental rights' and sorted out the finding that unlike fundamental rights there is nothing mentioned in the Constitution, which says that any law enacted violating these 'principles', will be void. To quote him:

There the Constitution rests. It does not say, as it says in Article 26 in respect of fundamental rights:

[30] Ibid, pp. 346-347.
[31] Ibid, para 84.

‖26 (1). All existing law inappropriate with the provisions of this Part shall, to the extent of such inconsistency, become invalid on the commencement of this Constitution.

(2) The State shall not create any law inappropriate with any provisions of this Part, and any law so created shall, to the extent of such inconsistency, be void.

(3) .....‖.

there being no specific provisions in the Constitution providing laws inappropriate with fundamental principles of state policy to be void, the learned Counsels for the appellants have declined back upon Article 7(2) and have mooted for acceptance of an interpretation which will take Fundamental Principles of State Policy at par with fundamental rights in so far as invalid ability is concerned. The submission is unacceptable, because, first, the creators of the Constitution did not lack in expression if they so meant it. Provisions analogous to Article 26 could have been inserted in Part II as well. The omission is deliberate and considered. Secondly, Article 8(2) proclaims the fundamental principles of state policy as "principles", not "laws" and that is the mandate of this Constitution. Article 7(2) cannot be explained to mean that if any other law is inappropriate with the "principles" mentioned in part II then that other law to the extent of the inconsistency, will be invalid. The Constitution is the supreme law and if the supreme law prescribes "principle" not "laws", and directs the exercise of these principles in certain specific manner, then the other law cannot be created void on the ground of inconsistency with these principles. It is argued that Article 9 and 11 are provisions of the Constitution and if any other law is inappropriate with these provisions, then it will be void. Article 7(2) says "this Constitution", not "provisions of the Constitution", which expression the Constitution uses in some other places. The use of the words "this Constitution" and not "provisions of the Constitution" is also wilful.[32]

He then mentioned the issue that 'what will occur if the Parliament creates any law violating any of the Fundamental Principles of State Policy embodied in the Constitution?'. He gives reply to this necessary question in the following words, which is self-explanatory:

[32] Ibid, para 85.

> A hypothetical question has been posed. Parliament passes a law which glaringly violates and flouts a fundamental principle of state policy, and if its vires is challenged solely on the ground of inconsistency with that principle and on no other ground whatsoever, will High Court Division declare the law void? It is a madness scenario. The learned Counsels could not show any such legislation in this sub-continent, but suppose. Parliament is struck with madness, is the High Court Division in its writ jurisdiction the only light at the end of the tunnel? What does public opinion, political party and election do if Parliament goes berserk?[33]

Latifur Rahman J. answered the above contention made by Amirul Islam in the following words:[34]

Mr. Amirul Islam while arguing wanted to create a distinction between these two terms "void" arid "enforceable" as contained in our Constitution. But it appears to me that in the topic of the present case, the distinction between the terms "void" and "enforceable" are not of much importance as Article 8(2) of the Constitution neatly contemplates that the fundamental principles of State Policy are not capable of being done in a court of law and the appellants have no justiciable rights in their benefit. The distinction as drawn by the learned Advocate is only superficial and indirectly he is seeking for enforceability which is repelled by this Article. Further, there being no violation of law, such a declaration that the Repealing law is invalid under Article 7(2) of the Constitution cannot be sought for.

Thus I took that Articles 7(2) and 8(2) co-exist harmoniously and the learned Advocate in an indirect manner is only trying to take a declaration of voidability which is not contemplated under the Constitution.

Lastly, Justice Latifur Rahaman refused the opinion of Justice Naimuddin in favour of enforceability of the FPSP and also criticized him in the following words:[35]

[33] Ibid, para 86.
[34] Ibid, p. 351.
[35] Ibid, p. 354 para 114.

Before parting with the case, I want to say a word as to the interpretation of Articles 7(2), 8(2) and 9 of the Constitution by Naimuddin Ahmed J. The learned Judge in his judgment observed as follows;

"Consequently, if it is found that the impugned recalling Ordinance is violative of Article 9 of the Constitution it is responsible to be struck down as void in view of article 7(2) of the Constitution".

This observation cannot take good in interpreting the Constitutional provisions as mentioned herein above. I must say that in dealing with Constitutional Provisions the court is not permitted to receive hypothetical questions as has been posed by the learned Judge and has answered them like an academician. The learned Judge has created some quotations from Text Books on various Constitutional law of some renowned scholars. Abstract theoretical questions are not to be considered by any court as those are of only academic importance. It is no doubt true that these fundamental principles of State Policy as taken in our Constitution have been declared "to be fundamental to the governance of Bangladesh, shall be applied by the State in creating of the laws", but we will normally hold that the State will not prepare a law contrary to the fundamental principles of State policy, the Government will have to reply and face the people who elect them. So, by taking a hypothetical question and on an interpretation of Article 9, the learned Judge ought not to have risked to strike down the Repealing Ordinance as void under Article 7(2) of the Constitution in the face of clear constitutional mandate of Article 8(2).

Let me now excerpt Justice Naimuddin Ahmed's observation, [36] which is the only extended judicial authority in favour of the enforceability of the Fundamental Principles of State Policy:

> 55. Let us, therefore, first of all see whether Article 7(2) of the Constitution is in conflict with Article 8(2) of the Constitution.We have already observed that the Fundamental
>
> Principles of State Policy embodied in Part II of the Constitution shall not be judicially enforceable. The crux of the question is in interpreting the words, "shall not be judicially enforceable.[37]

[36] In Ahsanullah, Pearul Islam, Shamsul Karim, Kudrat-E-Elahi Panir Vs. Bangladesh, through the Secretary, Ministry of Local Government , Rural development and Co-operative (Local Government Division), Government of Bangladesh, Bangladesh Secretarial, Dhaka and others, 44DLR (1992) pp. 188, 190-192.

[37] Ibid., para 55.

‖'He identifies three likely situations that may be envisaged in the behalf of the Fundamental Principles of State Policy as embodied in Part-II of our Constitution:[38]

First, the Government may not perform the Fundamental Principles by legislative enactment or executive action.

Secondly, a legislative act or an executive action may not keep to the Fundamental Principles.

Thirdly, there may be a legislative act or an executive action in obvious violation of the Fundamental Principles.

Then he felt no hesitation in refusing the possibility of judicial interference in the above first two circumstances. In his words;

> In the first contingency the Court has no jurisdiction to direct the legislature to enact laws or the executive to act for implementing the Fundamental Principles and in the second contingency also the court cannot intervene and say that the legislative act or the executive action is invalid not being in conformity with the Fundamental Principles and also cannot issue directions to make them in conformity with those principles.[39]

But what about the above third sitution, i.e., if any legislation is performed which neatly violates any of the Fundamental Principles of State Policy enshrined in the Constitution of Bangladesh - will the judiciary be capable to declare it as void? Or is the court still disable to interfere on the faith that these are not judicially enforceable? To replay this question he made the following long observation:

A plain reading of the provisions of clause (2) of Article 8 of the Constitution shows that the Principles set out in Part II of the Constitution shall not be enforced judicially meaning that if the executive or the legislature does not complete any of the provisions of this Part, the Court cannot erect for enforcement of these Principles. Does it indicate that the executive or the legislature can act in flagrant contravention and violation of the principles set forth in Part II of the Constitution? To cite only few examples,.....Article 10 provides that steps shall be caught to assure participation of women in all spheres of national life. Article 17(a) enjoins the State to adopt efficient measures for extending free and compulsory education. Article 18(2) enjoins the

[38] Ibid., para 64.
[39] Ibid.

State to adopt efficient measures to prevent prostitution and gambling and Article 24 enjoins the State to adopt measures for upkeep of all monuments. In the face of the above provisions can any law be performed prohibiting women from participating in any where of national life and keeping themselves shut inside the kitchens, prohibiting introduction of primary education without on payment, introducing prostitution and gambling throughout the country and for pulling down all monuments all over the country? In my view, the reply is emphatically in the negative, because, the mischief of Article 7(2) of the Constitution will be charmed notwithstanding clause 2 of Article 8 of the Constitution which simply enjoins that the provisions of Part II are not capable of being done by any Court but do not provide the raison detre for their contravention. What clause 2 of Article 8 says is that the Fundamental Principles cannot be enforced by issuing mandamus on the other two organs of Government and it does not provide a constitutional right to an individual to seek enforcement of the principles laid down in Part-II of the Constitution if the legislative or the executive organ of the State does not perform for implementation of the provisions of Part-II of the Constitution. But it does not indicate that since the Court cannot compel their enforcement, the executive and the legislature are at poverty to flout or act in contravention of the provisions laid down in Part-II of the Constitution. In this connection, the observation created by his Lordship Badrul Haider Chowdhury, CJ (as he was then) in the case of Anwar Hossain Vs. Bangladesh, reported in the Special Issue of BLD. 1989 may be referred to:

"Though the directive Principles are not capable of being done by any Court, the principles therein laid down are nevertheless fundamental in the Governance of the country and it shall be the responsibility of the State to apply these principles in creating laws, it is a protected Article in our Constitution and the legislature cannot amend this Article without referendum. This alone, shows that the directive principles cannot be despised by the executive. The endeavour of the Government must be to realize these aims and not to adze them down.[40]

To these words, it may be included that if the Government fails to implement the Fundamental Principles embodied in the Constitution, the Court cannot oblige the Government to act and at the same time it indicates that the Court has the power to intervene when the Government flouts and whittles down a provision embodied in this Part because Article 7(2) is specific in declaring

[40] Ibid., para 66.

that any law inappropriate with any provision of the Constitution shall be invalid to the extent of the inconsistency. Article 8(2), by creating the provisions of Part II unenforceable by the Courts, has simply provided the legislature the liberty to defer their implementation but that does not indicate that the said Article has vested the legislature with power to flout those provisions and enact laws in clear violation of those provisions. Article 8(2) cannot be explained as superseding Article 7(2) on the yardstick of which all laws enacted by the legislature has to be enjoyed. It also appears to me that there is no contradict between these two Articles, Article 7(2) being the constitutional yardstick to test the validity of all laws passed by Parliament and Article 8(2) being merely a prohibition against enforcement of the provisions of Part II of the Constitution. The constitution-creators were aware that implementation of the noble principles laid down in part-II may not be possible in the prevailing socio-economic condition of the country and as such, they very wisely enacted Article 8(2) creating these principles unenforceable through courts, but, that, by no indicates, implies that the constitution-makers intended to circumvent the mandate of Article 7(2) and permit the legislature to enact laws in violation of those principles.'‘[41]

> In view of the above, I find great force in the following observations made by Dr. MC Jain Kagzi in his The Constitution of India Volume 2, Fourth Edition, Page 938, "The declaration that the directives are 'not enforceable by any court' do not provide the *raison d' eter* for their disregard. Axiomaticality, a clear violation of the Directives might make a law unconstitutional. What is said in Article 37 is that the Directives cannot be enforced by, and through judicial process, if not implemented. Any non-implementation of the Directives violates no individual constitutional right, and affords no basis for litigation and legal remedy. This only means that the State cannot be legally forced to carry them out, if it cannot do. This is not to say that it can throw them to the winds, and can enact laws openly in opposition to them. The first cannot be objected to, but the latter cannot be permitted. A Court can, in a fit case, unambiguously declare a law bad as being manifestly opposed to the fundamental principles of governance of the country and, therefore, unconstitutional. The Directives are legal norms, although they are not enforced by the Court action at individual initiative. Their non-application through legislation might be a non-act which provides no cause of action. But any legislation in

[41] Ibid., para 67.

> opposition to them and in derogation to them is violative of the mandate of Article 37. The legislation can, in a fit case, be impugned on the ground of legislative contravention of the Article 37 directive. If applied, law may be rendered unenforceable even if not *void ab initio*".[42]

Fully agreeing with the shows expressed above I, therefore, take that the directives in Part-II of the Constitution are as valuable and as relevant as any other provision of the Constitution for the purpose of attracting the activities of Article 7(2) of the Constitution. As such, an enactment created by Parliament in opposition to, and in derogation of, the principles laid down in Part II of the Constitution is violative of the mandate provided in Article 7(2) of the Constitution and, therefore, invalid.[43]

Then he disclosed the opinion directly that a law should be struck down as void if that contravenes any of the fundamental principles of state policy. In his words:

> In such circumstance, to my view, a legislative act which is in direct contravention of any provision of Part II of the Constitution calls for intervention by the Court and is liable to be struck down as void in spite of the provisions laid down in Article 8(2) of the Constitution that the provisions of Part-II of Constitution are not judicially enforceable. Clause 2 of Article 8 of the Constitution is not really in conflict with clause (2) of Article 7 of the Constitution.[44]

Finally, he added:

> "... had the Upazila Parishads been found to be Local Government institutions within the meaning of Article 9 of the Constitution the impugned repealing Ordinance would be in contravention of the said Article and would be liable to be struck down to the extent of the inconsistency by operation of clause (2) of Article 7 of the Constitution."[45]

Thus, it appears that in answering the above third question Naimuddin J in the high Court Division in fact ultimately goes in favour of judicial enforceability of the Fundamental Principles

[42] Ibid., para 68.
[43] Ibid., para 69.
[44] ibid
[45] Ibid., para 83.

of State Policy though in a different way, though this has been overruled subsequently by the Appellate Division.

Sheikh Abdus Sabur V. Returning Officer, District Education Officer-in-Charge, Gopalganj and others, 41 DLR (AD) 1989 (30)

In Sheikh Abdus Sabur V. Returning Officer, District Education Officer-in-Charge, Gopalganj and others, [46] Badrul Haider Chowdhury J. fairly mentioned these principles as judicially unenforceable. In his words:

> "While our Constitution recognizes the supremacy of the Constitution, it lays fundamental principles of State policy in Part II although the principles cannot be judicially enforced."[47]

Shahabuddin J. in the same case focused on the use of the Fundamental Principles of State Policy in the creating of law and negatived the possibility of judicial enforceability in the following words:

> "Parliament is a creation of the Constitution itself; the local elective bodies are created by their respective statutes in pursuance of Article 9 of the Constitution, which appears in Part II relating to Fundamental Principles of State Policy. These Principles, though they must be applied by the State in the making of law, are not justiciable in court.‖[48]

Saleemullah V. Bangladesh, 47 DLR 218

In Saleemullah V. Bangladesh, [49] it was mooted that the decision of then Government to send troops to Haiti to join UN Force in Haiti was in violation of Article 25 of the Constitution. But the High Court Division held this judgement of the government not to be contrary to the Fundamental principles of State Policy. In the concluding paragraph of the judgment the Court says:

> "Rather the decision, in our view, has been taken on the principle enunciated in the United Nations Charter which is in no way against the Fundamental Principles of State

[46] 41 DLR (AD) 1989 (30)
[47] Ibid, p. 37 para 12.
[48] Ibid, p. 48 para 40.
[49] 47DLR 218

policy. The decision of the Government of the People's Republic of Bangladesh is in consonance with the spirit of the Fundamental Principles of State policy and in accordance with Chapter-VII of the Charter of the UN. We fail to understand how the policy decision of the Government taken in pursuant to the UN Resolution and the charter of the UN is an infringement of the Constitution as contended by the petitioner. On reference to this Resolution we find that it speaks about participation of the member states to support action taken by the United Nations acting under Chapter-VII of the Charter of the UN to facilitate the departure from Haiti of the military leadership. It may be observed that although the Fundamental Principles of State policy cannot be enforced in writ jurisdiction under Article 102 of the Constitution but it serves as a guide to the interpretation of the Constitution for the Court. We do not find that the decision of the Government is contrary to the Fundamental Principles of State policy and the Fundamental Rights."[50]

Thus, it appears that albeit the Court in this case mentioned fairly that the Fundamental Principles of State policy are not judicially enforceable , but at the similar time Court says that the judgement was not in contrary to the Fundamental Principles of State policy. This extra weakens the earlier clear stand of the Court regarding non-enforceability of the Fundamental Principles of State policy. Because, what would the Court tell if the judgement taken by the government would be found as contrary to the Fundamental Principles of State policy?

Aftabuddin V. Bangladesh and others, 48 DLR 1

In Aftabuddin V. Bangladesh and others,[51] the High Court Division has discussed the following two points regarding Fundamental Principles of State policy:

1. Fundamental Principles of State policy are not judicially enforceable: Naimuddin Ahmed J. observed that—

[50] Ibid.
[51] 48 DLR 1

"It is true that the Preamble to the Constitution is not enforceable. Nor is Article 22, which is enshrined in Part II of the Constitution as Principles of State Policy, in view of Article 8 of the Constitution."[52]

Thus, it shows that Naimuddin Ahmed J. deviated from his earlier opinion [53] regarding enforceability of the Fundamental Principles of State Policy.

2. Interpretive value o f the Fundamental Principles of State policy: Naimuddin Ahmed J. in the High Court Division observed that—

"But there is no doubt that the Fundamental Principles of State policy act as guide to the interpretation of the Constitution and other laws of Bangladesh in view of clause (2) of Article 8 of the Constitution ... Article 22 of the Constitution enjoins the State to ensure the separation of the judiciary from the executive organs of the State. Article 116 has, therefore, to be interpreted in the light of the above provisions. There is no dispute that the pledge contained in the third paragraph of the preamble presupposes an independent judiciary and unless independence of the judiciary is ensured the third paragraph of the Preamble cannot be secured. Similarly, although the directive to ensure separation of the judiciary from the executive by the State cannot be implemented and enforced through Court, Article 116 has to be interpreted in the light of this directive. In this connection. Article 116A is relevant. It runs as follows:

"Subject to the provisions of the Constitution all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions."

Article 116 A is, therefore, a step to realize the principle enshrined in Article 22."[54]

[52] Ibid,. p11 para 45.
[53] Supra note 58.
[54] 48 DLR pp.11-12 paragraphs 45,46

Dr. Mohiuddin Farooque V. Bangladesh, represented by the Secretary, Ministry o f Irrigation, Water Resources and Flood Control and others,49 DLR (1996)(AD) 1

It was argued in Dr. Mohiuddin Farooque V. Bangladesh[55] that—

> "The Preamble and Article 8 also proclaim 'the principles of absolute trust and faith in the Almighty Allah' as a fundamental principle of the Constitution and as a Fundamental principle of state Policy. Absolute trust and faith in the Almighty Allah necessarily mean the duty to protect his creation and environment. The appellant is aggrieved, because Allah's creations and environment are in mortal danger of extinction and degradation."[56]

Thus, it appears that an act done contradictory to the Fundamental principles of State Policy can make the concerned person aggrieved though those Fundamental Principles of Sf^ate Policy are not judicially enforceable. In the same case, [57] Dr. Farooque referring Article 21(1) of the Constitution, one of the Fundamental Principles of State Policy, which is as follows:

> "It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property."

Mooted that he has this constitutional obligation of performing public duties and to protect public property, and he succeeds in proving himself as an aggrieved person..

Latifur Rahman J. in this case[58] focused on the interpretive value of the Fundamental Principles of State Policy and also pointed out that the apex court of the country has the responsibility to interpret the Constitution in line of the Fundamental Principles of State Policy as enshrined in the same. He observed:

> "Part II of our Constitution relates to fundamental principles of State Policy. Article 8(2) provides that these principles are not enforceable in any court but nevertheless are fundamental to the governance of the country and it shall be the duty of the State to apply the principle in making the laws. The principles, primarily being social and economic

[55] 49 DLR (AD) 1
[56] Ibid,. P.9 para 25
[57] Ibid.
[58] Ibid.

rights, oblige the State, amongst other things, to secure a social order for the promotion of welfare of the people, to secure a right to work, to educate, to ensure equitable distribution of resources and to decentralize power to set up local government institutions composed of people from different categories of people as unit of self governance. A Constitution of a country is a document of social evolution and it is dynamic in nature. It should encompass in itself the growing demands, needs of people and change of time. A Constitution cannot be morbid at all. The language used by the framers of the Constitution must be given a meaningful interpretation with the evolution and growth of our society. An obligation is cast on the Constitutional Court which is the apex court of the country to interpret the Constitution in a manner in which social, economic and political justice can be advanced for the welfare of the state and its citizens."[59]

Saiful Islam Dilder V. Government of Bangladesh and others, 50 DLR(1998)318

In Saiful Islam Dilder V. Government of Bangladesh and others[60] the Court observed:

> "True, that fundamental principle of state policy, here Article25, can not be enforced by Court, nevertheless the fundamental principles of state policy is fundamental to the governance of Bangladesh, and serve as a tool in interpreting the Constitution and other laws of Bangladesh on the strength of Article 8(2) of the Constitution by the superior Court."

Here the Court made it clear that the Fundamental Principles of State Policy are not judicially capable of being done. But, on the other hand, when the adept Advocate relying upon Article 25 of the Constitution contended that Anup Chetia, if extradited to India the government would violate the mandate of Article 25[61], the Court in response to this argument noticed that the said extradition does not go against Article 25, one of the Fundamental Principles of State Policy. Thus, the Court denied the writ petition relying on, inter alia, that the said extradition does not violate Article 25, one of the Fundamental Principles of State Policy.[62] Then, from this approach

[59] Ibid., pp. 18-19 para 72.
[60] 50 DLR (1998) 318
[61] Ibid
[62] Ibid

of the Court a question may easily be posed; what would the Court tell if the Article 25 would be violated? Could the Court decide it differently?

Secretary, Ministry o f Finance, Government o f Bangladesh V. Mr. Md.Masdar Hossain & others, 20 BLD (AD) (2000) 104

In Masdar Hossain[63] case though the Court does not seem to enact the Principle directly but the Court criticized the State for non-implementation of Article 22 of the Constitution of Bangladesh, one of the Fundamental Principles of State Policy, focusing the failure of the state to individual the judiciary from the executive. The Court observed:

> "Article 22 of the Constitution provides that the State shall ensure the separation of judiciary from the executive organs of the State. Though more than 29 years have elapsed since making of the constitution and its coming into force no effective steps have been taken to separate the judiciary from the executive organs of the State."[64]

In the same case, the Court further put together that 'Article 22 contemplates separation of judiciary from the other organs of the State and it is for the legislature to decide on this issue'.[65]

Although in India also the Directive Principles are not judicially enforceable, interestingly, the Supreme Court issued a number of directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by non-implementation of the Directives.[66] The Constitution of Pakistan is rather very particular about the meaning,

---

63 20 BLD (AD) (2000)P. 142.

64 Ibid., Per Latifur Rahman, J agreeing with Mustafa Kamal, C.J., para 75.

65 Ibid. p.147, para 85.

66 Comptroller V. Jagannathan, AIR 1987 SC 537. See Basu D.D., Shorter Constitution of India, 10th ed., Prentice Hall of India Private Limited, New Delhi, p. 270. Basu cited the following directions issued by the Supreme Court referring different cases:

- To issue a notification under the Minimum Wages Act, for the benefit of bonded and other exploited laborers.
- To set up a joint committee of the Union of India and a State Government concerned as a machinery to supervise and ensure that the poor and needy employers are not exploited by unscrupulous contractors in imposing terms violative of the Directives under articles 38,41,42,43 or the various labor laws.
- To take various steps for extending the benefit of article 39A to all under trial prisoners.
- To lay down procedural safeguards in the matter of adoption of Indian children by foreigners, in view of article 39F.

impact and consequence of certain principles, which are not judicially enforceable. Article 30(2) of the Constitution of Pakistan says-—

> "The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State or any organ or authority of the state or any person on such ground."

The 1956 Constitution of Pakistan also embodied certain directives in the nature of our 'principles' which were not judicially enforceable. Mr. Abul Mansur in the then Pakistan Assembly criticized it highly as a member of the opposition in the parliament during the time of Sahrawardi on the 17th January 1956 in the following words:[67]

> "Now, Sir, what is this provision for directive principle which is found nowhere in the world except in India and Ireland?These are the two soUtary examples where constitution provides for directive principles. It is preposterous to think that the constitution will give some directives which will not be enforceable in law and which will not be justifiable and will not be effective. If that is so, why should these things be in the constitution at all? It is net a plaything of children. It is a sacred document which shall be preserved in the breasts of the citizens of the state as a sacrosanct provision on which they would rely for protection of their rights—individual, social, collective and political. But they provide at the very beginning that these or nsuch provisions shall not be enforceable in any court of law. If that is so, why do you provide it at all? Leave it to the people."

The Constitution of Lesotho contains in chapter III certain 'Principles of State Policy' which are not enforceable by any court. Article 25 of this Constitution[68] says about the application of these principles of State policy that—

> "The principles contained in this Chapter shall form part of the public policy of Lesotho. These principles shall not be enforceable by any court but, subject to the limits of the economic capacity and development of Lesotho, shall guidethe authorities and agencies of Lesotho, and other public authorities, in the performance of their functions with a view

---

67 For reference see Bangladesh GonoParishader Bitarka, Sarkari Biboroni, 1972 vol.2 at p. 222.

68 The Constitution of Lesotho

to achieving progressively, by legislation or otherwise, the full realisation of these principles."

The Constitution of the Republic of Liberia contains certain 'General Principles of National Policy' and Article 4[69] says that 'The principles contained in this Chapter shall be fundamental in the governance of the Republic and shall serve as guidelines in the formulation of legislative, executive and administrative directives, policy-making and their execution.'

Suranjit Sen Gupta, a member of the Constituent Assembly in Bangladesh during the debates on the draft constitution termed the Constitution as undemocratic on different grounds, inter alia, not making these 'principles' as judicially enforceable.[70] A proposal was raised subsequently in the Assembly to omit the words 'but shall not be judicially enforceable' from Article 8, but the proposal was rejected by the majority.[71]

[69] The Constitution of the Republic of Liberia.

[70] Supra note 91, p. 224.

[71] Ibid. p. 454.

3.7 Opinion

Thus, it is seen that a work contrary to the basic principles of state policy can hurt the person concerned even though those basic principles of state policy are not fairly applicable. Constitution These principles will be applied instead of being applied judicially by different constitutions and public opinion. Although these policies are not enforceable by any court, they are 'fundamental to the governance of Bangladesh'. It thus appears that Granville Austin rightly referred to the fundamental principles of state policy as the _conscience of the Constitution‘. The Constitution of Pakistan is rather specific about the meaning, effect and consequences of certain policies, which are not judicially applicable. The basic principles of state policy and it also mentions that the Supreme Court of the country has an obligation to interpret the constitution along with the basic principles of state policy which are similarly included. The basic principles of state policy are not judicially applicable but this does not mean that they are not applicable in any other way. The following are the recommendations by which the basic principles of state policy can be applied without the judiciary: Judicial application is not only the only way to enforce a certain rule, but also public opinion is an effective mechanism for implementing certain principles and is certainly consistent with Austin's popular notion of sovereignty. Thus, the responsibility to implement these policies was left to the political process and over time there has been a greater emphasis on meeting the goals set out in these policies. The basic principle of state policy as the 'conscience of the constitution'. The legal status of the UK Constitutional Convention in this case is worth noting here that they are not actually law because they are not enforced by the courts although it may be considered binding by the Constitution and by them. Since the basic principles of state policy are not laws enforced by the judiciary, even if a law is passed by parliament in violation of this policy, the judiciary is not the only light at the end of the tunnel to enforce it, and if it really happens, like public opinion, political parties and elections. In addition to judicial application, there are many other ways to apply.

Chapter-IV

Concluding chapter

4.1 CONCLUSION

In conclusion it can be said that, it is about 45 years we have achieved our independence and got a sovereign country. But only a few of the fundamental principle of state policy have been secured completely till today, thought under the fundamental rights the limit seems much extensive. Vast works are yet to be done for the complete implementation of the fundamental principles of state policy, though the State is taking significant steps in respect of implementing the fundamental principles of state policy. Some of the fundamental principles of the state policy have not achieved that envious goal in order to get the targeted human rights protection; and the State should ensure complete implementation of those principles. In respect of implementing the fundamental principles of state policy, the socio-economic perspective of the Republic should also accept into account. The fundamental principles of the state policy can never be implemented with a miracle. None knows when the government will acquire the destination of complete implementation of the fundamental principles as there are still some unavoidable problems in the State. However, if the judiciary‘s hands cadaverss tied in keeping human rights, government might not be willing to assure the fundamental rights which might go against their own benefits.

Bibliography

Weblinks

www.Scribd.com

www.Assignmentpoint.com

www.iosrjournals.org

www.blog.ipleaders.in

www.journal.library.du.ac.bd

BOOKS

Haque Muhammad Ekramul, legal and constitutional status of the fundamental principles of state policy as embodied in the constitution of bangladesh (The Dhaka university studies, part-f vol. xvi(i):45-80, june 2005

Halim, M. A. (2014). The Legal System of Bangladesh (8th ed.). Dhaka: CCB Foundation

Islam, M. (2002). Constitutional Law of Bangladesh (2nd ed.). Dhaka: Mullick Brothers.

Halim, M. A. (2018). Constitution, constitutional law and politics : Bangladesh (11th ed.). Dhaka: CCB Foundation

Bari, Dr. M. Ershadul, International Concern for the Promotion and Protection of Human Rights, (The Dhaka University studies, Part-F Vol. II, No.I. 1991), P.24