



Sonargaon University

Research Monograph on

“Fundamental Principles Enshrined in The constitution of Bangladesh: An Appraisal”

This research paper is submitted in partial fulfillment of the requirements of the degree of LL. B(Honors) under Sonargaon University.

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Firstly, I am grateful to benevolent almighty, who has been given me enough ability to let me complete this Research Monograph successfully.

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During the completion of this research monograph, I have taken help from some books, journals, articles, and newspapers. Thanks to all authors of that books, journals and articles.

Finally, I want to express my deep gratitude to my parents and all well wishes whose enormous helps assists me to complete this report.

Signature

Aysha Akter

CERTIFICATION BY THE RESEARCH SUPERVISOR

This is to certify that the Research Monograph titled “**Fundamental Principles Enshrined in the Constitution of Bangladesh: An Appraisal**” submitted by **Aysha Akter (ID No: LLB 1801013010)** in fulfillment of the requirements for the award of the Graduate Degree in Law from Sonargaon University, under my supervision and guidance. It is also to be certified that no part of this Research Monograph has been submitted anywhere earlier.

Research Supervisor

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DECLARATION

This is **Aysha Akter**, a student of LLB program of Department of Law of Sonargaon University, holding **ID No: LLB 1801013010**; do hereby declare that the research monograph titled, ***“Fundamental Principles Enshrined in the Constitution of Bangladesh: An Appraisal”*** 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 acknowledgement 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 expect where due reference 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 decree or otherwise.

Signature

Aysha Akter

LETTER OF TRANSMITTAL

To

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

Subject: **Submission of Research Monograph on “*Fundamental Principles Enshrined in the Constitution of Bangladesh: An Appraisal*”.**

Dear Sir,

It is a great pleasure for me that I have the opportunity to submit the research paper on,

“*Fundamental Principles Enshrined in the Constitution of Bangladesh: An Appraisal*”.

According to your guidelines I have been able to effectively and enthusiastically accomplish the report. This report attempts to describe my observations, learning and recommendation based on general reasoning and empirical evidence. I made sincere efforts to conduct this study in reviewing related rules, documents, interview and examine relevant records for preparation of this report. During the research period, it is customary to work in this field to gather a better understanding of this arena.

I have tried my level best to put meticulous effort for the preparation of this report. Any shortcomings or fault may arise as my unintentional or clerical mistakes. I will heartedly welcome any clarification and suggestion for any review and conception disseminated through this report.

Your active supervision and crafted guidance made it possible for me to prepare this report successfully. I remain available at your convenience to clarify any quarries if necessary.

Thanking you,

Aysha Akter

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ABSTRACT

Constitution of the People's Republic of Bangladesh is the supreme law of the country that manifests the rules and regulations, by which the State and its citizen shall be governed. The principles incorporated in Part II shall be fundamental to the governance of Bangladesh, shall be applied by the state in 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. The government should also bear in mind that, those principles are the political commitments to the people at large, and should not be kept unimplemented for a long period of time. None knows when the government will achieve the goal of complete implementation of the fundamental principles. However, if the judiciary's hands remain tied in protecting human rights, government might not be willing to ensure the fundamental rights, which might go against their own interests, and the goal to achieve access to justice and uphold rule of law will remain as dream.

Keywords: Constitution of Bangladesh, fundamental principles, state policy, governance, judiciary, rule of law.

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CHAPTER 1

INTRODUCTORY

INTRODUCTION: Fundamental principles of state policy indicate those principles which are used as a guideline in formulating different policies. These policies are made up based on the social, economic and administrative perspectives. These principles are the fixed permanent which is not denied by any of the government and policies are made based on these principles as well.

The concept of fundamental principles has been taken to our country Irish constitution and these are taken focusing on the prohibition of economic imbalance and extortion. Now every rolling government follows these fundamental principles. The fundamental principles have been stated in the Article-8 to Article-25 in part II of the constitution Republic of Bangladesh. The four fundamental principles of the Constitution are-

- Nationalism,¹
- Socialism,²
- Democracy³ And
- Secularism.⁴

The Constitution endeavors to create a socialist society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, is secured for all its citizens. It commits Bangladesh to “contribute to international peace and co-operation in keeping with the progressive aspirations of mankind”.^{5,6}

1 "Article 9 of the Constitution of Bangladesh". *Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs*. Retrieved 29 June 2021.

2 Jump up to:**a b** "Article 10 of the Constitution of Bangladesh". *Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs*. Retrieved 29 June 2021.

3 Jump up to:**a b** "Article 11 of the Constitution of Bangladesh". *Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs*. Retrieved 29 June 2021.

4 Jump up to:**a b** "Article 12 of the Constitution of Bangladesh". *Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs*. Retrieved 29 June 2021.

Fundamental Principles of State Policy enshrined in Articles 8 to 11 and 13 to 25 of Part II of the Constitution of the People's Republic of Bangladesh. According to Article 8, as amended by the Proclamations Order No. 1 of 1977, the principles of absolute trust and faith in Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, together with the principles derived from them, shall constitute the fundamental principles of state policy, and that absolute trust and faith in Almighty Allah shall be the basis of all actions. The Article also says that the principles set out in Part II 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 work of the state and of its citizens, but shall not be judicially enforceable.

FUNDAMENTAL PRINCIPLES

Directive or Fundamental Principles of State Policy as a term of constitutional jurisprudence have not got any universal definition. From the view of Bangladesh Constitution, it might be said that fundamental principles of state policy usually are those principles which behave as fundamental guide to the policy making whether it be social, economic, administrative or maybe international, governance of the united states, making laws and interpreting the Constitution and legislation. Directive Principles of State Policy are available as instructions or guidelines for the governments at the center in addition to states. Though these rules are non-justifiable, they are fundamental from the governance of the region. The idea of fundamental principles of state policy has been taken from the Irish Republic. They were incorporated within our Constitution in order to provide economic justice and also to avoid concentration of wealth from the hands of some individuals. A distinguishing feature of directive principles which is invariably found in all constitutions adopting these principles is that these are not enforceable in a court of law.

The Constitution of Bangladesh embodies in its part II certain directions to the State terming them as 'Fundamental Principles of State Policy'. The Constitution itself terms these as Principles', not 'laws'.' Apart from setting certain ideological objectives, interestingly, this part II

contains also the provisions regarding basic necessities which says that 'It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens' the basic necessities and rights, like food, clothing, shelter, education, medical care, right to work, etc.

CHAPTER 2

FUNDAMENTAL PRINCIPLES OF STATE POLICY IN BANGLADESH

FUNDAMENTAL PRINCIPLES OF STATE POLICY:

PART II

FUNDAMENTAL PRINCIPLES OF STATE POLICY⁵

8. Fundamental principles.

(1) The principles of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, together with the principles derived from them as set out in this Part, shall constitute the fundamental principles of state policy.

(1A). Absolute trust and faith in the Almighty Allah shall be the basis of all actions.

(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.

9. Promotion of local Government institutions.

The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible, to peasants, workers and women.

10. Participation of women in national life.

Steps shall be taken to ensure participation of women in all spheres of national life.]
Participation of women in national life.]

11. Democracy and human rights.

⁵ The Constitution of People's Republic of Bangladesh, 1972.

The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.

The principle of secularism shall be realised by the elimination of -

- (a) communalism in all its forms;
- 12. (b) the granting by the State of political status in favour of any religion;
- (c) the abuse of religion for political purposes;
- (d) any discrimination against, or persecution of, persons practicing a particular religion.

13. Principles of ownership.

The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms-

- 1. state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalised public sector embracing the key sectors of the economy;
- 2. co-operative ownership, that is ownership by co-operatives on behalf of their members within such limits as may be prescribed by law; and
- 3. private ownership, that is ownership by individuals within such limits as may be prescribed by law.

14. Emancipation of peasants and workers.

It shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms and exploitation.

15. Provision of basic necessities.

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens-

1. the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;
2. the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;
3. the right to reasonable rest, recreation and leisure; and
4. the right to social security, that is to say to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

16. Rural development and agricultural revolution.

The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas.

17. Free and compulsory education.

The State shall adopt effective measures for the purpose of -

1. establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;
2. relating education to the needs of society and producing properly trained and motivated citizens to serve those needs;
3. removing illiteracy within such time as may be determined by law.

18. Public health and morality.

(1) The State shall regard the raising of the level of nutrition and the improvement of public health as moving its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and drugs which are injurious to health.

(2) The State shall adopt effective measures to prevent prostitution and gambling.

19. Equality of opportunity.

(1) The State shall endeavour to ensure equality of opportunity to all citizens.

(2) 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, and of opportunities in order to attain a uniform level of economic development throughout the Republic.

20. Work as a right and duty.

(1) Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle "from each according to his abilities to each according to his work".

(2) The State shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour and of the human personality.

21. Duties of citizens and of public servants.

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

(2) Every person in the service of the Republic has a duty to strive at all times to serve the people.

22. Separation of Judiciary from the executive.

The State shall ensure the separation of the judiciary from the executive organs of the State. Separation of Judiciary from the executive.

23. National Culture.

The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture.

24. National monuments, etc.

The State shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places of special artistic or historic importance or interest.

25. Promotion of international peace, security and solidarity.

(1) The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principle shall-

1. Strive for the renunciation of the use of force in international relations and for general and complete disarmament;
2. uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and

3. support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.
4. (2) The State shall endeavour to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity.

FUNDAMENTAL PRINCIPLES:

Article 8 of the Constitution: Fundamental Principles:

“(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.”⁶

Nationalism: Nationalism has been set as the very first principles which have been stated in the **Article 9** of the constitution. Nationalism which has been achieved from the culture, belief and a long struggle of the war of independence.

Socialism and Freedom Extortion: Socialism has been stated as the basic principles and mentioned in **Article-10** of the constitution. In order to avoid the extortion of wealth and economic imbalance, these have been taken as fundamental principles of state policy.

⁶ Article 8, the Constitution of Bangladesh, 1972.

Democracy and Human Rights: Democracy is the way of people's participation in every sphere of the government. To ensure the human right and people's participation democracy has been included as a fundamental principle of state policy in Bangladesh. Constitution of the republic of Bangladesh states about this basic principle in the "**Article 11**".

Secularism and Freedom of Religion: Constitution of republic gives the freedom of religion and prohibits the abuse of religion in the name of politics. It prohibits to rescue the name of any religion in the state. Constitution of the republic of Bangladesh states about this basic principle in the "**Article 12**".

NATIONALISM:

Bengali nationalism is a form of nationalism that focuses on Bengalis as a singular nation. Nationalism has been set as the very first principles which have been stated in the **Article 9** of the constitution. Nationalism which has been achieved from the culture, belief and a long struggle of the war of independence. The people of Bengali ethnicity speak Bengali language. Bengalis mostly live across Bangladesh and the Indian states of West Bengal, Tripura, Assam and Jharkhand. Bengali nationalism is one of the four fundamental principles according to the original Constitution of Bangladesh.⁷ and was the main driving force behind the creation of the Independent nation state of Bangladesh through the 1971 liberation war.

Nationalism in the Constitution of Bangladesh:

Article 9. The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism.⁸

⁷ "9.Nationalism". *bdlaws.minlaw.gov.bd. Constitution of Bangladesh. Retrieved 25 December 2017.*

⁸ ^ Jump up to:**a b** Schuman, Howard (1972). "A Note on the Rapid Rise of Mass Bengali Nationalism in East Pakistan". *American Journal of Sociology*. **78** (2): 290–298. doi:10.1086/225325. JSTOR 2776497.

The first Bengali nationalist agitation emerged over the 1905 Partition of Bengal by British authorities.⁹ Although the partition was supported by Bengali Muslims, a large majority of Bengalis protested the partition and participated in civil disobedience campaigns such as the *Swadeshi* movement and mass boycott of European goods. Seeking a united Bengal and rejecting British hegemony, Bengalis also spearheaded an emerging revolutionary movement, which assumed a central role in the national independence struggle.

It was during this time the Mother Bengal was an immensely popular theme in Bengali patriotic songs and poems and was mentioned in several of them, such as the song "Dhan Dhanya Pushpa Bhara" (Filled with wealth and flowers) and "Banga Amar Janani Amar" (Our Bengal Our Mother) by Dwijendralal Ray. Rabindranath Tagore wrote *Banglar Mati Banglar Jal* (Soil of Bengal, water of Bengal) and *Amar Sonar Bangla* (My golden Bengal), the national anthem of modern Bangladesh as a rallying cry for proponents of annulment of Partition.^[5] These songs were meant to rekindle the unified spirit of Bengal, to raise public consciousness against the communal political divide.

Bengal became a strong base of the Indian struggle for independence, giving rise to national political leaders such as Bipin Chandra Pal, Khwaja Salimullah, Chittaranjan Das, Maulana Azad, Subhas Chandra Bose, his brother Sarat Chandra Bose, Syama Prasad Mookerjee, A. K. Fazlul Huq, Huseyn Shaheed Suhrawardy.

DEMOCRACY:

Democracy in Bangladesh was first introduced when the British ruled South Asia from 1700 to 1947, where Bangladesh was among the first British colonies in the subcontinent. It was then where the Westminster style of democracy was introduced that was prevalent in Britain at the time. Since Bangladesh achieved its independence on 26 March 1971 from Pakistan, Bangladesh introduced parliamentary democracy into its political system; however, a military coup in 1975 halted the process.¹⁰

9 John R. McLane (July 1965). "The Decision to Partition Bengal in 1905". *Indian Economic and Social History Review*. 2 (3): 221–237. doi:10.1177/001946466400200302.

10 "Bangladesh and its confusion on democracy". *bdnews24.com (Opinion)*. 2015-05-23. Retrieved 2020-06-01.

Democracy and Human Rights:

Article 11. The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured].”¹¹

Democratic Values:

Although Bangladesh has been under authoritarian regimes, it has been a democratic entity for a majority of the time since the country's foundation. The state of democracy can be judged by looking at the violations of the core principles of democracy as laid out by the United Nations.

Freedom of Expression and Association:

Bangladesh has suffered from assaults on university students - who are regarded as the pioneers of grassroots movements in the past - in order to change their political opinions. After the 2019 elections were held, reports of vote rigging emerged which sparked protests by the Left Democratic Alliance. However, cases of police brutality and assaults on protesters were seen, as at least 50 activists were left with serious injuries.

In September 2018, the Bangladeshi government introduced the Digital Security Act. However, some laws in the act criminalised the freedom of expression as several cases of civilians being charged were revealed for posting anti-government comments online. In 2019, Bangladesh ranked 44 out of 100 in net freedom, with 0 out of 100 representing extremely limited net freedom.¹²

¹¹ *The Constitution of Bangladesh, 1972, Article 11.*

¹² *"Caught Between Fear and Repression" (PDF). Amnesty International. Archived (PDF) from the original on 2018-01-15.*

Free and Independent Media:

Journalism in Bangladesh has been under immense pressure as evident in the rankings of the country in the World Press Freedom Index. Bangladesh stood at 144 out of 180 countries in 2016, and the rankings only slipped as Bangladesh received 146 in 2018, 150 in 2019, and 151 in 2019. Amnesty International reported that the main hindrance to free journalism is that several media outlets in Bangladesh are affected by owners and political influence, which hinders the diversification of opinions. In 2016, some reporters argued that Bangladesh's press freedom had never been more restricted since the country's return to civilian rule in 1991. Amnesty International also revealed that the press is often intimidated by threats of physical violence and criminal cases against journalists.¹² In 2011, the restrictions on press freedom drew international criticism after the then US Secretary of State, Hillary Clinton voiced her concern on the state of the freedom of press in the country.¹³

Free and Fair Elections:

Bangladesh elections in 2014 were marred with allegations of irregularities, such as voter suppression, fake votes and capturing of polling booths. The Bangladesh National Party (BNP) and its allies boycotted the 2014 elections as their demands of a caretaker government in place to oversee the elections were not met. This resulted in the Awami League to win the general election even as 153 out of the 300 parliamentary seats went uncontested. According to electoral agencies, only 10% of the eligible population cast their ballot in the 2014 general elections.¹⁴

Furthermore, leading up to the 2018 general elections, the opposition parties questioned the Election Commission (EC) on their neutrality as they believed them to be increasingly one-sided towards the ruling party. Media coverage and reports from human rights organisations revealed the Awami League's elaborate plan for voter suppression and arrests of opposition activists in the lead up to the 2018 general election. The ruling party and its allies won 288 out of the 300 parliamentary seats, which raised serious concerns over the legitimacy of the election held as

13 "Signing into eresources, The University of Sydney Library". login.ezproxy1.library.usyd.edu.au. Retrieved 2020-06-01.

14 ^ Barry, Ellen (2014-01-06). "Bangladesh's Governing Party Wins Vote Amid Unrest". *The New York Times*. ISSN 0362-4331. Retrieved 2020-06-02.

previous election held by the caretaker governments from 1991 to 2008 usually resulted in less than 48% of the seats going to the election winner.¹⁵

Independence of Judiciary:

The constitution of Bangladesh allows the President to appoint the Chief Justice of Bangladesh after receiving advice from the Prime Minister. Concerns of politically motivated court cases have continually emerged, and concerns regarding the politically appointed judiciary favouring the concurrent government is a contested debate in Bangladesh. In 2010, 6788 out of the 10,489 cases reviewed by a committee relating to the ruling party were dropped as the law ministry suggested that the cases were 'politically motivated'.¹⁶

The lower and higher courts have faced multiple allegations of corruption and bribery. Several ruling party members who had allegedly been involved in land grabbing scandals and corruption were not held 'accountable' in 2010.

Transparency and Accountability in Public Administration:

Using positions of power to grant favors to relatives, supporters and friends is considered a norm in Bangladeshi politics. Most leaders of Bangladesh have been alleged into being involved in large corruption scandals either directly or indirectly.¹⁷

15 ^ Rabbee, Shafquat. "A deeper look at the Bangladesh election". *Al Jazeera*. Retrieved 2020-06-02.

16 ^ Jump up to:[a](#) [b](#) Islam, Syful. "Bangladesh: Where The Judiciary Can Be An Obstacle To Justice" (PDF). *Global Integrity*. Archived (PDF) from the original on 2022-02-15.

17 ^ Mahmood, Shakeel. "Public procurement and corruption in Bangladesh confronting the challenges and opportunities".

Respect for Human Rights and Freedom:

Violations of human rights in Bangladesh take the forms of extrajudicial killings and custodial torture and deaths. An estimated of 154 extra judicial killings in 2009 and another 127 deaths were confirmed through extrajudicial in 2010, with larger numbers expected.¹⁸

Although local laws prohibit physical violence or mental torture of detainees and prisoners by state agencies, these laws were routinely broken, and in certain cases, the victims would effectively 'disappear'. From 2007 to 2008, several top businessmen and politicians were subjected to trials for charges such as financial corruption, tax evasion and bribery. Several of the top political leaders were then subject to mental and physical torture during detention.¹⁸

Cases such as those of police brutality in early 2019 were evident, as police used force to disperse 50,000 protestors, resulting in one death and over 50 injuries.

QUALITY OF DEMOCRACY

Bangladesh had a large voter turnout in 2009 and 2018 of 80%.¹⁹ However, the differentiation in political ideas for civilians to vote on became limited due to high barriers of entry requiring large amounts of resources, which left only a small segment of the population having the ability to run political campaigns. A small segment of the political class divided among the existing political parties left few new policy alternatives being presented to the public. After the elections, only a few procedures for accountability were available to the public for the elected officials. After election, members of parliament (MP) often indulged in being 'gatekeepers' of party policies in their constituency rather than serving their voters' interest. Voters often felt that their elected MPs either never visited their constituencies or visited infrequently. The same voters also felt that the interaction between MPs and their constituents is crucial for positive engagement and to monitor their performances in the parliament. In another survey of MPs, only 35 of the elected officials believed that they were being held accountable to their constituents. The members of parliament were also often unaware of all of the problems in their constituencies, due to a law

18 ^ Jump up to:**a b** "*State of Human Rights in Bangladesh – South Asia Journal*". Retrieved 2020-06-02.

19 ^ "*Nearly 80% voter turnout*". *Dhaka Tribune*. 2018-12-31. Retrieved 2020-06-02.

permitting members of parliament to represent constituencies they are not from. Members of parliament may also be unaware of critical issues in their constituencies as they are based in Dhaka, rather than within their community.²⁰

Political parties in Bangladesh are also often structured in a way that the party leadership remains dynastic. As a result, the children of political leaders are expected to be future party leaders. Rare changes in party leadership reduced the ability of younger party members to gain higher ranking positions, which also reduced diversification and differentiation of party policies. Article 70 of the constitution also prevented members of a party to vote against a policy brought forth by other party members of the same party. This also reduced the ability of parliament members on their ability to vote in the interest of their constituents, having been forced to vote in the interests of the party.²⁰

SOCIALISM:

Socialism is one of the four fundamental principles of state policy in the original Constitution of Bangladesh. Socialism has been stated as the basic principles and mentioned in **Article-10** of the constitution. In order to avoid the extortion of wealth and economic imbalance, these have been taken as fundamental principles of state policy. Socialism in Bangladesh differs from socialist countries where all the means of production are owned socially. Socialism has been considered in the Constitution as a way to establish an exploitation-free society.²¹ The constitution allows cooperative and private ownership along with state ownership.²²

20 ^ Jump up to:[a](#) [b](#) [c](#) Meisburger, Tim. "*Strengthening Democracy in Bangladesh*" (PDF). The Asia Foundation. Archived (PDF) from the original on 2013-01-27.

21 Phillips, Douglas A.; Gritzner, Charles F. (2007). *Bangladesh*. Infobase Publishing. p. 65. ISBN 978-1-4381-0485-0.

22 ^ Afzalur Rashid, Sudhir C. Lodh (1 January 2008). "The influence of ownership structures and board practices on corporate social disclosures in Bangladesh". *Corporate Governance in Less Developed and Emerging*

Socialism and Freedom from Exploitation in The Constitution:

“A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man.”²³

History of Socialism in the Constitution:

After the liberation of Bangladesh in 1971, some socialistic approaches were taken by the Government of Bangladesh, increasing state participation in the productive activities to improve the economic status of the war ridden country. With a view to establishing a socialist nation, many large and medium-sized enterprises and public utility enterprises were nationalized. On 26 March 1972, all banks, and all insurance companies excluding the branches of foreign banks were nationalized. The reformation process left only the small and cottage industries for the private sector. Although public sector expanded very rapidly, the share of public sector in GDP and in total productive efforts was insignificant. This was because the agricultural sector was left to the private sector, which comprised about 80% of the national economy. On 24 February 1975, Sheikh Mujibur Rahman used the powers granted to him by the fourth amendment of the constitution to form a new political party, Bangladesh Krishak Sramik Awami League (BAKSAL). It would be the only party allowed in Parliament. All other political parties were with the formation of BAKSAL through a presidential order.²⁴ The party advocated state socialism as a part of the group of reforms under the theory of Second

Economies. Research in Accounting in Emerging Economies. Emerald Group Publishing Limited. 8: 211–237. doi:10.1016/s1479-3563(08)08008-0. ISBN 9781848552524.

²³ *The Constitution of Bangladesh, Article 10.*

²⁴ *Mitra, Subrata Kumar; Enskat, Mike; Spiess, Clemens (1 January 2004). Political Parties in South Asia. Greenwood Publishing Group. p. 226. ISBN 9780275968328.*

Revolution.²⁵ BAKSAL was the decision making council to achieve the objectives of the Second Revolution.²⁶ With the assassination of Sheikh Mujib in 1975, BAKSAL was dissolved.

During the years of military rule that followed under Ziaur Rahman (1975-1981) and Hussain Muhammad Ershad (1982-1990), socialist policies and rhetoric were abandoned. State enterprises were dismantled, state subsidies withdrawn and trade liberalization and exports promoted. Thus, contemporary Bangladesh has among the most liberalized economies of South Asia.²⁷

SECULARISM:

Secularism in Bangladesh is known as "neutrality of religion" under Bangladeshi law.

Bangladesh is the first constitutionally secular country in South Asia, having declared itself as an explicitly secular state in 1972.²⁸ It was the first and only Muslim-majority country in South Asia to enshrine secularism in its constitution. In the Constitution of Bangladesh, secularism is mentioned in the preamble as one of the fundamental principles of Bangladeshi law. Article 8 enshrines secularism as one of the fundamental principles of state policy. Article 12 elaborates further on secularism and freedom of religion.²⁹ Constitution of republic gives the freedom of religion and prohibits the abuse of religion in the name of politics. It prohibits to rescue the name of any religion in the state. Constitution of the republic of Bangladesh states about this basic principle in the "Article 12".

25 [^] Mitra, Subrata Kumar; Enskat, Mike; Spiess, Clemens (1 January 2004). *Political Parties in South Asia*. Greenwood Publishing Group. p. 225. ISBN 9780275968328.

26 [^] "BANGLADESH: The Second Revolution". *Time*. 10 February 1975. ISSN 0040-781X. Retrieved 1 May 2017.

27 [^] Riaz, Ali; Fair, Christine, eds. (2010). "Political Culture in Contemporary Bangladesh". *Political Islam and Governance in Bangladesh*. Oxford: Routledge. p. 34. ISBN 978-113692-623-5.

28 "*Struggle for the Soul of Bangladesh*".

29 "*The Constitution of the People's Republic of Bangladesh / 12. Secularism and freedom of religion*".

Secularism and Freedom of Religion in the Constitution of Bangladesh:

The principle of secularism shall be realised by the elimination of -

- (a) communalism in all its forms;
- (b) the granting by the State of political status in favour of any religion;
- (c) the abuse of religion for political purposes;
- (d) any discrimination against, or persecution of, persons practicing a particular religion.³⁰

Principles of Ownership

The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms –

- (a) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalized public sector embracing the key sectors of the economy;
- (b) co-operative ownership, that is ownership by co-operatives on behalf of their members within such limits as may be prescribed by law; and
- (c) private ownership, that is ownership by individuals within such limits as may be prescribed by law.³¹

Emancipation of Peasants and Workers:

It shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms of exploitation.³²

30 Article 12, the Constitution of Bangladesh, 1972.

31 Article 13, the Constitution of Bangladesh, 1972.

32 Article 14, the Constitution of Bangladesh, 1972.

Provision of Basic Necessities:

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens –

- (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;
- (b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;
- (c) the right to reasonable rest, recreation and leisure; and
- (d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.³³

Rural Development and Agricultural Revolution:

The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas.³⁴

Free and Compulsory Education:

The State shall adopt effective measures for the purpose of –

- (a) establishing a uniform, mass oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;
- (b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs; (c) removing illiteracy within such time as may be determined by law.³⁵

33 Article 15, the Constitution of Bangladesh, 1972.

34 Article 16, the Constitution of Bangladesh, 1972.

35 Article 17, the Constitution of Bangladesh, 1972.

Public Health and Morality:

(1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.

(2) The State shall adopt effective measures to prevent prostitution and gambling.³⁶

Protection and Improvement of Environment and Biodiversity:

“The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.”³⁷

Equality of opportunity:

(1) The State shall endeavor to ensure equality of opportunity to all citizens.

(2) 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, and of opportunities in order to attain a uniform level of economic development throughout the Republic.

[(3) The State Shall endeavor to ensure equality of opportunity and participation of women in all spheres of national life.]³⁸

Work as a Right and Duty:

(1) Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle “from each according to his abilities, to each according to his work”.

36 Article 18, the Constitution of Bangladesh, 1972.

37 Article 18A, the Constitution of Bangladesh, 1972.

38 Article 19, the Constitution of Bangladesh, 1972.

(2) The State shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour and of the human personality.³⁹

Duties of citizens and of public servants:

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

(2) Every person in the service of the Republic has a duty to strive at all times to serve the people.⁴⁰

Separation of Judiciary from the executive:

The State shall ensure the separation of the judiciary from the executive organs of the State.⁴¹

Separation of Judiciary in Bangladesh- Masdar Hossain Case's Directions:⁴²

The separation of the judiciary is a precondition for the independence of the judiciary, which is a basic feature of the Constitution. If the judiciary can perform independently, the citizens' rights can never be endangered from any quarters and the judiciary will be respected as protector of citizens' constitutional rights. But in order to implement the constitutional mandates regarding the separation of judiciary, particularly the subordinate judiciary from the executive, the nation had to wait about 36 years from its independence.

In Bangladesh history, it is found that the first attempt was taken in 1976 by a Law Committee of Justice Kamluddin Hossain, who made a recommendation for the separation of the subordinate judiciary on the criminal side in three stages. In 1990 the separation of the judiciary was one of the commitments in the manifesto of the three-party alliance but no steps were taken by the governments of 1991 and 1996 except spoiling their tenure. It was Masdar Hossain, a district judge along with another 441 judicial officers who

39 Article 13, the Constitution of Bangladesh, 1972.

40 Article 21, the Constitution of Bangladesh, 1972.

41 Article 22, the Constitution of Bangladesh, 1972.

42 Secretary, Ministry of Finance v Masdar Hossain (1999) 52 DLR (AD) 82

brought a writ petition in 1995 to the HCD, which is known as the *Masdar Hossain* case. In this case the petitioners claimed inter alia: i. inclusion of judicial service in the name of BCS (Judicial) under the Bangladesh Civil Services (Re-organization) Order, 1980 is ultra vires the Constitution; ii. Chapter II of Part VI of the constitution has already separated the lower judiciary from executive where necessary amendments of article 115 may be required for full separation; iii. judges of the subordinate courts being presiding officers cannot be subject to the jurisdiction of the administrative tribunal of the executive. The court gave a landmark judgment in 1997 declaring 12 historical directions, with a view to giving implementation of the separation of judiciary from the executive. The AD of the SCB reversed the decision of the HCD upholding the 12 directions of the HCD in 1999 in a reply to the appeal of the government:

‘The Appellate Division directed the Government to implement its 12 point directives, including for formation of separate Judicial Service Commission (JSC) to serve the appointment, promotion and transfer of members of the judiciary in consultation with the SC. A further 12-point directive called for a separate Judicial Service Pay Commission, amendment of the criminal procedure and the new rules for the selection and discipline of members of the Judiciary.’31”

In the mentioned case, the AD of the SCB declared and directed the government to implement the 12 directions where they are as under:

1. The judicial service is a service of the Republic within the meaning of Article 152(1) of the Constitution, but it is a functionally and structurally distinct and separate service from the executive and administrative services of the Republic.32
2. The word “appointment” in Article 115 means that it is the President who under Article 115 can create and establish a judicial service and also a magistracy exercising judicial functions, make recruitment rules and all pre appointment rules etc., but Article 115 does not contain any rulemaking authority with regard to other terms and conditions of service and Article 133 and Article 136 of the constitution and the Services (Reorganization and Conditions) Act 1975 have no application to the above matters in respect of judicial functions.33
3. The creation of BCS (Judicial) Cadre along with other BCS executive and administrative cadres by Bangladesh Civil Service (Re-organisation) Order 1980 with amendment of 1986 is ultra vires the

Constitution, whereas Bangladesh Civil Service Recruitment Rules 1981 are applicable to the judicial service.34

4. The nomenclature of the judicial service shall follow the language of the Constitution and shall be designated as the Judicial Service of Bangladesh or Bangladesh Judicial Service. A Judicial Services Commission shall be established forthwith with majority of members from the senior judiciary of the Supreme Court and the subordinate courts for recruitment to the Judicial service on merit, with the objective of achieving equality between men and women in the recruitment.35
5. Under Article 133 law or rules relating to posting promotion, grant of leave, discipline (except suspension and removal), pay, allowances, pension (as a matter of right not favour) and other terms and conditions of service, consistent with Articles 116 and 116A shall be enacted separately for the judicial service.36
6. It is also directed to establish a separate Judicial Pay Commission forthwith as a part of the Rules to be framed under Article 115 to review the pay, allowances and other privileges of the judicial service. The pay etc. of the judicial service shall follow the recommendations of the Commission.37
7. It is declared that in exercising control and discipline of persons employed in the judicial service and magistrates exercising judicial functions under Article 116, the views and opinion of the SC shall have primacy over those of the Executive.38
8. The conditions of judicial independence in Article 116A, elaborated in the judgment, namely (1) security of tenure, (2) security of salary, pension and other benefits and (3) institutional independence from the parliament and the executive shall be secured in the law or rules made under Article 133 or in the executive orders having the force of rules.39
9. The executive Government shall not require the SCB as to seek their approval to incur any expenditure on any item from the funds allocated to the Supreme Court in the annual budgets.40
10. It is declared that the members of the judicial service are within the jurisdiction of the administrative tribunal.41
11. For the separation of the subordinate judiciary from the executive, parliament can amend the constitution if necessary to make the separation more meaningful, pronounced, effective and complete.42
12. It is declared that until the Judicial Pay Commission gives its first recommendation the salary of Judges in the judicial service will continue to be governed by status quo ante.43

Despite the necessary directions being given by the Appellate Division in the *Masdar Hossain* case to the Government for the separation of the judiciary from the executive and legislature, the 1996 and 2001 governments also made excuses many times and dissipated their tenure.44

In order to meet the constitutional mandate under Article 22 of the Constitution and implement the directions of *Masdar Hossain*'s judgment, the then caretaker government took the necessary steps to execute the directives of the *Masdar* case and ensure separation of the judiciary, enacting four sets of rules and finally on paper the judiciary was separated from the executive on 1st November 2007:

1. Bangladesh Judicial Service Commission Rules 2007
2. Bangladesh Judicial Service Pay Commission Rules 2007
3. Bangladesh Judicial Service Commission (Constitution of service, appointment on the service and suspension, removal and dismissal from the service) Rules 2007
4. Bangladesh Judicial Service (posting, promotion, grant of leave, control discipline and other condition of service) Rules 2007.

National Culture:

The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture.⁴³

National Monuments, etc.:

The State shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places of special artistic or historic importance or interest.⁴⁴

Promotion of international peace, security and solidarity:

The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of

43 Article 23, the Constitution of Bangladesh, 1972.

44 Article 24, the Constitution of Bangladesh, 1972.

international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall –

- (a) strive for the renunciation of the use of force in international relations and for general and complete disarmament;
- (b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and
- (c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.⁴⁵

⁴⁵ Article 25, the Constitution of Bangladesh, 1972.

CHAPTER 3

NATURE OF THE FUNDAMENTAL PRINCIPLES OF STATE POLICY

NATURE

An interesting feature of directive principles which is invariably found in all constitutions adopting these principles is that these are not enforceable in a court of law. This non-justifiability of these principles have paved the way for critics to portraint them in variety of descriptions.

First, these are described as 'beau ideal'⁴⁶ in the Constitution, i.e... the highest standard of excellence in the Constitution. Because they embody the principles of high ideals like economic emancipation, eradication of poverty, illeteracy etc.

Second, these are described as 'veritable dustbin of sentiment',⁴⁷ for they are the best idealistic words written down in the Constitution without providing anything for their enforcement. They are, therefore, nothing but the mere expression of good sentiment of the Constitution makers.

Third, these are sometimes described as 'decoratives in the Constitution. Tushar Chatterjee, a communist member of Indian parliament being very harsh in assessing the utility of the directives, commented that he could not but feel that these solemn declarations in the Constitution were not directives but mere decoratives in the constitution.⁴⁸

Professor K.C. Wheare has described them as 'paragraphs of generalities into the Constitution. He has severely criticised insertion of such decoratives in the Constitution. He has doubted "whether there is any gain, on balance, from introducing these paragraphs of generalities into a Constitution anywhere at all, if it is intended that the Constitution should command the respect as well as the affection of the people. If the Constitution is to be taken seriously, the interpretation

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

47 Krishnamachari, T.T, a member of the Indian Constituent Assembly. Quoted by Kapoor, A.C, Ibid. P.94.

48 Quoted by Kapoor, A.C, Ibid, P.101

and fulfillment of these general objects of policy will raise great difficulties for courts and for legislatures into conflict and disrepute. If these declarations are, however, to be neglected, if they are to be treated as 'words', they will bring discredit upon the Constitution also.!"

Constitutional Status of the Fundamental Principles of State

The first postulate is that these are mentioned in the Constitution of Bangladesh as principles, not as laws, and in fact whole Part II wherein these principles are embodied deals only with principles, not laws. However, the status and the functions of these principles are clearly mentioned in article 8(2) of the Constitution of Bangladesh, they are as follows:

- i) These Principles shall be fundamental to the governance of Bangladesh,
- ii) shall be applied by the State in the making of laws,
- iii) shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh,
- iv) shall form the basis of the work of the State and of its citizens; but
- v) shall not be judicially enforceable.⁴⁹

The points (iii) and (v) above require further explanation and these have become subject to many judicial pronouncements.

Making of Laws:

The supreme court of Bangladesh is charged with duty to protect and uphold the Constitution of Bangladesh, and thereby it also functions as the guardian and interpreter of our constitution. In other words, it is one of the major functions of the honorable Supreme Court to interpret and construct the constitution in order to meet the needs of changing conditions of our society, as to make it a living constitution.

The power to interpret the constitution is not explicitly provided in any provision of our constitution. This authority to interpret the constitution is actually derived from the power of judicial review, which is conferred upon the court by our constitution under article 102. Moreover, according to article 7(2) of the Constitution, if any law is made inconsistent with any

⁴⁹ Article 8, the Constitution of Bangladesh, 1972.

provision of constitution, that law shall to the extent of such inconsistency be void. In true sense, that law shall be declared void by the Supreme Court, if it considers the Law as inconsistent with any provision of the constitution. This power gives the court an implied authority to interpret the constitution.

Anawar Hossain Chowdhury v. Bangladesh, 1989. 41 DLR: This is one of the land mark decisions ever pronounced by our Supreme Court, which is known as the *8th amendment case*. In this case, the judges have given a totally new interpretation of article 142 of our constitution. Before insertion of article 7B by the 15th amendment Act in 2011, neither there was any specific provision regarding the basic structure of the constitution nor any provision regarding unamendability of those basic structures. The concept of basic structure was first introduced by the court in this 8th amendment case by giving an exclusive interpretation of term ‘Amendment’ in article 142.

As Justice Shahbuddin Ahmed said, “Amendment is a change or alteration, for the purpose of bringing an improvement in the statute to make it more effective and meaningful, but it does not mean its abrogation or destruction or a change resulting in the loss of its original identity and character”.⁵⁰

Dr. Mohiuddin farooqi v. Bangladesh, 1997. 49 DLR: In the famous case of *Dr. Mohiuddin Farooqi v. Bangladesh*, which is known as *locus standi* case, the court added a wider meaning of the term ‘person aggrieved’ while interpreting the article 102 the constitution. Before the pronouncement of locus standi case, only the person affected directly could move to the Supreme Court for enforcement of any fundamental right guaranteed in the constitution, under article 102 of constitution. But in the locus standi case of 1997 the court has given a more liberal interpretation oh term ‘person aggrieved’.

It was held in the said case, ‘if a fundamental right is involved, the impugned matter need not affect a purely personal right of the applicant touching him alone. It is enough if he shares that right in common with others’⁵¹ After this milestone judgment, in case of public wrong, any

50 Anawar Hossain Chowdhury v. Bangladesh, 1989. 41 DLR

51 Dr. Mohiuddin farooqi v. Bangladesh, 1997. 49 DLR

person of the society on behalf of Public at large, rather than only the person aggrieved personally could move the court for enforcement of Fundamental rights.

Ain o Shalish kendro v. Bangladesh: In this landmark case, the court has given a comprehensive meaning of right to life while interpreting article 31 and 32 of the constitution. The court held that right to life means something more than mere animal existence. It includes right to live consistently with human dignity. The court said, “when rootless people have taken shelter in slums and somehow making a livelihood, their wholesale eviction without any scheme of their rehabilitation has been found to offend the mandate of article 31 and 32.” However, in this case the court did not go through fixed literal meaning of the term ‘right to life’, rather the court widened the scope of this right by giving a broader meaning of the Term.

Acting AS A Guide to the Interpretation of the Constitution:

It speaks about the role of these Principles as a guide to interpret the Constitution and as well as of the other laws of Bangladesh. Thus its role has been widened beyond the Constitution by empowering it to act as a guide to interpret all laws of any type in Bangladesh. What is the meaning and impact of acting as 'a guide to the interpretation'? It means to interpret the Constitution and other laws in conformity with these Principles, but obviously in the name of interpretation a completely new meaning cannot be awarded to any clear provision of the Constitution or of any other law. This task of interpretation must be done with utmost good care so that ultimately let it not amount to enforce these Principles in the name of interpretation. Similarly, if the principles are used by the courts merely to interpret as mandated by the Constitution that cannot be restricted in the name of judicial enforcement. The judgment pronounced by the High Court Division in the case of *Winifred Rubie V. Bangladesh* may be a classic illustration on the point that every effort made by the court does not amount to judicial enforcement. In this case, the term "public purpose" used in the Fundamental Principles of State Policy has been defined in narrow sense and it was held that the requisition of a property for a private school does not serve the "public purpose" and was void. The Appellate Division observed:

"As for the State policy of education it is unfortunate that the learned Judges have taken upon themselves as enquiry which is neither warranted by law in the Constitution by the arguments of the parties. It is for this reason that the constitutional mandate provides in the chapter on directive Principles of State Policy that these are not enforceable in the Court of Law."⁵²

Mr. Mahmudul Islam, the former Attorney General of Bangladesh, rightly criticized in his book⁵³ the above observation made by the Appellate Division. To quote him—

"... in order to find the meaning of 'public purpose' in relation to education, the High Court Division was not only entitled, but was also under constitutional obligation, to consider whether the requisition of property for a school of the type involved could be said to serve a public purpose when article 17 mandates the State to adopt effective measures for the purpose of establishing a uniform, mass-oriented and universal system of education."

Fundamental Principles of State Policy Are Not Judicially Enforceable:

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

Kudrat E-Elahi V. Bangladesh, 44 DLR (AD) 319: Kudrat E-Elahi V. Bangladesh is an elaborate authority on this issue where the nature and the question of judicial enforceability of these principles have been discussed thoroughly both in the High Court Division and in the Appellate Division. For the convenience of analysis and to get a clear idea about the judicial position regarding this issue the case will be examined here in a detailed manner. In this case, the petitioners before the High Court Division challenged the constitutional validity of the Bangladesh Local Government (Upazila Parishad and Upazila Administration Re-organization) (Repeal) Ordinance, 1991, on the ground, inter alia, that this Ordinance is inconsistent with articles 9, 11, 59 and 60 of the Constitution and as such it is void in terms of Article 7(2) of the

⁵² The High Court Division, in the Winifred Rubie V. Bangladesh case.

⁵³ Islam, Mahmudul, Constitutional Law of Bangladesh, 2nd ed. Mallick Brothers, Dhaka, 2003, p.57.

Constitution. It appears that the petitioners in this case, tried to enforce Articles 9 and 11, two fundamental principles of state policy, judicially enforceable along with Articles 59 and 60, but they could not succeed before the Court. Before the High Court Division, Respondents State defended the vires of the impugned Ordinance saying that Fundamental Principles of State Policy are not "judicially enforceable", that these Principles are not laws but are simply guidelines for the State including Parliament and that even if any law is inconsistent with the Fundamental Principles that cannot be challenged in court. The High Court Division in this case unanimously held that the Upazila Parishad was not Local Government as the Upazila was not an administrative unit, but the judges differed as to the inconsistency of the said ordinance with the Constitution.

Finally, **Justice Mustafa Kamal** negated above contention and said that these principles may be enforced through the public opinion. He replied the above question through the following stages of observations. Firstly, he confirmed that these principles are not laws. In his words:

“Article 7(2) provides that this Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law, to the extent of the inconsistency, be void. Therefore, this constitution taken as a whole is a law, albeit the supreme law and by 'any other law' and 'that other law' the Constitution refers to the definition of 'law' in Article 152(1), including a constitutional amendment. It is the Law of the Constitution itself that the fundamental principles of state policy are not laws themselves but 'principles'. To equate 'principles' with 'laws' is to go against the Law of the Constitution itself. These principles shall be applied by the State in the making of laws, i.e., principles of policy will serve as a beacon of light in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the state and of its citizens. Not being laws, these principles shall not be judicially enforceable.”⁵⁴

⁵⁴ Justice Mustafa Kamal, Kudrat E-Elahi V. Bangladesh, 44 DLR (AD) 319

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

In Saiful Islam Dilder V. Government of Bangladesh and others, the Court observed:

*"True, that fundamental principle of state policy, here Article 25, cannot be enforced by Court, nevertheless the fundamental principles of state policy is fundamental to the governance of Bangladesh, and serve as a tool in interpreting the Constitution and other laws of Bangladesh on the strength of Article 8(2) of the Constitution by the superior Court."*⁵⁵

Sheikh Abdus Sabur V. Returning Officer, District Education Officer-inCharge, G

opalganj and others, 41 DLR (AD) 1989 (30): In the case, Badrul Haider Chowdhury J. clearly mentioned these principles as judicially unenforceable. In his words:

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

Shahabuddin J. in the same case focused on the utility of the Fundamental Principles of State Policy in the making of law and negated the possibility of judicial enforceability in the following words:

*"Parliament is a creation of the Constitution itself; the local elective bodies are created by their respective statutes in pursuance of Article 9 of the Constitution, which appears in Part II relating to Fundamental Principles of State Policy. These Principles, though they must be applied by the State in the making of law, are not justiciable in court."*⁵⁶

Saleem Ullah V. Bangladesh, 47 DLR 218: In Saleemullah V. Bangladesh, it was contended that the decision of then Government to send troops to Haiti to join UN Force in Haiti was in violation of Article 25 of the Constitution. But the High Court Division held this decision of the government not to be contrary to the Fundamental principles of State Policy. In the concluding paragraph of the judgment the Court says:

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

56 Sheikh Abdus Sabur V. Returning Officer, District Education Officer-inCharge, G opalganj and others, 41 DLR (AD) 1989 (30)

*"Rather the decision, in our view, has been taken on the principle enunciated in the United Nations Charter which is in no way against the Fundamental Principles of State policy. The decision of the Government of the People's Republic of Bangladesh is in consonance with the spirit of the Fundamental Principles of State policy and in accordance with Chapter-VII of the Charter of the UN. We fail to understand how the policy decision of the Government taken in pursuant to the UN Resolution and the charter of the UN is an infringement of the Constitution as contended by the petitioner. On reference to this Resolution we find that it speaks about participation of the member states to support action taken by the United Nations acting under Chapter-VII of the Charter of the UN to facilitate the departure from Haiti of the military leadership. It may be observed that although the Fundamental Principles of State policy cannot be enforced in writ jurisdiction under Article 102 of the Constitution but it serves as a guide to the interpretation of the Constitution for the Court. We do not find that the decision of the Government is contrary to the Fundamental Principles of State policy and the Fundamental Rights."*⁵⁷

Thus, it appears that though the Court in this case mentioned clearly that the Fundamental Principles of State policy are not judicially enforceable, but at the same time Court says that the decision was not in contrary to the Fundamental Principles of State policy. This addition weakens the earlier clear stand of the Court regarding non-enforceability of the Fundamental Principles of State policy.

Aftabuddin V. Bangladesh and others, 48 D LR 1: In Aftabuddin V. Bangladesh and others, the High Court Division has discussed the following two points regarding Fundamental Principles of State policy Naimuddin Ahmed J. observed that—

*"It is true that the Preamble to the Constitution is not enforceable. Nor is Article 22, which is enshrined in Part II of the Constitution as Principles of State Policy, in view of Article 8 of the Constitution."*⁵⁸

57 Saleem Ullah V. Bangladesh, 47 DLR 218

58 Aftabuddin V. Bangladesh and others, 48 D LR 1

CHAPTER 4

IMPLEMENTATION OF FUNDAMENTAL PRINCIPLES

50 years have passed since we achieved our independence. But none of fundamental principles have been implemented to its full swing. Rural electrification, promotion of cottage industries, separation of judiciary from the executive, eradication of poverty and unemployment, population control- all these are yet to be done. It, however, would be wrong to say that nothing has yet been achieved. To some extent rural electrification, communication development, women education etc. have been done. State has also passed law fixing a ceiling for the land to be possessed by an individual; it has made primary education free and compulsory, laws have been made as regards prohibition of intoxicating drinks and drugs. Much effective work, however, had not been done. It cannot be denied, however, that the problems like eradication poverty, achieving full employment, equitable distribution of national wealth, raising living standard are colossal, indeed, and no government whatever be its complexion can achieve miracles. Several decades may take to achieve the goals set forth in the fundamental principles.

Fundamental Principles- Where to be Applied:

According to Article 8(2) the fundamental principles shall be applied in the following spheres:

- (i) they shall be fundamental in governance of the country;
- (ii) they shall be applied in making laws;
- (iii) they shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh; and (iv) they shall form the basis of all works of the state and of its citizens.

But they shall not be enforceable in a court of law.

All the fundamental principles as set out in the Constitution may, for the convenience of study, be classified into following four groups:

Fundamental Principles Relating to Economic Ideal

1. Eradication of social and economic inequality [Art.19(2)]
2. Equitable distribution of wealth among citizens.
3. Uniform level of economic development throughout the
4. Republic (ditto). 4. Rural electrification (Art.16).
5. Development of cottage and other industries.
6. Improvement of education
7. Improvement of communication.
8. A constant increase of productive forces through planned economic growth (Art. 15). 9. A steady improvement in the material and cultural standard of living of the people.
10. To secure the basic necessities of life including food, clothing, education and medical care.
11. To ensure the right to a guaranteed employment at a reasonable wage.
12. To secure the right to reasonable rest, recreation and leisure.
13. To secure the right to public assistance in cases of undeserved want arising from unemployment, illness or disablement or suffered by widows or orphans or in old age, or in other such cases.
14. For economic development state will ensure three types of ownerships: state ownership, co-operative ownership and private ownership (Art. 13).
15. Right to be paid on the basis of the principle- "form each according to his abilities to each according to his work (Art. 20).

Fundamental Principles Relating to Social Ideal

1. Raising of the level of nutrition and the improvement of public health (Art. 18).
2. Prevention of consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health (ditto).
3. Prevention of prostitution and gambling (ditto).
4. Free and compulsory education for all children (Art. 17).
5. Removing illiteracy (ditto).

6. Emancipation of peasants and workers from all forms of exploitation (Art.14).
7. To ensure equality of opportunity to all citizens (Art. 19).
8. To ensure equality of opportunity and participation of women in all spheres of national life (19(3)).

Fundamental Principles Relating to Legal and Administrative Reforms

1. Separation of judiciary from the executive (Art. 22). 2. Conserving the cultural traditions and heritage of the people (Art. 23).
2. Improving the national language, literature and the arts (ditto).
3. Protection against disfigurement, damage or removal of all monuments, objects or places of special artistic or historic importance or interest (Art. 24).
4. Promotion of local government institutions (Art.9). 6. Participation of women in all walks of national life (Art.10).

Fundamental Principles Relating to International Relations

International relations of our state shall be based on the following principles as enunciated in article 26:

1. Respect for national sovereignty and equality.
2. Non-interference in the internal affairs of other countries.
3. Peaceful settlement of international disputes.
4. Respect for international law and the principles enumerated in the UN Charter.
5. Renunciation of the use of force in international relations and general and complete disarmament.
6. Respect and support for the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice.
7. Support for the oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.
8. To consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity.

CHAPTER 5

CONCLUDING REMARKS

CONCLUSION:

In conclusion it can be said that, it is about 45 years we have achieved our independence and got a sovereign country. But only few limits of the fundamental principle of state policy have been assured completely till today, though under the fundamental rights the limit seems more extensive. Implementations of vast works are yet to done for the complete implementation of the fundamental principles of state policy. The State has taken significant steps in respect of implementation of most of the fundamental principles of state policy. Some of the fundamental principles of the state have not achieved that envious goal in order to get the targeted human rights protection and the State should ensure complete implementation of those principles. Though the State is striving, much more effective works have not done yet for the complete implementation of the fundamental principles of state policy. In this regard the socio-economic perspective of the Republic cannot be ignored. The fundamental principles of the state policy can never be implemented with a miracle. None knows when the government will achieve the goal of complete implementation of the fundamental principles as there are still some unavoidable problems in the State. However, if the judiciary's hands remain tied in protecting human rights, government might not be willing to ensure the fundamental rights which might go against their own interests.

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