

Sonargaon University

Research Monograph

On

‘‘Fundamental Rights in Bangladesh Constitution & Their Enforcement Mechanism”.

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Date of Submission: 05.09.2022

ABSTRACT

PREFACE

At first, thanks to almighty, who has been kind enough to let me complete this Research Monograph in right time.

I would like to acknowledge my gratitude to my honorable teacher **Md. Deedarul Islam Bhuiyan** for permitting me to undertake this research. Thanks to him for his most constructive suggestion. And informative guidance through his lectures.

To complete this assignment, I am personally indebted to some book writers for their kind And valuable writings. Thanks to all from the bottom of my heart.

Signature

CERTIFICATION BY THE ADVISOR

This is hereby certified that this research monograph on the topic **‘‘Fundamental Rights in Bangladesh Constitution & Their Enforcement Mechanism”** submitted by **Jiyasmin Akter ID No: LLB-1803015018** in fulfillment of the requirements for LLB (hones from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted any place earlier, as far as I know.

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DECLARATION

This is **Jiyasmin Akter**, a student of LL. B program of Department of Law of Sonargaon University, **ID No: LLB-1803015018** does hereby declare that this research paper Titled, **"Fundamental Rights in Bangladesh Constitution & Their Enforcement Mechanism"** is an original work. The assigned work has done by me for partial requirement of my LLB degree, as a part of academic curriculum. I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where dereference is made in the text.

I also declare that the presented work does not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

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LETTER OF TRANSMITTAL

To,
Md. Deedarul Islam Bhuiyan
Asst. Professor & Head, Department of Law
Sonargaon University, Dhaka.

Subject: **For the submission of research Monograph titled "Fundamental Rights in Bangladesh Constitution & Their Enforcement Mechanism"**

Dear Sir,

This is a matter of joy for me to submit the assignment on the title **"Fundamental Rights in Bangladesh Constitution & Their Enforcement Mechanism"** While doing this research monograph, I have tried my level best to keep the required standard. I Hope, this dissertation will fulfill your expectation. I hope that you would be kind enough to go through this dissertation for your kind evaluation. I am always available for any clarification or any other necessity of any part of this research Monograph at your convenience.

Yours obediently

Jiyasmin Akter
ID No: LLB-1803015018

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CHAPTER 1

INTRODUCTORY

Introduction

Fundamental rights give the citizens dignity of life in an atmosphere of freedom and justice beyond the man-made fetters that had constricted their physical and mental horizons. Modern judiciary is regarded as an excellent product of civilization to put the concept of justice to work in the midst of divergent force with conflicting class or individual interests. Such conflicts make is difficult to bring about equilibrium in the society for a peaceful and orderly association of citizens for their common good. An independent judiciary and strong democratic institutions are the best guarantee against assaults on the rights of the citizens. the constitution of Bangladesh enumerated some basic civil and political rights common to most liberal democracies and also insures the rights to constitutional remedies for the protection of these rights. In addition, the fundamental rights of the constitution of Bangladesh are aimed at overturning the inequalities of past social practice.

1.2 Objectives of the Study

1.3 Scope of the Study

1.4 Methodology of the study

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

1.5 Limitation of the study

Although the study has reached its aims, there were some unavoidable limitations and shortcomings.

First, I am an amateur researcher who is not even expert on the field of study; therefore, it was a tough task to assess the objectives perfectly within short time-limit. Second, all the data I used in this study is mostly self-reported that is limited by the fact that it rarely can be independently verified.

CHAPTER 2

INTRODUCTORY

2.1 Introduction

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

Fundamental rights give the citizens dignity of life in an atmosphere of freedom and justice beyond the man-made fetters that had constricted their physical and mental horizons. Modern judiciary is regarded as an excellent product of civilization to put the concept of justice to work in the midst of divergent force with conflicting class or individual interests. Such conflicts make is difficult to bring about equilibrium in the society for a peaceful and orderly association of citizens for their common good. An independent judiciary and strong democratic institutions are the best guarantee against assaults on the rights of the citizens. 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[1]; the constitution of Bangladesh enumerated some basic civil and political rights common to most liberal democracies and also insures the rights to constitutional remedies for the protection of these rights. In addition, the fundamental rights of the constitution of Bangladesh are aimed at overturning the inequalities of past social practice. I prohibit discrimination on the grounds of religion, race, sex, color place of birth, 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 their creator with certain inalienable secure these rights, government are instituted among

[1] The doctrine of fundamental rights

men, deriving their just, endows them powers form the consent of the governed. That whenever any form of government becomes destructive of those ends, it shall be the right of the people to alter or abolish it and to institute new government, laying its foundations upon such principles, and organizing its power in such forms, as shall seem to them most likely to affect their safety and happiness"[2].

The universal Declaration of Human Rights 1948[3], which states – "Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law". Rights and freedoms from the bedrock of democracy. No democracy can function successfully in the absence of some basic freedoms. Again, modern democratic government is a party government. The party winning majority in the election form the government. However, coming in to power the government may turn itself into a one violating the basic rights of people and oppressing the opposition. The aim of having a declaration of fundamental rights in the constitution is to prevent such a possible danger. In order words, they provide a restraint on the power of the government so that it cannot interface with the people's basic rights according to its whims. When rights and freedom are placed mending process, which is always a right one. This is why insertion of a Bill of right in a written constitution is considered one of the safeguards of democracy. Bangladesh accepted fundamental rights and incorporated the same in their constitution. Within less than a year after the emergence of Bangladesh as a new, independent, sovereign republic, the constitution of Bangladesh was passed, though; however, it came into force on December 16, 1972, the first anniversary of the day of liberation.

2.2 What is Rights?

Before understanding fundamental rights are should have idea about rights and human rights. Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory.

[2] A Summary View of the Rights of British America(1774)

[3] The universal Declaration of Human Rights 1948

Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology. Rights are often considered fundamental to civilization, for they are regarded as established pillars of society and culture, and the history of conflicts can be found in the history of each right and its development. According to the Stanford Encyclopedia of Philosophy, "rights structure the form of governments, the content of laws, and the shape of morality as it is currently perceived".

Rights mean a claim of some interests adverted by an individual or a group of individual which has either moral or legal basis and which is essential for his development in the society[4]. In a sense right not created by law it originates itself as an obvious result of mutual interaction between man and society. Rights are primarily divided in to two categories- natural rights and legal rights.

2.2.1 Natural rights

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

2.2.2 Legal rights

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

Some thinkers see rights in only one sense while others accept that both senses have a measure of validity. There has been considerable philosophical debate about these senses throughout history. For example, Jeremy Bentham believed that legal rights were the essence of rights,and he denied the existence of natural rights; whereas Thomas Aquinas held that rights purported

[4] "Stanford Encyclopedia of Philosophy", Stanford University, July 9, 2007

by positive law but not grounded in natural law were not properly rights at all, but only a facade or pretense of rights.

2.3 What are Human rights?

The term "Human Rights" which does not mean any right is used in special sense. Human rights are those of legal and moral rights which can be claimed by any person for the very reason that is a human being[5]. These rights come with birth and applicable to all people throughout the world irrespective of their race, color, sex, language or political or other opinion. These are those rights, that are inherent in human person and without which they cannot live as human beings.

So we can say, 'Human Rights' are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

2.4 What are Fundamental Rights?

The term fundamental right is a technical one, for when certain human rights are written down in a constitution and protected by constitutional guarantees they are called fundamental rights[6]. They are called fundamental rights in that sense that they are placed in the supreme or fundamental law of the land which has a supreme society over all other law of the land.

From WEX Legal Dictionary, Fundamental rights are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment. These rights are specifically identified in the Constitution (especially in the Bill

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

[6] International Covenant on Civil and Political Rights, Article 1.

of Rights), or have been found under Due Process. Laws encroaching on a fundamental right generally must pass strict scrutiny to be upheld as constitutional[7].

Article 26 to 47 of Bangladesh constitution confers a number of substantive fundamental rights on every citizen of Bangladesh e.g. the right to freedom of expression, assembly, association, movement and profession.

2.5 Nature of Fundamental Rights

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

1. To prevent the Executive from acting arbitrarily;
2. To ensure some amount of security and protection to various types of minorities; and
3. To promote and foster social revolution by establishing the conditions necessary for achieving justice, social, economic and political.

[7] WEX Legal Dictionary

CHAPTER 3
FUNDAMENTAL RIGHTS IN BANGLADESH CONSTITUTION

Constitutional Provision Relating to Fundamental Rights

18 fundamental rights have been enumerated in the constitution commencing from Article 26 to 43. All of these rights are civil and political rights[8]. These 18 fundamental rights may be firstly divided into two groups:

A. Rights granted to all persons-citizens and non-citizens alike. These are six rights enumerated in Articles 32, 33, 34, 35, 41 and 44 of the constitution.
B. Rights granted to citizens of Bangladesh only, these are 12 rights enumerated in Articles 27,28, 29, 30, 31, 36, 37, 38, 39, 40, 42 and 43.

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

3.1 Laws in consistent with Fundamental rights to be void

Article, 26 Provides that all existing laws inconsistent with the fundamental rights as provided in part III shall to the extent of the inconsistency become void on the commencement of the constitution and the state shall not make any law inconsistent with those rights. In our jurisdiction, the case of Anwar Hossain vs. Bangladesh[9], popularly known as the constitution (Eight Amendment) case has also expressed the same view.

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

[8] The Constitution the People's Republic of Bangladesh

[9] "Anwar Hossain vs. Bangladesh" (known as The Constitution Case)

differ, people after making a constitution give the parliament power to amend it in exercising its legislative power strictly following certain special procedures constitutions of some countries may be amended like any other status following the ordinary legislative procedure. Even if the constituent power is vested in the parliament the power is a derivative one and the mere fact that an amendment has been made in exercise of the derivative constituent power will not automatically make the amendment immune from challenge. In that sense there is hardly any difference whether the amendment is a law, for it has to pass through the order invalidity test my considered opinion therefore is that an amendment of the constitution is not included in law" within the meaning of Article 7 in the same way as it is not law in Article10.

3. 2 Equality before law

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

"Equality before law" means that among equals law shall be equal and shall be equally administered. There shall not be any special privilege by reason of birth, creed etc. "Equal protection of law" mea that all persons in like circumstances shall be treated alike and no discrimination shall be made in conferment of privileges or imposition of liabilities. The first part is negative while the second is positive in approach. Equality before law is involved in the enforcement of law, while equal protection of law involves the validity of a law. However, these are not independent or severable concepts in their application and will often be found to overlap each other this article more than others firmly embodies the concept of rule of law the establishment of which is one of the prime objectives of the constitution[11].

[10] The Constitution the People's Republic of Bangladesh

[11] The Constitution the People's Republic of Bangladesh

3.3 Discrimination on grounds of religion etc.

Art. 28 has been introduced to make classification only or grounds of religion, race, caste, sex or place of birth parse unreasonable except when a provision is made in favor of women, children and backward section of citizens[12].

As a matter of fact, this article projects the citizen against discrimination. The state can't discrimination only on the grounds as mentioned in Article 28, but with some other national factor, the discrimination would be valid. The crucial word in this Article is discrimination, which means making an adverse destination with regard to or distinguishing unfavorably from others.

3.4 Equality of Opportunity in Public Employment

Clause (1) of Article-29 of the constitution guarantees equality of opportunity for all citizens in the matter of employment or office in the service of the Republic[13]. The expression "the service of the Republic" means any service, post or office whether in a civil or military capacity, in respect of the government of Bangladesh and any other service declared by law to be a service of the Republic. Equality of opportunity in respect of employment under this clause means equality as between members of the same class of employees and not equality between members of separate classes. This clause gives effect to the doctrine of equality in respect of appointment as well as promotion. Inequality of opportunity for promotion between holders of posts in the same grade may be an infringement of this clause, but those who hold post indiffe rent grades are not entitled to invoke it. When an application for a post has been made, it must be considered on merits.

Prohibits discrimination in respect of employment an office in the service of Bangladesh on the grounds only of religion, race, caste, sex or place of birth. Where selection for promotion to the next higher grade is on the "basis of seniority cum-merit", a public servant is entitled to claim relief under this clause if he is placed in the placed in the list of seniority contrary to the rules governing seniority. Clause (3) provides an exception by restricting the operation of

[12] The Constitution the People's Republic of Bangladesh

[13] The Constitution the People's Republic of Bangladesh

clauses (1) and (2) of Article 29. A provision an exception can't be so interpreted as to nullify or destroy the main provision[14].

In the case of Bangladesh vs. Azizur Rahman[15], will interpreting Article 29 of the constitution, Equal opportunity held at paragraph 44 as under: The guarantee of equal opportunity in respect of employment is available at the stage of initial appointment and of promotion. Merely because chances of promotion of the write petitioners may be said to have been affected by the impugned rules of 1990 would not amount to denial of equality of opportunity in respect of the employment, as chances of promotion are not conditions of service. As a matter of fact, no writ petitioners have been deprived of the right to be considered for promotion and as such, the submission that they have been denied the right of equalopportunity in respect of future employment is untenable and there is in fact no violation of Article 29(1) of the constitution.

3.5 Prohibition of Foreign Titles, Etc.

Article 30 provides that No citizen shall, without the prior approval of the president, accept any title, honor, award or decoration from any foreign state[16].

3.6 Right to Protection of Law

Article 31 deals with the protection of law to be enjoyed by citizens and persons residing in Bangladesh and in particular, in respect of life, liberty, body, reputation and property. The term in accordance with law is akin to American concept[17].

3.7 Protection of Right to Life and Personal Liberty

No personal shall be derived of life on personal liberty saved in accordance with law. In the case of Islam Mahmud vs. Bangladesh[18], H.M. Habibur Rahman, j. held that the detaining authority must have some jurisdictional facts for detaining an individual, since the detaining authority is

[14] The Constitution the People's Republic of Bangladesh

[15] Case of "Bangladesh vs. Azizur Rahman"

[16] The Constitution the People's Republic of Bangladesh

[17] The Constitution the People's Republic of Bangladesh

[18] Case of "Islam Mahmud v Bangladesh"

curtailing the liberty of a citizen by detaining him on preventive detention; it is exercising a non-judicial authority. To curtail fundamental rights of personal liberty enshrined in the constitution it is essential that the detaining authority. Must have report and materials that is jurisdictional facts for exercising power to the detune under the special power Act, 1974.

3.8 Safeguards as to Arrest and Detention

Article 33 consists of two parts: Clauses (1) and (2) relate to persons otherwise than a preventive detention of law. Clauses from (3) to (6) apply to person arrested or detained under preventive detention. This Article provides for protection against unreasonable arrest and detention. This Article provides for some specific procedural safeguard as in clause (1) of 33, a person in detention is entitled to know the grounds of his arrest and he cannot be denied the right to consult or be defended by a lawyer of his/her choice. In clause (2) a person arrested must be produced before the nearest magistrate within twenty-four hours excluding the tie for such journey. The Article provides for certain substantive and procedural safeguard in respect of deprivation of life and personal liberty as a matter of fact, disclosure of grounds of arrest and detention before a magistrate even mandatory, under clause (1) of Article 33. There are numerous judicial decisions of the supreme court of Bangladesh on the question of preventive detention and the safeguards to be observed have become a highly specialized subject. Clause (4) provides that no person can be detained at the first place exceeding six months and during this time; he must be given an opportunity to be heard by an Advisory Board. This clause also speaks of the constitution of the board. Clause (5) of Article 33 provides for early communication of grounds of detention of such person, the provision of this clause also authorize the detaining authority for not disclosure of facts in public interest[19].

In the case of professor Ghulam Azam vs. Bangladesh, Md. Abdul Jalil[20] , j. held at paragraph25 asunder: From the facts and circumstances as discussed above we are of the opinion that the petitioner having been living in Bangladesh is entitled to the protection under Article 33(5)of the constitution and as such the detaining authority was under constitutional obligation to

[19] Case of "Islam Mahmud vs. Bangladesh"

[20] Case of "Professor Ghulam Azam vs. Bangladesh"

communicate grounds of detention as soon as may be, but no grounds were communicated within such long period of more than 1 year and 3 months.

3.9 Prohibition of Forced Labour

Clause (1) of Article 34 prohibits all forms of forced labour and any contravention of this rule has been made punishable in accordance with law. Clause (2) prevents persons undergoing punishment for sentence given by a court of law from invoking the prohibition against forced labour provided in the proceeding clause and further the state is empowered to require compulsory services for public purposes. The Article does not expressly mention slavery as has been mentioned in the thirteen Amendments of the United States constitution, and though there is no longer the remotest likelihood of enforcing such institution the prohibition against forced labour would extend to it if at all any attempt is made to introduce it[21].

3.10 Protection in Respect of Trial and Punishment

Article 35 guarantees a cluster of rights in respect of trial and punishment. Clause (1) provides protection against ex post facto laws, clause (2) provides guarantee against double jeopardy, clause speedy and fair trial: clause (4) grants privilege against self-incrimination and clause (5) prohibits torture and cruel, inhuman or degrading punishment. Clause (6) provides that nothing in clause (3) or clause (5) shall affect the operation of any existing law, which prescribes any punishment or procedure for trial[22].

3.11 Freedom of Movement

Rights of locomotion is an important part of liberty, the right of a person to move freely to reside where he will and to work where he will be connected with his livelihood and pursuit of happiness. Even though this right may be protected by the due process clause of article 31, as an important segment of liberty, the frames of the constitution made special provision to protect the freedom of movement of citizens. Article 36 provides that subject to reasonable restrictions imposed by law in the public interest, every citizen has the right to move freely through out

[21] The Constitution of the People's Republic of Bangladesh

[22] The Constitution of the People's Republic of Bangladesh

Bangladesh, to reside and settle in any place in Bangladesh, and to leave and re-enter Bangladesh.

In the case of Dr. Mohiuddin Farooque vs. Bangladesh and others[23], Mustafa Kamal, j. held at paragraph 31 as under: These rights, attached to a citizen are not local. They pervade and extend to every inch of the territory of Bangladesh stretching up to continental shelf.

3.12 Freedom of Assembly

Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health[24].

3.13 Freedom of Association

The very existence of democracy is dependent on the right to form associations, without the right; there can't be any political party, which is an essential institution of democracy. The right of free association is closely allied with the freedom of speech and which is a right to free speech, and foundation of a free society[25].

3.14 Freedom of Thought, Conscience Speech and Press

Freedom of thought and conscience is essential to the development of human personality and every person should be free in his thought and conscience. On the other, freedom of speech is essential for the development and functioning of democracy. Without freedom of speech there can't be any democracy and the first thing and autocrat does is to curb the freedom of speech[26]. In the case of Bangladesh National curriculum and Text Board vs. A.M Samsuddin and others[27], A.T.M. Afzal, c.j. held at paragraph 32 while interpreting Article 32(2) as under: The right to freedom of speech and expression as claimed by the writ petitioners does not extend to the right

[23] Case of "Dr. Mohiuddin Farooque vs. Bangladesh and Others"

[24] The Constitution of the People's Republic of Bangladesh

[25]

[26] The Constitution of the People's Republic of Bangladesh

[27] Case of "Bangladesh National curriculum and Text Board vs. A.M Samsuddin and others"

of printing and publishing of note books or textbook prepared and published by the textbook board under stationary authority the court was not justified in declaring the impugned Act to be ultra vires of Article 39(2) of the constitution.

3.15 Freedom of profession or occupation

Article 40 provides that every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business[28].

3.16 Freedom of religion

Article 41 ensures that every citizen has the right to profess, practice or propagate any religion and every religious community on group can establish, maintain and manage its religious institutions subject to reasonable restriction imposed by law on the ground of public order and morality[29].

3.17 Rights to property

Article 42 guaranteed that every citizen has right to acquire, hold, and transfer or otherwise dispose of property, subject to restrictions imposed by law compulsory acquisition, nationalization and requisition of property is not permissible without the authority of law[30].

3.18 Protection of home and correspondence

Article 43 ensures the citizens right to be secured in his home against entry, search and seizureand also to the privacy of his correspondence and other means of communicatio. Restriction can be imposed on such rights on the ground of security of the state, public order, public morality and public health. This article guarantees the privacy of home and correspondence and communications[31].

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CHAPTER 4

Enforcement of Fundamental Rights

Article 44(1) provides that the right to move the Supreme Court for enforcement of any of the fundamental rights is itself a fundamental right. Art. 44(2) enables parliament to confer the jurisdiction to enforce fundamental rights on any other court, but such conferment cannot be in derogation of the power of the Supreme Court under Art. 102(1), which means that such other court may be given concurrent, but not exclusive, power of enforcement of fundamental rights. The Court must always have the power of enforcement of fundamental rights[32].

INSTITUTIONAL MECHANISM FOR THE PROTECTION SYSTEM OF FUNDAMENTAL RIGHTS

1. National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) was established in 2009 under the National Human Rights Commission Act 2009[33] with aim to contribute to the embodiment of human dignity and integrity as well as to the safeguard of the basic order of democracy. NRHC consists of three members, one chairman and other two members. However, the 2009 Act itself may not inspire confidence in the efficacy, independence or transparency of the institution. The reasons are to be found in formation of the selection committee, the size of the Commission, in restraints on its investigative powers, and limited mandate to try perpetrators.

2. Anti-Corruption Commission (ACC)

Anti-Corruption Commission Act 2004[34], established an Anti-Corruption Commission, in2004. The Act sought to establish an independent agency for combating corruption with legal authority to conduct inquiries and investigations, file and conduct cases, review legal measures for preventing corruption, demand statement. It has been observed not to make the desired impact,

[32] The Constitution of the People's Republic of Bangladesh

[33] National Human Rights Commission Act 2009

[34] Anti-Corruption Commission Act 2004

but following its reconstitution in February 2007, the Commission began working with renewed vigor and impetus duly acceding to the United Nations' convention against corruption that was adopted by the General Assembly away back on 31 October 2003.

3. National Legal Aid Organization (NLAO)

Recognizing inherent difficulties that impede marginalized and poor people's access to justice, the government enacted the Legal Aid Act in 2000 under which a National Legal Aid Organization has been set up to provide legal aid services to the poor and the dis advantaged, of assets and liabilities, and seize property in excess of known sources of income.[35]

PARADOXES OF FUNDAMENTAL RIGHTS

1. Emergency Provisions and Fundamental Rights

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

2.Violation of Fundamental Rights

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

[35] The Legal Aid Act 2000

subjected to electric shocks. It is alleged that this brutality stemmed from the brothers 'family being incapable of paying a sufficient bribe. The brothers were tortured to such an extent that they were hospitalized at the Rajshahi Medical School Hospital under police custody. [8] The most thorough account of torture in Bangladesh was the May 2007 case of torture against Tasneem Khalil, a journalist and blogger. He was tortured while in the custody of Directorate General of Forces Intelligence during the interim government, and after his release, Khalil wrote a report published by Human Rights Watch. Sweden granted Khalil asylum after he fled Bangladesh[36].

Recommendations & Concluding Remarks

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

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