Govt & UGC Apporved
SonargaonUniversity(SU)
we will rise up, we will shine

Sonargaon University (SU)

RESEARCH MONOGRAPH

ON

Rights without Remedies : A Critical appraisal of Economic, Social & Cultural Rights in Bangladesh Constitution.

A research submitted in partial fulfillment of the requirements for the Degree of Bachelor of Law (LL.B) for Sonargaon University (SU)

SUPERVISED BY
Md. Deedarul Islam Bhuiyan
Asst. Professor & Head
Department of Law
Sonargaon University (SU)

SUBMITTED BY
Salauddin
LL.B (Hon's)
ID NO: LLB1902017039
Department of Law
Sonargaon University(SU)

Submission Date: 07-07-2023

LETTER OF TRANSMITTAL

To

Md. Deedarul Islam Bhuiyan
Asst. Professor & Head
Department of Law
Sonargaon University (SU)

Subject: Submission of research paper on "Rights without Remedies : A Critical Appraisal of Economic, Social and Cultural Rights in Bangladesh Constitution."

Dear Sir,

It is a great pleasure to submit my research on "Rights without Remedies : A Critical Appraisal of Economic, Social and Cultural rights in Bangladesh Constitution ". I have given best efforts to finish the research with relevant information that I have collected from various sources. I have concentrated my efforts to achieve the objectives the objectives of the work and hope that my endeavor will serve the purpose. I shall be grateful and obliged if you kindly accept my research and evaluate it.

Sincerely yours,

…….....
Salauddin
LL.B (Hon's)
ID No: LL.B 1902017039
Department of Law
Sonargaon University (SU)

STUDENT'S DECLARATION

I hereby do solemnly declare that the work presented in this research has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breach any copyright. I further undertake to indemnify the university against any loss or damage arising from breach of the for going obligations.

…….....

Salauddin
LL.B (Hon's)
ID No: LL.B 1902017039
Department of Law
Sonargaon University (SU)

SUPERVISOR'S CERTIFICATION

This is to certify that the research on Rights without Remedies of the Constitutional Mandate and other International Instruments: Bangladesh Perspective is done by Salauddin LL.B (Hon's), Reg. No. LL.B 1902017039, Department of Law, Sonargaon University (SU).

The dissertation has been carried out under my guidance and is a record of the benefited work carried out successfully.

.....

Md. Deedarul Islam Bhuiyan

Asst. Professor & Head

Department of Law

Sonargaon University (SU)

ACKNOWLEDGMENTS

First of all, I wish acknowledge the immeasurable grace and propound kindness of the Almighty Allah. I express my gratitude to my honorable research supervisor, **Md. Deedarul islam Bhuiayan**, Asst. Professor & Head Department of Law, Sonargaon University (SU) for giving me the opportunity to complete my research report under his supervision. He gave me his valuable time and important information to complete the research report. As without his proper guidance it was quite impossible for me to complete theresearch.

I also express my gratefulness to my parents and my family members who encouraged me all the time. And finally I express thanks to my friends and well-wishers.

ABSTRACT

"Rights without Remedies: A Critical Appraisal of Economic, Social, and Cultural Rights in the Bangladesh Constitution" is a comprehensive analysis of the economic, social, and cultural rights enshrined in the Constitution of Bangladesh. This critical appraisal examines the extent to which these rights are effectively protected and enforced in practice.

Economic, social, and cultural rights encompass a wide range of entitlements, including the right to education, health, housing, food, and a decent standard of living. These rights are essential for the well-being and dignity of individuals and communities, and their recognition in a country's constitution reflects a commitment to ensuring the welfare of its citizens.

However, the mere inclusion of these rights in the constitution does not guarantee their realization. The effectiveness of economic, social, and cultural rights depends on the availability of remedies for violations and the mechanisms in place to enforce them. Without adequate remedies, these rights remain theoretical and unenforceable, resulting in a gap between legal entitlements and practical implementation.

The critical appraisal likely examines the legal framework surrounding economic, social, and cultural rights in Bangladesh, including relevant constitutional provisions, legislation, and jurisprudence. It may highlight the challenges and barriers to the enforcement of these rights, such as inadequate institutional capacity, resource constraints, and social barriers. Additionally, the appraisal may explore the role of the judiciary, civil society organizations, and other stakeholders in promoting and protecting these rights.

Some potential issues that the critical appraisal might address include:

Implementation gaps: Are there disparities between the constitutional guarantees and the actual implementation of economic, social, and cultural rights? Are there specific rights or groups that are particularly neglected or marginalized?

Access to remedies: Are there effective legal mechanisms available to individuals and communities to seek redress for violations of their economic, social, and cultural rights? Are these remedies accessible, affordable, and timely?

Role of institutions: How effective are the government institutions responsible for promoting and protecting these rights? Are there any institutional deficiencies that hinder the realization of these rights?

Awareness and capacity: To what extent are the citizens of Bangladesh aware of their economic, social, and cultural rights? Do they have the knowledge and capacity to claim these rights and hold duty-bearers accountable?

International obligations: Does the critical appraisal consider Bangladesh's international commitments regarding economic, social, and cultural rights, such as its obligations under international human rights treaties?

By critically examining these aspects, the appraisal seeks to provide an assessment of the current state of economic, social, and cultural rights in Bangladesh and offer recommendations for improving their protection and realization. It may contribute to policy discussions, legal reforms, and advocacy efforts aimed at bridging the gap between rights and remedies and ensuring the full enjoyment of economic, social, and cultural rights for all individuals in Bangladesh.

ABBREVIATIONS

SDGs- Sustainable Development Goals

ESC- Economic, Social & Cultural

ICESCR- International Covenant on Economic, Social, and Cultural Rights

HCD- High Court Division

MDGs- Millennium Development Goals

IHRT- International Human Rights Treaties

CEDAW- Convention on the Elimination of All Forms of Discrimination Against Women

CRC- Convention on the Rights of the Child

Table of Content

Letter of Transmittal----------II
Student Declaration----------III
Supervisor Certification----------IV
Acknowledgement----------V
Abstract----------VI
Abbreviation----------VIII

Chapter-I

Introductory Chapter

1.1 Introduction 1
1.2 Historical Background 2
1.3 Aims & Objective of the Research 3
1.4 Review of the Literature 5
1.5 Methodology of Research 7
1.6 Limitation of Research 7
1.7 Legal Issue 9
1.8 Concluding Remarks 11

Chapter-II

Conceptual Analysis

2.1 Concept of Rights without Remedies 13
2.2 Historical Background of Rights without Remedies of ESC 15
2.3 Concluding Remarks 18

Chapter-III

Rights without remedies: ESC of Bangladesh prespective

3.1 What Is Right without Remedies ? 19
3.2 Definition of Rights without Remedies or Fundamental Principle of State Policy in Bangladesh Constitution 22
3.3 Categories of ESC Rights in Bangladesh 22
3.4 Legal Aspect of ESC in Bangladesh 23
3.5 Concluding Remarks 25

Chapter-IV

Justification Behind Enforcement and non-enforcement of ESC Rights

4.1 Justifications for Enforcement: 27

4.2 Justifications for Non-enforcement: 28
4.3 Infraction of Economic, Social and Cultural Rights 28
4.4 Reasons of Infraction of Economic, Social and Cultural Rights 30
4.5 Initiative Step by Bangladesh Government 31

Chapter-V

Case Laws

5.1 Kudrat-E-Elahi Panir & Others vs. Bangladesh 33
5.2 Ain O Aalish Kendra and Others v. Government of Bangladesh 34
5.3 Lekengere Faru and Others v. Attorney General and Others 34
5.4 My Opinion 35

Chapter-VI

Concluding Chapter

6.1 Findings 36
6.2 Suggestion 37
6.3 Recombination 38
6.4 Conclusion: 40

LIST OF CASES

1. Kudrat-E-Elahi Panir & Others vs. Bangladesh
2. Ain O Salish Kendra and Others v. Government of Bangladesh
3. Lekengere Faru and Others v. Attorney General and Others

Chapter-I
Introductory chapter

1.1 Introduction

Inclusion of economic, social, and cultural rights (ESCR) in a constitution is a positive step towards recognizing and protecting the fundamental rights of individuals within a country, including their right to education, health, housing, and an adequate standard of living. In the case of Bangladesh, the Constitution does indeed contain provisions related to ESCR. However, the practical implementation and enforcement of these rights often pose significant challenges, leading to a situation where rights exist on paper but lack effective remedies in practice. This has raised concerns and prompted critical appraisals of ESCR in the Bangladesh Constitution.

One of the main issues with ESCR in Bangladesh is the lack of clear mechanisms for their enforcement. While the Constitution may guarantee certain rights, such as the right to education or the right to healthcare, there is often a gap between these legal provisions and their actual realization. This can be attributed to various factors, including limited resources, inadequate infrastructure, corruption, and governance challenges. As a result, many individuals in Bangladesh are unable to effectively claim and exercise their ESCR.

Additionally, the absence of specific legislation to give effect to ESCR further undermines their enforcement. While the Constitution may provide a broad framework, the absence of detailed laws and policies hampers the practical implementation of ESCR. Without clear guidelines and mechanisms for the realization of these rights, individuals are often left without effective remedies when their rights are violated.

Furthermore, the lack of awareness and accessibility to justice exacerbates the issue. Many people, particularly those from marginalized communities or living in poverty, may not be aware of their rights or how to seek redress when their rights are violated. Moreover, the judicial system in Bangladesh faces its own challenges, including delays, inefficiencies, and limited access to justice, which can hinder the effective enforcement of ESCR. It is important to note that the challenges related to ESCR are not unique to Bangladesh but are prevalent in many countries. However, addressing these challenges requires a comprehensive approach that involves improving governance, allocating adequate resources, enhancing access to

justice, and creating specific legislation to give effect to ESCR. Without such measures, the existence of ESCR in the Constitution may remain symbolic rather than substantive, leaving individuals without meaningful remedies when their rights are violated.

In conclusion, while the inclusion of ESCR in the Bangladesh Constitution is a positive development, the practical implementation and enforcement of these rights pose significant challenges. The lack of clear mechanisms for enforcement, absence of specific legislation, limited awareness and accessibility to justice, and governance issues all contribute to a situation where rights exist on paper but lack effective remedies. Addressing these challenges requires concerted efforts from the government civil society, and other stakeholders to bridge the gap between constitutional provisions and the realization of ESCR in Bangladesh.

1.2 Historical Background

Constitution of Bangladesh: The Constitution of Bangladesh was adopted in 1972, shortly after the country gained independence. It included a comprehensive set of fundamental rights, encompassing both civil and political rights as well as ESCR.
Recognition of ESCR: The inclusion of ESCR in the constitution was influenced by the socio-economic context of Bangladesh, which faced high levels of poverty, inequality, and limited access to essential services.
International Commitments: Bangladesh is a signatory to various international human rights treaties, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which further emphasizes the importance of ESCR.
Critical Appraisal of ESCR in Bangladesh:

Implementation Challenges: Despite constitutional provisions and international commitments, the implementation of ESCR in Bangladesh has been inadequate. Factors such as limited resources, corruption, political instability, and weak governance have hampered the effective realization of these rights.
Inequality and Poverty: Bangladesh continues to face significant challenges in addressing poverty and reducing inequality. Limited access to healthcare, education, housing, and clean water remains a concern for a substantial portion of the population.

Labor Rights: While the constitution recognizes the right to work and the protection of workers' rights, there have been instances of labor rights violations, including poor working conditions, low wages, and restrictions on the right to form trade unions.

Discrimination and Marginalization: Certain marginalized groups, such as women, children, ethnic minorities, and indigenous communities, face additional barriers in accessing their economic, social, and cultural rights due to discrimination and social exclusion.

Remedies and Enforcement: While the constitution provides remedies for the violation of fundamental rights, including ESCR, the effectiveness of these remedies has been called into question. Some critics argue that the remedies available through the judicial system are often slow, costly, and inaccessible to the most vulnerable populations.

In summary, the inclusion of economic, social, and cultural rights in the constitution of Bangladesh reflects the country's commitment to ensuring comprehensive human rights protection. However, the effective implementation of these rights and the availability of remedies for their violation face significant challenges. Addressing issues such as poverty, inequality, discrimination, and improving governance and access to justice are crucial steps towards realizing the full potential of these rights for all citizens in Bangladesh.

1.3 Aims & Objective of the Research

The aim of the research is to critically appraise the provisions and implementation of economic, social, and cultural rights (ESCR) in the Constitution of Bangladesh. Specifically, the research seeks to examine the extent to which these rights are effectively protected and enforced, focusing on the remedies available to individuals whose ESCR are violated.

The objectives of the research can include:

1.Analyzing the constitutional framework: The research aims to study the specific constitutional provisions in Bangladesh related to economic, social, and cultural rights. This involves understanding the language, scope, and guarantees provided for these rights

in the Constitution.

2. Assessing legislative and policy implementation: The research aims to evaluate the legislative and policy measures that have been put in place to give effect to economic, social, and cultural rights. This includes examining relevant laws, regulations, and policies that address issues such as education, healthcare, housing, employment, and cultural rights.

3. Examining the effectiveness of institutional mechanisms: The research seeks to assess the effectiveness of the institutional mechanisms responsible for protecting and promoting economic, social, and cultural rights in Bangladesh. This may involve examining the role of government bodies, such as human rights commissions or ombudsman offices, in addressing ESCR violations.

4. Identifying gaps and challenges: The research aims to identify gaps and challenges in the realization of economic, social, and cultural rights in Bangladesh. This could include analyzing factors such as resource constraints, social inequalities, discriminatory practices, or lack of awareness and understanding of ESCR.

5. Evaluating available remedies: The research aims to critically evaluate the remedies available to individuals whose economic, social, and cultural rights have been violated. This may involve examining legal frameworks, judicial mechanisms, administrative procedures, or any other means by which individuals can seek redress for ESCR violations.

6. Providing recommendations: Based on the findings of the research, the aim is to propose recommendations for strengthening the protection and enforcement of economic, social, and cultural rights in Bangladesh. These recommendations may include legal reforms, policy changes, capacity-building measures, or awareness-raising initiatives.

Overall, the research seeks to provide a comprehensive and critical assessment of economic, social, and cultural rights in the Bangladesh Constitution, with a particular focus on the remedies available to individuals to ensure that these rights are effectively protected and realized in practice.

1.4 Review of the Literature

"Rights without Remedies: A Critical Appraisal of Economic, Social & Cultural Rights in the Bangladesh Constitution," is an important area of study within constitutional law and human rights. While I don't have access to specific literature reviews beyond my September 2021 knowledge cutoff, I can provide you with a general understanding of the issues surrounding economic, social, and cultural rights in the Bangladesh Constitution.

Economic, Social & Cultural Rights (ESCR):
Economic, social, and cultural rights encompass a broad range of rights that are essential for individuals' well-being and dignified living. These rights include the right to education, healthcare, adequate housing, food, clean water, social security, and cultural participation. They are recognized internationally in various human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

Constitutional Recognition in Bangladesh:
The Constitution of Bangladesh recognizes and guarantees certain economic, social, and cultural rights. For example, Article 15 of the Constitution guarantees the right to social security, Article 18 ensures the right to work, and Article 21 recognizes the right to free and compulsory primary education. These provisions reflect the government's commitment to protecting these rights.

Challenges and Critiques:
Despite constitutional recognition, the effective realization of economic, social, and cultural rights in Bangladesh faces significant challenges. Some common critiques include:

a) Lack of Implementation: One criticism is the lack of effective implementation and enforcement mechanisms to ensure that these rights are realized in practice. While the Constitution guarantees these rights, the absence of adequate legislation, policies, and resources hampers their realization.

b) Inequality and Poverty: Bangladesh struggles with high levels of poverty and inequality, which can hinder the enjoyment of economic, social, and cultural rights. Socio-economic

disparities, including limited access to education, healthcare, and employment opportunities, disproportionately affect marginalized groups.

c) Limited Judicial Enforcement: Judicial enforcement of economic, social, and cultural rights can be challenging due to factors such as a lack of legal awareness, limited access to justice, and the judiciary's traditional focus on civil and political rights. As a result, individuals may face difficulties in seeking remedies for violations of their rights.

d) Resource Constraints: The government's limited resources can also pose challenges to the realization of economic, social, and cultural rights. Allocating sufficient funds to sectors such as education, healthcare, and social welfare programs can be a complex task, particularly in a developing country like Bangladesh.

Potential Solutions:
Efforts to address the gaps and challenges related to economic, social, and cultural rights in Bangladesh may include:

a) Legislative Reforms: Strengthening legislation to provide clearer provisions and mechanisms for the realization of these rights can help address implementation gaps.

b) Awareness and Capacity Building: Increasing awareness and understanding of economic, social, and cultural rights among citizens, government officials, and the judiciary can promote their effective enforcement.

c) Empowering Marginalized Communities: Ensuring the active participation and representation of marginalized groups in decision-making processes can help address the structural barriers that hinder the realization of these rights.

d) International Cooperation: Collaborating with international organizations, such as the United Nations and relevant non-governmental organizations, can provide technical assistance, expertise, and resources to support the realization of economic, social, and cultural rights.

It's important to note that a comprehensive literature review would involve an in-depth

analysis of scholarly articles, research papers, and legal literature on the specific topic you mentioned. I recommend conducting a thorough literature search using academic databases or consulting with legal experts and scholars who specialize in constitutional law and human rights in Bangladesh for an up-to-date review of the literature.

1.5 Methodology of Research

It is difficult to complete a research without adopting any method. The methodology is one of the important parts of a research. A scientific methodology is a system of explicit rules and procedures upon which research is based on and against which claims for knowledge are evaluated by looking for new means of observation, analysis, logical inference, and generalization. I followed the some methods i.e. the imperial methods; analytical method etc. respectively where it is applicable. The methodology which is used in this research to collect relevant information to fulfill the objectives of the research is secondary data collection method. The data used in this report are collected from secondary sources like the articles, journals, internet, newspapers, Human Rights organizations reports etc.

1.6 Limitation of Research

The phrase "rights without remedies" suggests that while these rights may be recognized in theory, their practical enforcement and implementation may be limited or lacking in effectiveness.

The research on this topic may face certain limitations, including:

1. Legal and Constitutional Framework: Conducting a critical appraisal of economic, social, and cultural rights in the Bangladesh Constitution requires a thorough understanding of the constitutional provisions and relevant laws. Access to the most up-to-date and accurate legal texts may be challenging, especially if they have

undergone recent changes or amendments.

2. Interpretation and Case Law: Interpreting constitutional provisions and understanding the impact of case law on economic, social, and cultural rights can be complex. Researching relevant judicial decisions and their implications for the enforcement of these rights may be time-consuming and require access to legal databases and scholarly resources.

3. Access to Information: Gathering accurate and comprehensive information about the implementation and enforcement of economic, social, and cultural rights in Bangladesh may be challenging. Limited availability of official data, lack of transparency, or restricted access to certain regions or communities could hinder the research process.

4. Socio-Political Factors: Economic, social, and cultural rights are influenced by various socio-political factors. Analyzing the broader context, such as political dynamics, social structures, and cultural norms, is crucial for a comprehensive appraisal. However, obtaining reliable and unbiased data on these factors, especially in sensitive areas, may pose challenges.

5. Subjectivity and Bias: Assessing the effectiveness of economic, social, and cultural rights can involve subjective judgments and interpretations. Researchers must be aware of their own biases and strive to maintain objectivity throughout the study.

6. Language Barriers: Accessing and understanding primary and secondary sources, including legal texts, court decisions, academic articles, and reports, may require proficiency in the Bengali language. Overcoming language barriers can be a limitation for researchers who do not have sufficient language skills or access to translation resources.

Despite these limitations, a critical appraisal of economic, social, and cultural rights in the Bangladesh Constitution can shed light on the challenges and potential areas for improvement in the realization of these rights. It can serve as a basis for advocating for stronger enforcement mechanisms, policy reforms, and societal changes to ensure the

effective enjoyment of these rights by all individuals in Bangladesh.

1.5 Legal Issue

.The issue of "rights without remedies" refers to a situation where constitutional or legal rights are recognized in theory but lack effective mechanisms or remedies for their enforcement. In the case of economic, social, and cultural rights (ESCR), which are often referred to as second-generation rights, the concern is that individuals may have these rights guaranteed on paper but face significant challenges in actually realizing them.

In the context of Bangladesh's constitution, the issue of rights without remedies regarding ESCR is a subject of critical appraisal. The Constitution of Bangladesh does contain provisions that recognize and guarantee certain economic, social, and cultural rights. For example, Article 15 of the Constitution recognizes the right to social security, and Article 19 guarantees the right to participate in cultural life. Additionally, Article 15(2) states that "the State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens."

However, despite the constitutional recognition of these rights, there are concerns about the lack of adequate remedies and enforcement mechanisms to ensure their effective implementation. This has led to a gap between the rights guaranteed on paper and the actual enjoyment of those rights by the people of Bangladesh.

One of the key challenges is the absence of specific legislation or comprehensive frameworks that provide clear guidance on the implementation of ESCR. Without clear laws, it becomes difficult for individuals to seek remedies when their rights are violated or denied. Additionally, the lack of an independent and robust judicial system can further hinder the enforcement of these rights.

Another significant issue is the resource constraint faced by the government in fulfilling its obligations related to ESCR. Economic and social rights often require substantial resources for their realization, such as adequate healthcare, education, or social welfare programs. The government's limited resources can impede its ability to effectively implement and provide remedies for violations of these rights.

Furthermore, there may be societal and cultural barriers that hinder the realization of ESCR in Bangladesh. Factors such as gender inequality, discrimination based on social or economic status, and traditional practices may undermine the full enjoyment of these rights, making it challenging to provide effective remedies.

To address these challenges and bridge the gap between rights and remedies, several steps can be taken. First and foremost, the development of specific legislation and policies focused on ESCR can provide a legal framework for their implementation and enforcement. This would enable individuals to seek remedies through the legal system in case of violations.

Moreover, strengthening the judiciary and ensuring its independence is crucial to ensure effective adjudication of ESCR-related cases. This involves providing adequate training to judges, establishing specialized courts or tribunals, and promoting awareness among legal professionals about ESCR.

Additionally, enhancing public awareness and promoting a culture of respect for ESCR can contribute to a more conducive environment for the realization of these rights. Education and advocacy campaigns can play a significant role in changing societal attitudes and addressing cultural barriers that hinder the enjoyment of ESCR.

In conclusion, while the Bangladesh constitution recognizes certain economic, social, and cultural rights, the issue of rights without remedies remains a critical concern. The lack of specific legislation, resource constraints, weak judicial systems, and societal barriers pose challenges to the effective implementation and enforcement of these rights.

Addressing these issues requires a comprehensive approach, including the development of specific legislation, strengthening the judiciary, and promoting public awareness and cultural change.

1.6 Concluding Remarks

In conclusion, the recognition and inclusion of economic, social, and cultural rights (ESCR) in the Constitution of Bangladesh is undoubtedly a significant step towards ensuring a comprehensive framework for the protection and promotion of human rights. These rights are crucial for addressing issues of inequality, poverty, and social exclusion in the country.

However, despite their constitutional recognition, there are notable challenges and shortcomings in the implementation and enforcement of ESCR in Bangladesh. The phrase "rights without remedies" aptly captures the situation, as the rights exist on paper but often lack effective mechanisms for individuals to seek redress when these rights are violated.

One of the key issues is the limited availability of legal remedies and access to justice for individuals seeking to enforce their ESCR. The judiciary and legal infrastructure in Bangladesh face numerous challenges, including a backlog of cases, limited resources, and insufficient capacity to address complex socio-economic issues. As a result, individuals often face significant barriers in seeking legal remedies for violations of their ESCR.

Moreover, there is a lack of awareness and understanding among the general population about their economic, social, and cultural rights. Many people in Bangladesh, particularly those from marginalized communities, may not be fully aware of their entitlements or how to claim them. This lack of awareness further hampers the effective realization of ESCR.

Additionally, the absence of comprehensive legislation and policies specifically addressing ESCR is another obstacle. While the Constitution provides a broad framework, the absence of specific laws and policies hinders the ope-rationalization and enforcement of these rights.

The lack of clear guidelines and mechanisms for implementation makes it difficult to hold duty-bearers accountable for fulfilling their obligations related to ESCR.

Furthermore, the socio-political and economic context of Bangladesh poses challenges to the realization of ESCR. Issues such as poverty, inadequate resources, political instability, corruption, and limited infrastructure create significant barriers to the effective implementation of ESCR. These systemic challenges need to be addressed comprehensively to ensure the full realization of economic, social, and cultural rights.

In light of these challenges, it is crucial for Bangladesh to take concrete steps to address the gaps in the implementation and enforcement of ESCR. This requires enhancing access to justice, raising awareness about ESCR, developing specific legislation and policies, allocating adequate resources, and addressing the underlying socio-economic issues that impede the realization of these rights.

Only by addressing these challenges and taking effective measures can Bangladesh move closer to ensuring that economic, social, and cultural rights are not just rhetorical commitments in its constitution but meaningful rights with accessible remedies for individuals whose rights have been violated. It is a collective responsibility of the government, civil society organizations, and the international community to work together towards realizing these rights and promoting a more equitable and inclusive society in Bangladesh.

CHAPTER- II

CONCEPTUAL ANALYSIS

2.1 Concept of Rights without Remedies

In an ideal legal system, rights and remedies are interconnected. When individuals have certain rights, they also have corresponding remedies or legal recourse to seek redress if those rights are violated. Remedies can include compensation, injunctions, or other forms of relief that aim to restore the individual to the position they would have been in if the violation had not occurred.

However, in some cases, rights may exist on paper or in theory, but the practical ability to enforce those rights may be limited or absent. This can happen due to various reasons, such as:

Inadequate legal framework: The legal system may lack the necessary laws, regulations, or mechanisms to effectively enforce certain rights. For example, a country may have a constitution that guarantees freedom of speech, but if there are no laws protecting individuals from censorship or if the judiciary lacks independence, the right to free speech becomes largely theoretical.

Lack of resources: Even if there are legal remedies available, individuals may not have the financial or logistical means to pursue legal action. Legal proceedings can be expensive, time-consuming, and complex, which can deter people from seeking remedies for rights violations.

Weak institutions: In some cases, the institutions responsible for upholding and enforcing rights may be ineffective, corrupt, or subject to political interference. This undermines the ability of individuals to obtain remedies for rights violations. For example, if law enforcement agencies are unwilling or unable to investigate crimes or protect individuals from harm, the right to personal security becomes meaningless.

Cultural or societal barriers: Cultural or societal norms and attitudes can also play a role in limiting the effectiveness of rights and remedies. Discrimination, stigma, or social pressure may discourage individuals from asserting their rights or seeking remedies for violations.

When rights are without remedies, it can result in a situation where individuals are left vulnerable to rights abuses without any meaningful recourse. This undermines the rule of law, erodes public trust, and weakens the overall protection of human rights. It is important for legal systems to ensure not only the existence of rights but also the availability of effective remedies to address violations and ensure justice.Economic, social, and cultural rights are the freedoms, privileges, and entitlements that individuals and communities require to live a life of dignity. These human rights include the rights to food, housing, health, education, cultural identity, and more. Although some economic, social, and cultural rights cannot be immediately implemented, States that have ratified the relevant treaties nonetheless have the obligation to guarantee these rights.

Specifically, States have an obligation to respect, protect, and fulfill economic, social, and cultural rights. The obligation to respect means States cannot interfere with enjoyment of the right. The obligation to protect requires the State to reasonably prevent other actors from interfering with enjoyment of the right. The obligation to fulfill mandates that the State actively take steps to create the conditions necessary for individuals' full enjoyment of the right. See, e.g., OHCHR, Fact Sheet No. 33: Frequently Asked Questions on Economic, Social and Cultural Rights (2008), 11.

For a more in-depth discussion of each of the rights addressed in this guide, see the specific thematic research guides available on children's rights, education, and other topics.[1]

[1] International Justice Resource Centre (https://ijrcenter.org/thematic-research-guides/economic-social-and-cultural-rights-2/)

2.2 Historical Background of Rights without Remedies of ESC

The fundamental state policy of economic, social, and cultural rights in Bangladesh has its roots in the country's history and its commitment to ensuring the welfare and development of its citizens. Here is a brief historical background of this policy:

1. Emergence of Bangladesh: Bangladesh emerged as an independent nation in 1971 following a nine-month-long liberation war against Pakistan. The war was fought to secure political, economic, and social rights for the people of Bangladesh.

2. Constitution of Bangladesh: The Constitution of Bangladesh was adopted in 1972, providing the framework for governance and enshrining the fundamental rights and principles of state policy. The constitution recognizes the importance of economic, social, and cultural rights as fundamental rights of the citizens.

3. Four Fundamental State Policies: The Constitution of Bangladesh lays down four fundamental state policies, which are collectively known as the "Four Pillars." These pillars include democracy, socialism, secularism, and nationalism. The socialist pillar emphasizes economic and social justice, including the promotion of economic, social, and cultural rights.

4. Adoption of the Fifth Amendment: In 1979, the Constitution of Bangladesh was amended through the Fifth Amendment, which incorporated the fundamental state policies into the constitution. This amendment solidified the commitment of the state towards ensuring economic, social, and cultural rights for all citizens.

5. Poverty Alleviation Efforts: Bangladesh has faced significant challenges in terms of poverty and inequality. Over the years, the government has implemented various poverty alleviation programs and initiatives aimed at improving access to education, healthcare, housing, and basic amenities for the population.

6. Millennium Development Goals (MDGs): Bangladesh actively participated in the global effort to achieve the Millennium Development Goals, which included targets related to poverty reduction, education, gender equality, healthcare, and environmental sustainability. The government's commitment to these goals further emphasized its focus on economic,

social, and cultural rights.

7. Sustainable Development Goals (SDGs): Following the expiration of the MDGs, Bangladesh has aligned its development efforts with the Sustainable Development Goals, which provide a comprehensive framework for sustainable development. The SDGs continue to prioritize economic, social, and cultural rights as crucial aspects of development.

8. Legal Framework and Initiatives: Bangladesh has established a legal framework to protect and promote economic, social, and cultural rights. The country has enacted laws and policies related to labor rights, education, healthcare, women's empowerment, child rights, and social protection. Various programs and initiatives have been implemented to ensure the realization of these rights.

9. International Commitments: Bangladesh is a signatory to various international human rights treaties and conventions, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). These commitments further reinforce the government's obligation to respect, protect, and fulfill the economic, social, and cultural rights of its citizens.

Overall, the historical background of the fundamental state policy of economic, social, and cultural rights in Bangladesh reflects the country's commitment to inclusive development and the well-being of its people.

enforceable will create an obligation on the state to fulfil them and utilize the resources well to bring an equitable atmosphere for its citizens and reduce the imbalance in the society. It is necessary because in many third world countries of the world, economic growth has happened but the living standard of the people has not improved. Bangladesh has also ratified the ICESCR which imposes an obligation to make these socio-economic rights justice-able in its territorial jurisdiction as much as it can according to its availability of resources. The government has to advance with proper planning to execute these rights as the territory of Bangladesh is not too big for its gigantic population.

The fulfillment of socio-economic rights is much dependant on socio-economic development, such as growth or decrease in GDP, advancement in commerce, and trade. According to the

Bangladesh Ministry of Finance, in 2010 the per capita income was 781 US dollars. In 2019, the Law Minister of Bangladesh, Anisul Huq said in a conference that our per capita income touched 1909 US dollars.[7] Since independence, the country has improved significantly in its economic sector. Nonetheless feeding such a vast population and also providing shelter on this comparatively small territory is difficult. During the drafting of our constitution in 1972, the framers did not make these socio-economic rights enforceable because they knew the impediments coming in the way of implementation of these rights. In a country that just went through a liberation war, it is pretty obvious that time will be needed more or less, to rebuild all the sectors of that country in a planned manner. The new country after gaining independence faced many problems, including the restoration of transportation, communication, and international trade networks; the renewal of the power supply; the resurgence of education, health, and population programs; and the restart of agricultural and industrial production.[8] But after 49 years of independence, keeping in mind the overall development of the country, the judicial non-enforcement of these rights is a matter of concern. The government, lawmakers, and scholars should give a second thought on the enforce-ability of these rights as the country is moving forward to speedy enlistment.

The Constitution of Bangladesh, adopted in 1972, enshrines several fundamental state policies that aim to ensure the economic, social, and cultural rights of its citizens. These policies are rooted in the historical background of Bangladesh and reflect the aspirations of the people for a just and equitable society. Here is an overview of the historical background and reference to the fundamental state policy of economic, social, and cultural rights in the Bangladesh Constitution:

1. Economic Rights:

Bangladesh's historical background includes a struggle for economic justice and independence. The country gained independence from Pakistan in 1971, and its Constitution was framed in the aftermath of a war for self-determination and economic emancipation. The Constitution recognizes the fundamental state policy of "securing to its citizens the provision of the basic necessities of life, including food, clothing, shelter, education, and medical care."[2]

[2] Article 15 The Constitution Of The People's Republic Of Bangladesh

2. Social Rights:

The historical background of Bangladesh is marked by a quest for social justice and the eradication of inequality. The Constitution emphasizes the principle of social justice and the elimination of exploitation. It states that it is a fundamental state policy "to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity"[3]. This policy reflects Bangladesh's commitment to fostering regional cooperation and solidarity among Islamic nations.

3. Cultural Rights:

Bangladesh has a rich cultural heritage and a diverse society. The historical background of the country includes struggles for cultural identity and the preservation of cultural values. The Constitution recognizes the importance of preserving and promoting cultural and linguistic diversity. Article 23 of the Constitution declares that it is a fundamental state policy "to foster the development of the national language, literature, and culture."[4]

These fundamental state policies demonstrate Bangladesh's commitment to ensuring economic, social, and cultural rights for its citizens. The Constitution provides a framework for achieving these goals and serves as a guiding document for the government and policymakers in formulating laws and policies that uphold these rights.

2.3 Concluding Remarks

In the Bangladesh constitution, economic, social, and cultural rights are enshrined in various provisions. These rights are primarily addressed in Part II of the constitution, which includes fundamental principles of state policy. The state policy directives provide a framework for the government to take necessary steps to ensure economic and social justice, including the improvement of public welfare.

[3] Article 25 Ibid
[4] Article 23 Ibid

Article 15 of the Bangladesh constitution recognizes the right to equality in various aspects, including social, economic, and political spheres. Article 19 emphasizes the importance of ensuring the basic necessities of life, such as food, clothing, shelter, education, and medical care.

Furthermore, the constitution also guarantees specific rights related to labor, such as the right to work, the right to just and favorable conditions of work, and the right to social security. These rights are protected under Articles 15, 16, and 18.

CHAPTER- III

Rights without Remedies : ESC of Bangladesh Perspective

3.1 What Is Right without Remedies ?

."Rights without remedies" refers to a situation where individuals or groups possess certain rights in theory or according to the law, but lack effective means or mechanisms to enforce or protect those rights. In other words, they have legal entitlements or claims, but they do not have practical avenues to seek redress or obtain remedies when their rights are violated or infringed upon.

This concept highlights a gap between the recognition of rights in principle and the ability to enforce them in practice. It implies that even if individuals or groups have legal rights, such as civil rights, human rights, or constitutional rights, those rights may remain illusory or ineffective without access to appropriate remedies or means of enforcement.

In the momentous 1803 case Marbury v. Madison, Chief Justice Marshall observed that the “very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury” and warned that a government cannot be called a “government of laws, and not of men . . . . if the laws furnish no remedy for the violation of a vested legal right.”

When the government itself violates individuals' rights, it is especially important for courts to furnish a remedy. To be sure, providing remedies to the victims of unconstitutional conduct after the fact is often at best an imperfect solution. While money plausibly provides full compensation to, say, a government worker denied income while suspended for engaging in First Amendment–protected activity, it may be far less effective in a case involving an unconstitutional strip search: Can money really restore the sense of security that the victim has lost? If not, perhaps it can at least enable her to begin rebuilding her life.

Ideally, backward-looking remedies can deter future violations. If government officials or agencies know that they will be held to account, they will be less likely to commit violations in the first place. And injunctive remedies—judicial orders either to stop engaging in a particular practice (for example, racial profiling of motorists) or to start doing something the government has so far failed to do (for example, issuing marriage licenses to same-sex couples)—have been critical to enforcing civil rights and civil liberties.

More broadly, judicial remedies perform an important expressive function: they drive home to the public that the law takes constitutional violations seriously. This can galvanize popular movements to vindicate constitutional values even more fully. For example, the Supreme Court's decisions in Brown v. Board of Education (1954–55), held that purposeful racial segregation of public schools violated the Fourteenth Amendment's equal protection clause and ordered that school boards dismantle their dual school systems. The Brown decisions by themselves achieved very little actual integration, but the Court's condemnation of segregation provided critical support to a mass movement that culminated in statutes such as the Civil Rights Act of 1964, which crafted more effective tools for dismantling Jim Crow in schools, public accommodation, employment, and housing.

So a lot depends on the availability of a remedy: when the courts refuse to provide one, rights can be reduced to mere lines on paper.

Indeed, recent years have shown a troubling trend as the Supreme Court has retrenched on protecting civil rights and civil liberties in two important ways. Sometimes the Court has straightforwardly redefined an underlying right in more limited terms[5]. For example, in Montejo v. Louisiana (2009) the Court narrowed Sixth Amendment protections against police interrogation of criminal defendants without their lawyers being present. And in Gonzales v. Carhart (2007) the Court upheld restrictions on abortion rights almost identical to those it had earlier struck down[6]. (I represented the California Medical Association as an amicus curiae in the case.)

The second approach is more insidious. Here the Court leaves the formal right in place but constricts the remedial machinery. At best, this will dilute the value of the right, since some violations will go unremembered. At worst, it may signal potential wrongdoers that they can infringe the right with impunity.

Remedial abridgment is a pervasive tool of the contemporary Supreme Court. One area in which it's often used is criminal procedure. For decades the so-called exclusionary rule forbade prosecutors from using evidence obtained through unconstitutional searches or impermissible interrogation techniques. But while the Burger, Rehnquist, and Roberts Courts have left in place most of the Warren Court's restrictions on police activity, they have developed a series of what criminal procedure scholar Carol Steiker calls "inclusionary" rules: exceptions to the exclusionary rule that result in many defendants being convicted on the basis of illegally obtained evidence. These inclusionary rules weaken the deterrent force of the exclusionary rule by signaling to police that illegally obtained evidence won't be worthless.

.

---

[5] Library of Congress (.gov)

https://tile.loc.gov › usrep556PDF

Montejo v. Louisiana, 556 U.S. 778 (2009).

[6] Gonzales v. Carhart (2007)U.S. Reports: Volume 550 (35)Constitutional law Health law

3.2 Definition of Rights without Remedies or Fundamental Principle of State Policy in Bangladesh Constitution

. 1[(1) The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy.]

(2) 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[7]

3.3 Categories of ESC Rights in Bangladesh

Economic, social, and cultural rights (ESCR) are an important aspect of human rights, and in Bangladesh, these rights are categorized into various areas. Here are some of the key categories of ESCR in Bangladesh:

1. Right to Work: This category includes the right to gainful employment, fair wages, safe working conditions, and the right to form and join trade unions. It also encompasses the right to social security and protection against unemployment.

2. Right to Education: The right to education guarantees access to free, compulsory, and quality education at all levels. It includes primary education, secondary education, and higher education. Bangladesh has made significant progress in improving access to education, particularly primary education.

3. Right to Health: The right to health entails the availability, accessibility, and affordability

[7] Substituted for the former clause (1) and (1A) by the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011), section 8.

of healthcare services for all individuals. It includes access to medical facilities, essential medicines, maternal and child healthcare, and prevention and treatment of diseases. Bangladesh has been working towards improving healthcare services and reducing maternal and child mortality rates.

4. Right to Housing: This category encompasses the right to adequate housing and shelter. It includes access to safe and secure housing, protection against forced evictions, and affordable housing options. In Bangladesh, efforts have been made to address the housing needs of vulnerable populations and improve housing conditions.

5. Right to Food: The right to food guarantees access to nutritious food and freedom from hunger. It encompasses food security, availability, accessibility, and affordability of food. Bangladesh has made significant progress in reducing poverty and improving food security through various programs and initiatives.

6. Right to Culture: The right to culture involves the preservation, development, and enjoyment of cultural heritage, language, and artistic expressions. It includes the right to participate in cultural life, access cultural resources, and protect cultural diversity. Bangladesh has a rich cultural heritage and has taken steps to promote and preserve its diverse cultural traditions.

These categories represent some of the major areas of economic, social, and cultural rights in Bangladesh. However, it is important to note that these categories are not exhaustive, and other rights, such as the right to water, sanitation, and environmental rights, are also integral to the overall framework of ESCR.

.

3.4 Legal Aspect of ESC in Bangladesh

The legal aspect of economic, social, and cultural rights in Bangladesh can be examined with reference to specific legal instruments. Here are some key references:

1. Constitution of Bangladesh:

Article 15: Right to life, liberty, and security of person, encompassing the right to an

adequate standard of living.[8]

Article 19: Freedom of thought, conscience, and speech, including the right to express economic, social, and cultural concerns.[9]

Article 20: Protection against forced labor and child labor.[10]

Article 28: Equal rights and non-discrimination in public employment and participation in cultural life.[11]

2. International Human Rights Treaties:

- International Covenant on Economic, Social and Cultural Rights (ICESCR):

- Ratified by Bangladesh in 1999.

- Recognizes rights such as the right to work, just and favorable conditions of work, the right to education, the right to adequate food, the right to health, and the right to culture.

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):

- Ratified by Bangladesh in 1984.

- Guarantees women's rights in various aspects, including education, employment, and access to healthcare.

- Reference: Bangladesh ratified CEDAW and it is legally binding in the country.

- Convention on the Rights of the Child (CRC):

- Ratified by Bangladesh in 1990.

- Recognizes children's rights, including the right to education, health, and protection from economic exploitation.

- Reference: Bangladesh ratified CRC and it is legally binding in the country.

3. National Laws:

- Regulates employment conditions, including wages, working hours, occupational safety, and workers' rights.[12]

8Ibid

[9] Ibid

[10] Ibid

[11] Ibid

[12] Labor Act, 2006

- Ensures free and compulsory primary education for all children in Bangladesh.[13]

- Establishes the framework for the provision of healthcare services in Bangladesh.[14]

- Aims to preserve and protect cultural heritage sites, artifacts, and objects of historical importance.[15]

These references provide a legal framework for the protection and promotion of economic, social, and cultural rights in Bangladesh. It is important to consult the actual texts of these legal instruments for detailed provisions and their interpretation within the legal system of Bangladesh.

3.5 Concluding Remarks

In the context of Bangladesh, the realization of economic, social, and cultural rights (ESCR) has been a significant area of focus and development. These rights encompass a wide range of fundamental human rights, including the right to work, the right to education, the right to health, the right to housing, and the right to cultural participation. Bangladesh has made notable progress in advancing these rights, although challenges remain.

Economically, Bangladesh has experienced remarkable growth and development over the past decades. The country has made significant strides in poverty reduction, achieving impressive improvements in income levels, and expanding access to financial services. The government has implemented various programs and policies to promote inclusive economic growth, such as micro credit initiatives, infrastructure development projects, and investment in industries like garments and textiles. However, income inequality and unemployment remain persistent challenges, and efforts to ensure equitable distribution of wealth and employment opportunities need to be continued.

---

[13] Primary Education Act, 1990
[14] Health and Population Welfare Ministry Order, 1976
[15] Antiquities Act, 1968

In terms of social rights, Bangladesh has taken significant steps to address various social issues. The government has implemented initiatives to enhance access to education, with a focus on primary education and girls' education. Efforts have also been made to improve healthcare services, including the expansion of primary healthcare facilities, immunization programs, and the establishment of specialized hospitals. The government has shown commitment to reducing maternal and child mortality rates and combating major infectious diseases. Despite progress, access to quality education and healthcare remains uneven, particularly in rural areas, and further investments are required to ensure universal access to these services.

Cultural rights hold a significant place in Bangladesh's social fabric. The country has a rich cultural heritage, reflected in its literature, music, dance, art, and traditional practices. The government has taken measures to preserve and promote cultural diversity, including the recognition and protection of minority cultures, the establishment of cultural institutions, and the organization of festivals and cultural events. However, challenges such as the erosion of cultural traditions, urbanization, and the impact of globalization pose threats to the preservation of cultural rights. Continued efforts are needed to safeguard cultural heritage and foster an environment that allows for cultural expression and participation.

In conclusion, Bangladesh has made commendable progress in advancing economic, social, and cultural rights. However, challenges such as income inequality, unequal access to education and healthcare, and threats to cultural heritage persist. The government and relevant stakeholders need to sustain their commitment to address these challenges through inclusive policies, targeted interventions, and adequate resource allocation. By doing so, Bangladesh can continue its journey towards ensuring the full realization of economic, social, and cultural rights for all its citizens.

CHAPTER-IV

Justification Behind Enforcement and Non-enforcement of Economic, Social & Cultural Rights

The enforcement or non-enforcement of economic, social, and cultural rights is influenced by various factors and can vary across different jurisdictions and contexts. Here are some justifications that are commonly put forth for both the enforcement and non-enforcement of these rights:

4.1 Justifications for Enforcement:

1. Human Dignity: Economic, social, and cultural rights are considered fundamental human rights necessary for individuals to live a life of dignity. Enforcing these rights ensures that individuals have access to basic necessities such as food, housing, healthcare, education, and cultural participation.

2. International Human Rights Standards: Many countries are signatories to international human rights treaties that include provisions on economic, social, and cultural rights. Enforcing these rights demonstrates a commitment to upholding international human rights standards and obligations.

3. Equality and Social Justice: Enforcing economic, social, and cultural rights can help reduce inequality and promote social justice. By providing equal opportunities and resources, these rights can contribute to a more equitable society.

4. Social Stability and Development: Protecting and fulfilling economic, social, and cultural rights can contribute to social stability and development. Ensuring access to education, healthcare, and decent work can enhance productivity, reduce poverty, and create more resilient communities.

4.2 Justifications for Non-enforcement:

1. Limited Resources: One of the key challenges in enforcing economic, social, and cultural rights is the availability of resources. Governments may argue that they lack the financial means to fully implement and enforce these rights, especially in cases of economic constraints or competing priorities.

2. Judicial Restraint: In some legal systems, courts may exercise judicial restraint by deferring to the executive and legislative branches on matters related to economic, social, and cultural rights. This approach reflects the belief that policy decisions and resource allocation are better left to the elected representatives of the people.

3. Negative Rights vs. Positive Rights: Economic, social, and cultural rights are often referred to as positive rights, as they require active government intervention to be realized. Some argue that the primary focus of human rights should be on negative rights, such as civil and political rights, which impose a duty on the state to refrain from interfering with individual freedoms.

4. Cultural Relativism: Cultural relativism posits that different cultures and societies have their own values, norms, and priorities. Critics of enforcing economic, social, and cultural rights argue that imposing a universal framework may not respect cultural diversity and may undermine local autonomy and decision-making.

It's important to note that the justifications provided here are not exhaustive and may vary depending on the specific context and perspectives of different stakeholders involved. The enforcement or non-enforcement of economic, social, and cultural rights often involves complex considerations and trade-offs.

4.3 Infraction of Economic, Social and Cultural Rights

An infraction of economic, social, and cultural rights refers to a violation or breach of the rights recognized under the International Covenant on Economic, Social, and

Cultural Rights (ICESCR). These rights are fundamental human rights that aim to protect individuals' well-being, dignity, and quality of life.

The ICESCR, adopted by the United Nations General Assembly in 1966, recognizes a broad range of economic, social, and cultural rights, including the right to work, the right to an adequate standard of living, the right to education, the right to health, the right to social security, and the right to participate in cultural life.

Examples of infractions of economic, social, and cultural rights can vary widely, but here are a few common examples:

1. Denial of the right to work: This can include discriminatory practices in employment, forced labor, or unjust dismissal without proper compensation or due process.

2. Lack of access to essential services: If individuals or communities are denied access to basic services such as healthcare, education, water, sanitation, or housing, it constitutes an infringement of their economic, social, and cultural rights.

3. Violation of labor rights: This can include exploitation of workers, including child labor, unsafe working conditions, long working hours without adequate rest breaks, or lack of fair wages and benefits.

4. Discrimination and inequality: When certain groups face systemic discrimination, such as gender-based discrimination, racial or ethnic discrimination, or discrimination based on social or economic status, it undermines their ability to enjoy their economic, social, and cultural rights fully.

5. Inadequate social protection: If governments fail to provide social safety nets, such as unemployment benefits, social security, or pensions, it can leave individuals and communities vulnerable and unable to fulfill their basic needs.

6. Limitations on cultural rights: When cultural practices, expressions, or heritage are suppressed, restricted, or prohibited, it can impede people's ability to participate in cultural life and enjoy their cultural rights.

It's important to note that the recognition and realization of economic, social, and cultural rights can vary across countries and regions, as different nations have different levels of development, resources, and legal frameworks. Nonetheless, international human rights standards provide a common framework for promoting and protecting these rights, and violations should be addressed to ensure the dignity and well-being of all individuals.

4.4 Reasons of Infraction of Economic, Social and Cultural Rights

Infractions of Economic, Social, and Cultural Rights can occur for various reasons, often resulting from a combination of systemic, structural, and individual factors. These infringements can be attributed to several factors, including:

Lack of Legal Frameworks: In some cases, countries may not have comprehensive legislation or legal frameworks in place to protect and promote Economic, Social, and Cultural Rights (ESCR). This absence of clear legal provisions can lead to violations and an inability to hold accountable those responsible for such violations.

Discrimination and Inequality: Discrimination based on various factors such as race, ethnicity, gender, disability, and socioeconomic status can significantly impact the enjoyment of ESCR. Marginalized and disadvantaged groups often face unequal access to basic services, opportunities, and resources, thereby exacerbating existing inequalities.

Poverty and Unequal Distribution of Resources: Poverty and the unequal distribution of resources are major contributors to ESCR violations. Insufficient access to adequate housing, healthcare, education, food, and clean water disproportionately affect the most vulnerable populations, denying them the basic conditions necessary for a dignified life.

Political Instability and Conflict: Political instability, armed conflicts, and post-conflict situations can disrupt the provision of essential services and hinder the realization of ESCR. Displacement, destruction of infrastructure, and the breakdown of governance

structures can lead to severe disruptions in access to education, healthcare, and basic necessities.

Globalization and Neoliberal Policies: The implementation of neoliberal economic policies, driven by globalization, can undermine ESCR. Measures such as privatization, deregulation, and austerity measures often prioritize market interests over social welfare, leading to decreased access to essential services and exacerbating socioeconomic inequalities.

Lack of Awareness and Accountability: Insufficient awareness and understanding of ESCR, both among governments and the general public, can contribute to their violation. Additionally, a lack of effective mechanisms for monitoring, reporting, and holding perpetrators accountable for ESCR violations can perpetuate a culture of impunity.

4.5 Initiative Step by Bangladesh Government

As of my last knowledge update in September 2021, I can provide information on various initiatives taken by the Bangladesh government to promote economic, social, and cultural rights. Please note that the information might not include the most recent developments. It's always a good idea to verify the latest information from official sources.

1. Poverty Alleviation Programs: The Bangladesh government has implemented various poverty alleviation programs to improve economic and social conditions. One of the notable programs is the "Safety Net Program," which includes social safety nets like cash transfers, food assistance, and subsidies for vulnerable populations.

2. Education Initiatives: The government has placed significant emphasis on education to promote social and cultural rights. The "Primary Education Stipend Program" provides financial assistance to encourage primary education enrollment and reduce the dropout rate. Additionally, the "Secondary Education Quality and Access Enhancement Project" aims to enhance secondary education by improving infrastructure, teacher quality, and curriculum.

3. Women Empowerment: Bangladesh has taken steps to promote gender equality and empower women. Initiatives include the "National Women's Development Policy," which aims to ensure equal rights and opportunities for women. The government has also implemented programs such as microcredit schemes, vocational training, and awareness campaigns to support women's economic and social empowerment.

4. Health Initiatives: The government has focused on improving healthcare services and ensuring access to basic healthcare facilities. Initiatives like the "Community Clinic Project" aim to establish primary healthcare centers at the grassroots level, providing essential healthcare services to the rural population. The government has also prioritized immunization programs, maternal health services, and initiatives to combat malnutrition.

5. Cultural Preservation: The Bangladesh government recognizes the significance of cultural rights and has taken steps to preserve and promote cultural heritage. The Ministry of Cultural Affairs works towards safeguarding traditional arts, crafts, literature, and music. National celebrations, cultural festivals, and cultural exchange programs are organized to promote cultural diversity and understanding.

6. Labor Rights and Employment: The government has implemented labor laws and regulations to protect workers' rights and ensure safe working conditions. Initiatives like the "Bangladesh Labor Act" aim to address labor rights, workplace safety, and the formation of trade unions. The government has also taken steps to enhance employment opportunities, promote entrepreneurship, and attract foreign direct investment.

It's important to note that the Bangladesh government's initiatives and policies are dynamic and subject to change. For the most up-to-date information, I recommend referring to official government sources or news outlets.

Chapter-V
Case Laws

5.1 Kudrat-E-Elahi Panir & Others vs. Bangladesh

The statement you mentioned is attributed to the Appellate Division of the Supreme Court of Bangladesh in a landmark case regarding Economic, Social, and Cultural (ESC) rights. According to the statement, ESC rights are seen as a people's program for the gradual socio-economic development of the country in a peaceful manner. The implementation of these programs necessitates resources, technical know-how, mass education, and other prerequisites.

The statement suggests that achieving socio-economic development is a gradual process that requires careful consideration and planning. It acknowledges that bringing about positive change in the economic, social, and cultural aspects of a country involves addressing various factors such as resource allocation, technical expertise, and the need for widespread education.

Furthermore, the statement implies that the responsibility to determine whether all the necessary conditions for a peaceful socio-economic revolution exist lies with the state. This indicates that the state has the authority and duty to assess the readiness of the country to embark on a transformative path and implement the necessary policies and programs accordingly.

It is important to note that without specific details about the case or further context, it is difficult to provide a more comprehensive analysis of the statement or its implications. Legal interpretations can vary based on specific contexts and the particular arguments presented in the case.[16]

[16] Per Shahabuddin Ahmed C.J and Mustafa Kamal J in. Kudrat-E-Elahi Panir & Others v. Bangladesh, (1992) 44 DLR (AD) 319

5.2 Ain O Salish Kendra and Others v. Government of Bangladesh

In the case of Ain O Aalish Kendra and Others v. Government of Bangladesh, three non-governmental organizations and two slum dwellers filed a writ petition challenging the government's demolition of slum dwellings in Dhaka and the eviction of the inhabitants. The court made the following rulings:

1. The principles in the Fundamental State Policy, while not legally enforceable, are fundamental in governing the country and interpreting basic rights.

2. Evictions must be carried out in the spirit of the Constitution and under a specific rehabilitation program, respecting human dignity.

3. The government can proceed with the eviction process, but it should be done in stages and with reasonable notice. A master plan or pilot project should be undertaken to rehabilitate slum dwellers in phases, considering the availability of other housing.

4. Slum dwellers should have the option to return to their home villages or continue living in urban areas. If they choose to stay in urban areas, they should be provided with loans for housing construction, food, and vocational training. Special arrangements should be made for vulnerable populations.

The court ordered the government to develop master guidelines or pilot projects for the resettlement of slum dwellers, allow evictions to occur in phases based on the individuals' ability to find alternative accommodation, and provide reasonable notice before evictions. Slums along railway lines and road sides should be cleared for security reasons, but inhabitants should be resettled according to the guidelines.

5.3 Lekengere Faru and Others v. Attorney General and Others

In the case of Lekengere Faru and Others v. Attorney General and Others, Maasai pastoralists in Mkomazi Game Reserve, Tanzania, claimed against evictions from ancestral

lands. The High Court found the evictions illegal and ordered the seeking of alternative land and compensation for the claimants. However, the Court of Appeal, presided over by the Chief Justice, ruled that the Maasai were not natives of the contested area and were recent immigrants residing there under a license. The court ordered damages only for those who gave evidence and for alternative land to be sought. Unfortunately, the order for alternative land remains unimplemented to date.[17]

5.4 My Opinion

As an AI language model, I don't have personal opinions or emotions. However, I can provide you with some information about economic, social, and cultural rights in the Bangladesh constitution.

The Constitution of Bangladesh, adopted in 1972, contains provisions related to economic, social, and cultural rights. These rights are outlined in Part II of the constitution, titled "Fundamental Principles of State Policy." While these principles are not justiciable, meaning they cannot be directly enforced in a court of law, they provide a guideline for the government's responsibilities and obligations towards it citizens.

[17] Tanzania High Court, Moshi, Civil cause No 33/1994, CV No.33/1995, Court of Appeal- CVA No. 53/1998

Chapter -VI
CONCLUDING CHAPTER

6.1 Findings

I'm sorry, but as an AI language model, I don't have real-time access to specific books, articles, or documents. Therefore, I don't have the ability to provide you with the findings of a specific publication titled "Rights without Remedies: A Critical Appraisal of Economic, Social, and Cultural Rights in Bangladesh Constitution." My training data only goes up until September 2021, and I'm unable to browse the internet.

However, I can provide you with a general overview of economic, social, and cultural rights in the Bangladesh constitution. Please note that the specific findings of the mentioned publication may differ from this general overview.

The Constitution of Bangladesh, adopted in 1972, includes several provisions related to economic, social, and cultural rights. Some key provisions include:

1. Right to Equality: Article 27 guarantees the right to equality before the law and prohibits discrimination on various grounds, including race, religion, caste, sex, or place of birth.

2. Right to Education: Article 17 establishes free and compulsory primary education and encourages the development of a uniform, mass-oriented, and universal system of education.

3. Right to Health: Article 18 ensures the right to the highest attainable standard of health and obligates the state to provide medical facilities and public health services to all citizens.

4. Right to Work: Article 15 promotes the right to work, employment, and just and favorable conditions of work. It also prohibits forced labor.

5. Right to Social Security: Article 15A recognizes the right to social security, including public assistance in cases of unemployment, old age, sickness, or disablement.

It's important to note that while these provisions exist in the constitution, the realization of economic, social, and cultural rights in Bangladesh faces various challenges. These challenges can include limited resources, inadequate implementation mechanisms, and societal barriers.

To obtain the specific findings of the publication you mentioned, I recommend searching for the book or article in academic databases, libraries, or online platforms. This will provide you with an in-depth analysis and critical appraisal of economic, social, and cultural rights in the Bangladesh constitution.

6.2 Suggestion

1. Lack of Enforce ability:
One of the main criticisms regarding ESC rights in the Bangladesh Constitution is the absence of proper mechanisms for their enforcement. Unlike civil and political rights, which often have clear legal remedies, ESC rights lack effective implementation strategies. This creates a gap between the recognition of these rights and their actual enjoyment by the citizens.

2. Insufficient Allocation of Resources:
ESC rights, by their nature, often require substantial resources for their realization. However, the lack of clear provisions for resource allocation in the Constitution hampers the effective implementation of these rights. Without adequate financial and logistical support, the state may struggle to fulfill its obligations to provide quality education, healthcare, and other essential services.

3. Weak Monitoring and Accountability Mechanisms:
To ensure the fulfillment of ESC rights, robust monitoring and accountability mechanisms are indispensable. Unfortunately, the existing mechanisms in Bangladesh are often inadequate, leading to limited oversight and accountability for violations. Strengthening monitoring bodies and ensuring their independence and effectiveness would help bridge this gap.

4. Socio-cultural Barriers:

Bangladesh, as a diverse nation, faces unique socio-cultural challenges that can impede the realization of ESC rights. Traditional gender roles, discrimination, and social prejudices can hamper equal access to education, employment, and cultural opportunities. Constitutional provisions need to be accompanied by targeted measures to address these deep-rooted social barriers.

Suggestions for Improvement:

1. Legal Enforce-ability:

Amend the Constitution to provide clear and enforceable remedies for violations of ESC rights. This could include establishing specialized courts or tribunals to handle cases related to ESC rights violations and ensuring access to justice for individuals seeking redress.

2. Adequate Resource Allocation:

Introduce constitutional provisions that mandate the allocation of a reasonable percentage of the national budget towards fulfilling ESC rights. This would provide a legal framework for resource allocation and increase accountability in the implementation of these rights.

3. Strengthen Monitoring Mechanisms:

Enhance the capacity and independence of existing monitoring bodies responsible for overseeing ESC rights. Ensure their active involvement in assessing the government's performance and holding it accountable for any lapses or violations.

4. Public Awareness and Sensitization:

Promote public awareness and education campaigns to address socio-cultural barriers that hinder the enjoyment of ESC rights. This can help challenge prejudices, stereotypes, and discriminatory practices, facilitating a more inclusive society.

6.3 Recombination

One of the fundamental principles of Bangladesh is the recognition and guarantee of fundamental rights as enshrined in its constitution. However, the effectiveness of these rights

can be diminished if there are rights without remedies. To address this issue and strengthen the protection and enforcement of fundamental rights, here are some recommendations:

1. Strengthen Legal Frameworks: Review and amend existing laws to ensure that they align with international human rights standards and provide clear and enforceable remedies for violations of fundamental rights. This includes enhancing legislation related to economic, social, and cultural rights, as well as civil and political rights.

2. Access to Justice: Improve access to justice for all citizens, particularly marginalized groups, by reducing barriers such as cost, complexity, and delays in the legal system. This can be achieved through measures such as legal aid programs, alternative dispute resolution mechanisms, and strengthening the capacity of judicial institutions.

3. Judicial Independence: Ensure the independence and impartiality of the judiciary to instill public trust and confidence in the justice system. This can be achieved by safeguarding judicial appointments, ensuring security of tenure, and promoting transparent and fair judicial processes.

4. Public Awareness and Education: Conduct awareness campaigns to educate citizens about their fundamental rights, including the remedies available for violations. This can empower individuals to assert their rights and hold accountable those responsible for violations.

5. Strengthen Human Rights Institutions: Provide adequate resources and authority to human rights institutions, such as the National Human Rights Commission, to effectively investigate complaints, monitor human rights situations, and provide remedies for rights violations.

6. Civil Society Engagement: Foster an enabling environment for civil society organizations to actively engage in human rights advocacy, monitoring, and accountability efforts. This includes protecting the rights of human rights defenders and facilitating their participation in policy-making processes.

7. International Cooperation: Engage with international human rights mechanisms and organizations to seek technical assistance, capacity building, and knowledge sharing in strengthening the protection and promotion of fundamental rights.

It is important for the government, civil society organizations, and other stakeholders to work collaboratively to implement these recommendations and ensure that fundamental rights are not only recognized in theory but also effectively protected and enforced in practice.

6.4 Conclusion:

While the inclusion of ESC rights in the Bangladesh Constitution is commendable, the lack of effective remedies undermines their realization. To bridge this gap, it is crucial to address issues of enforceability, resource allocation, monitoring mechanisms, and socio-cultural barriers. By implementing the suggested improvements, Bangladesh can strive towards a society where all citizens can enjoy their economic, social, and cultural rights without discrimination or obstacles.

Bibliography

Statute:
The Constitution of the People's Republic of Bangladesh
2. Labor Act, 2006
3. Primary Education Act, 1990
4.Health and Population Welfare Ministry Order, 1976
5.Antiquities Act, 1968

Books:
Legal System of Bangladesh
Writer: Pro. Dr. Md Anser Ali Khan

The Constitution Law of Bangladesh
Writer: M. Jashim Ali Chowdhury

Law of the Constitution
Writer: A. V Dicey

Website:
1.Library of Congress (.gov)

https://tile.loc.gov › usrep556PDF
Montejo v. Louisiana, 556 U.S. 778 (2009).