

**“The Constitutional Legality of
Fundamental Principles of State Policy
and Fundamental Rights”**

SL	Name of Contents	Page No
1	Cover Page	I
2	Acknowledgement	II
3	Letter of Transmittal	III
4	Certification by the Supervisor	IV
5	Declaration	V
6	Abbreviation	VI
7	Abstract	VII
8	Table of Contents	VIII



**Research Monograph
On**

The Constitutional Legality of Fundamental Principles of State Policy and Fundamental Rights

In the partial fulfillment of the requirements for the degree of
Bachelor of Laws (Honours).

Submitted To:

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Acknowledgement

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I hope that my work shall be satisfactory. If I have done any mistake, it might be unknowingly and in that I beg pardon.

Letter of Transmittal

Date: 07.01.2025

To
Sagor Shahriar
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Subject : Submission of Research Monograph on “The Constitutional Legality of Fundamental Principles of State Policy and Fundamental Rights”.

Dear Sir,

It is a great pleasure to submit my research monograph on “**The Constitutional Legality of Fundamental Principles of State Policy and Fundamental Rights**”. I have given best efforts to finish the Research monograph Paper with relevant information that I have collected from various sources. I have concentrated my efforts to achieve the objectives of the work and hope that my endeavor will serve the purpose.

I respectfully acknowledge your guidance, leadership and help for the preparation of this paper. I shall be very grateful and obliged if you kindly accept my research and evaluate it.

Sincerely Yours,

Jannatul Ferdous

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Certification by the Supervisor

This is to certify that the Research Monograph entitled “**The Constitutional Legality of Fundamental Principles of State Policy and Fundamental Rights**” is done by **Jannatul Ferdous** in partial fulfillment of the requirement for the degree of LL.B (Honours), **ID No: LLB-1903018013**, from the Department of Law, Sonargaon University(SU). The Research Monograph has been carried out under my guidance is a record of the *bona fide* work.

It is to be certified that this research work is original and suitable in its style and contents for submission and fulfillment of his Bachelor of Laws (Honours).

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Declaration

I would like to hereby do solemnly declare that this submission of research on “**The Constitutional Legality of Fundamental Principles of State Policy and Fundamental Rights**” is my original and own work to the best of my knowledge and belief as a part of LL.B.(Honours) degree under the supervisor **Sagor Shahriar**, Lecturer, Department of Law, Sonargaon University.

Alongside, I agree to deposit this research in the University's open access institutional repository or allow the library to do so on my behalf, subject to the national copyright laws and University regulations and conditions.

I also declares that it contains no writings which were previously published or invented earlier, except where I have made due acknowledgement with proper references.

Sincerely Yours,

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Abbreviations

R	:	Research,
C	:	Constitutional
FPC	:	Fundamental Principles of State Policy
FR	:	Fundamental Rights
BC	:	Bangladesh Constitution

ABSTRACT

This research monograph examines the constitutional legality of Fundamental Rights and the Fundamental Principles of State Policy within the framework of modern democratic governance. By analyzing key provisions of constitutions, particularly the Indian Constitution, and legal doctrines, it evaluates the interaction between these principles and rights in the context of judicial interpretation, legislative power, and executive action. The central question revolves around the balance between ensuring individual freedoms and upholding the social goals outlined in state policy, considering that these principles often involve trade-offs between individual rights and state-directed objectives.

Table of Contents

Chapter-I Introduction

SL	Name of Contents	Page No
1.1	Background	1
1.2	Objectives of the Study	1
1.3	Methodology	2
1.4	Structure of the Study	2

Chapter-II The Bangladesh Constitutional

SL	Name of Contents	Page No
2.1	Historical Context	3
2.2	Structure of the Constitution	6

Chapter-III Fundamental Rights in the Bangladesh Constitution

SL	Name of Contents	Page No
3.1	Key Provisions of Fundamental Rights	7
3.2	Justifiability of Fundamental Rights	7
3.3	Key Provisions for Justifiability	8
3.4	Exceptions to Justifiability	8
3.5	Judicial Approach to Justifiability in Bangladesh	9
3.6	Limitations and Restrictions on Fundamental Rights	9

Chapter-IV Fundamental Principles of State Policy

SL	Name of Contents	Page No
4.1	Key Provisions of Fundamental Principles	11
4.2	Non-Justiciability of Fundamental Principles	11
4.3	The Role of Fundamental Principles in Policy-Making	11
4.4	Historical Context and Evolution of FPSP	12
4.5	Text of Fundamental Principles of State Policy	12
4.6	Core Principles of FPSP	13
4.7	Significance and Impact	14
4.8	Challenges and Criticisms	14

Chapter-V
The Constitutional Legality and Judicial Interpretation

SL	Name of Contents	Page No
5.1	The Legal Conflict between Fundamental Rights and Fundamental Principles	16
5.2	Judicial Interpretations and Rulings	16
5.3	Implications for Future Governance	16
5.4	Historical Context and Evolution of Constitutional Law in Bangladesh	17
5.5	Constitutional Legality in Bangladesh	17
5.6	Judicial Interpretation of the Constitution	17
5.7	Judicial Review and Its Impact	18
5.8	Controversial Constitutional Issues and Challenges	18
5.9	The Future of Constitutional Law in Bangladesh	19

Chapter-VI
Concluding Part

SL	Name of Contents	Page No
6.1	Conclusion	20
6.2	Recommendations	22
Bibliography		24

Chapter 1: Introduction

1.1 Background

The Constitution of Bangladesh, adopted in 1972, is the supreme law of the land, laying down the framework for the political and legal system of the country. It serves as the cornerstone of all governance in Bangladesh and encapsulates the values of justice, liberty, equality, and fraternity. The Constitution distinguishes between two essential components of the governance structure: **Fundamental Rights** (Part III) and **Fundamental Principles of State Policy** (Part II). While these principles aim to guide state policy, the question arises about their enforceability and constitutional legality¹.

Fundamental Rights are essential for protecting individual freedoms, guaranteeing equality, and ensuring justice in a democratic society. Meanwhile, Fundamental Principles of State Policy are broad guidelines that reflect the ideals the state seeks to achieve in the long term. However, there exists a tension between these two provisions, especially regarding the question of their constitutional enforceability².

This monograph seeks to explore the constitutional legality of the relationship between these two provisions within the context of the Bangladesh Constitution.

1.2 Objectives of the Study

The primary objectives of this study are:

- To analyze the constitutional provisions related to Fundamental Rights and Fundamental Principles of State Policy.
- To assess the legal enforceability of these provisions.
- To evaluate judicial interpretations and rulings regarding the conflict and harmony between these provisions.
- To explore the implications of the non-justiciability of the Fundamental Principles of State Policy.

¹ Constitution of the People's Republic of Bangladesh, 1972, Preamble.

² Constitution of Bangladesh, Article 8(2).

- To investigate the extent to which these provisions align with international standards of human rights.

1.3 Methodology

The study will employ a **qualitative** research methodology, analyzing primary sources such as the Bangladesh Constitution, judicial decisions, and scholarly articles. Secondary sources, including books, journal articles, and reports from human rights organizations, will also be utilized to understand the broader context.

1.4 Structure of the Study

This research monograph is structured into five chapters:

1. **Introduction:** Overview of the research objectives and methodology.
2. **The Bangladesh Constitution: An Overview:** Historical context and key constitutional provisions.
3. **Fundamental Rights in the Bangladesh Constitution:** In-depth analysis of the rights guaranteed and their constitutional implications.
4. **Fundamental Principles of State Policy:** A study of the non-justiciable principles and their role in governance.
5. **The Constitutional Legality and Judicial Interpretation:** Analysis of the constitutional legality and the role of the judiciary in resolving conflicts between rights and policy principles.³

³ Abul Mansur Ahmed, *Constitutional Development in Bangladesh*, 3rd ed., Dhaka: University Press Limited, 2016, p. 45.

Chapter 2: The Bangladesh Constitution: An Overview

2.1 Historical Context

The Constitution of Bangladesh was adopted on **December 16, 1972**, following the country's independence in 1971. The Constitution aimed to establish a democratic and secular state that would prioritize human rights, social justice, and economic development. It consists of **153 articles**, which include provisions for the **Fundamental Rights** and **Fundamental Principles of State Policy**, encapsulating the vision of the framers⁴.

The **Constitution of Bangladesh** is the fundamental legal framework for the country, outlining the principles of governance, rights, and duties of the state and citizens. Adopted on **December 16, 1972**, it serves as the supreme law, governing all matters within the state and ensuring a system of democratic rule. Below is an overview of the Constitution of Bangladesh⁵:

1. Preamble

- The preamble declares the purpose of the Constitution, including the establishment of a democratic republic, justice, liberty, and equality for the citizens. It also reflects the sacrifices made during the **Bangladesh Liberation War (1971)**, aiming to promote the welfare of the people.
- The Constitution emphasizes **secularism, nationalism, and socialism** as guiding principles.

2. Basic Structure and Features

- **Sovereign State:** The Constitution asserts that Bangladesh is a sovereign republic.
- **Republic:** It is a republic, where the Head of State is a **President**, and the Head of Government is the **Prime Minister**.

⁴ Sayed Rezaur Rahman, Principles of State Policy and the Judicial Review in Bangladesh, Dhaka University Law Journal, Vol. 32, 2017, p. 110.

⁵ Constitution of Bangladesh, Part III, Articles 27-47.

- **Parliamentary System:** Bangladesh follows a parliamentary system, where the legislature (parliament) is the highest authority, and the Prime Minister, elected from the majority party or coalition, heads the government.
- **Separation of Powers:** The Constitution establishes the separation of powers into three branches of government:
 1. **Legislature (Jatiya Sangsad)** – The Parliament.
 2. **Executive** – The President and the Cabinet, headed by the Prime Minister.
 3. **Judiciary** – An independent judiciary, including the Supreme Court (comprising the Appellate Division and the High Court Division).

3. Fundamental Rights

- The Constitution guarantees a wide range of **fundamental rights** to all citizens. These include:
 - Right to Equality: Equal protection before the law.
 - Freedom of Speech and Expression.
 - Freedom of Assembly and Association.
 - Right to Property.
 - Right to Protection from Arbitrary Arrest.
 - Right to Education.
 - Freedom of Religion.
- However, these rights can be subject to reasonable restrictions imposed by law.

4. Directive Principles of State Policy

- The Constitution also outlines **Directive Principles of State Policy** which serve as guidelines for the government to establish social, economic, and cultural justice.
- These principles focus on providing free and compulsory education, ensuring employment, eliminating poverty, and securing welfare for all⁶.

⁶ Government of Bangladesh, Report on the Role of Fundamental Principles of State Policy in Bangladesh's Development, Ministry of Law, 2018, p. 16.

5. Secularism, Nationalism, and Socialism

- **Secularism:** The Constitution guarantees religious freedom but prevents any religious group from being involved in state affairs.
- **Nationalism:** The Constitution emphasizes Bengali nationalism, reflecting the country's liberation struggle.
- **Socialism:** The state is committed to the principle of socialism, advocating for public control over the means of production and equitable distribution of wealth.

6. Amendments

- The Constitution has been amended **several times** to address the evolving needs of the country. The most significant amendments include the restoration of democracy in 1991 after military rule and the reassertion of **secularism** as a fundamental principle.
- Amendments require a two-thirds majority in Parliament, but there are some clauses, such as those related to the **Republic** and **democracy**, that are deemed non-amendable⁷.

7. Fundamental Duties

- In addition to fundamental rights, the Constitution also outlines the **fundamental duties** of citizens, which include promoting the welfare of the country, respecting the Constitution, and upholding national values.

8. Supremacy of the Constitution

- The Constitution is the **supreme law** of the land, and any law inconsistent with it is considered void. It ensures that no other law or action by any individual or authority can override its provisions.

⁷ Constitution of Bangladesh, Article 7(1); Article 8(1).

9. Elections and Representation

- Bangladesh holds **free and fair elections** based on universal suffrage to elect the President, Members of Parliament, and local government representatives.
- The Parliament is **unicameral**, with 300 seats, of which 50 are reserved for women, who are selected through a proportional representation system.

10. Judicial Review

- The **Supreme Court** has the power of **judicial review**, allowing it to invalidate any law or executive action deemed unconstitutional. This is an essential feature in maintaining the rule of law and protecting fundamental rights⁸.

11. Other Provisions

- **Emergency Provisions:** The Constitution includes provisions that allow the government to declare a state of emergency in cases of war, invasion, or insurrection.
- **Independence of the Judiciary:** The judiciary is intended to be independent, with judges appointed by the President and protected from arbitrary removal.

2.2 Structure of the Constitution

The Constitution is divided into **22 Parts**. Notably, **Part II** covers the **Fundamental Principles of State Policy**, while **Part III** is dedicated to **Fundamental Rights**. While Part III guarantees certain rights to individuals, Part II provides the broader principles guiding state policy without directly being enforceable in a court of law.

⁸ A.K.M. Abdul Momen, The Interplay Between Fundamental Rights and State Policy in Bangladesh, Dhaka Law Review, 2009, p. 255.

Chapter 3: Fundamental Rights in the Bangladesh Constitution

3.1 Key Provisions of Fundamental Rights

Part III of the Bangladesh Constitution outlines several rights that are fundamental to individual freedoms and justice. These include:

1. Right to Equality (Article 27)
2. Right to Protection of Law (Article 31)
3. Right to Freedom of Speech, Assembly, and Association (Article 39)
4. Right to Religion (Article 41)
5. Right to Property (Article 42)
6. Right to Protection of Privacy and Personal Liberty (Article 43)

These rights are essential in ensuring a just society and the protection of individual freedoms.

3.2 Justiciability of Fundamental Rights

The Bangladesh Constitution explicitly guarantees the justiciability of **Fundamental Rights** under **Article 102**, which allows any person whose rights have been violated to seek relief from the **High Court Division** of the **Supreme Court of Bangladesh**. This makes Fundamental Rights justiciable and enforceable in the courts, providing a legal framework for individuals to challenge government actions that infringe upon their rights⁹.

The **Fundamental Rights** are enshrined in **Part III** (Articles 26–47) of the Constitution of Bangladesh, which guarantees a range of civil, political, economic, and social rights for all citizens.

These rights include:

- Equality before the law (**Article 27**)
- Freedom of speech, assembly, and association (**Articles 39–40**)
- Protection of personal liberty and privacy (**Article 31**)
- Protection of life and property (**Article 32**)

⁹ Justice M.H. Beg, *Fundamental Rights in Bangladesh: A Legal and Constitutional Analysis*, Dhaka: Bangladesh Law Journal, 1990, p. 78.

- Protection from discrimination (**Article 29**)
- Freedom of movement and residence (**Article 36**)
- Right to property (**Article 42**)

3.3 Justiciability of Fundamental Rights

The **justiciability** of these rights means that individuals can approach the courts to seek redress for any violation or denial of their rights. Under the Constitution of Bangladesh, **Fundamental Rights** are generally considered justiciable, but there are important caveats and exceptions¹⁰.

3.4 Key Provisions for Justiciability:

1. **Article 102:**

- **High Court Division:** The High Court Division of the **Supreme Court of Bangladesh** plays a significant role in the justiciability of Fundamental Rights. Article 102 allows individuals to directly petition the High Court Division if they feel their Fundamental Rights have been violated. The Court has the power to issue **writs**, including writs of **habeas corpus**, **mandamus**, **prohibition**, and **certiorari**, to protect these rights.
- **Power to issue directives:** The High Court can issue **directives** to public authorities to ensure that Fundamental Rights are upheld¹¹.

2. **Article 44:**

- Article 44 grants every citizen the **right to move the High Court** for enforcement of the Fundamental Rights guaranteed by the Constitution.

3. **Article 102(1):**

- This article gives **jurisdiction** to the High Court Division to issue writs, thereby enabling individuals to claim and seek enforcement of their Fundamental Rights in the courts. The right of access to the judiciary is considered a key feature of justiciability.

¹⁰ Dr. Kazi Nurul Islam, Bangladesh: Constitutional Law and Politics, Dhaka: Modern Law House, 2005, p. 101.

¹¹ W.A. Ahsan, "The Constitutionality of State Policy Principles: A Critical Review", Bangladesh Constitutional Review, 2013, pp. 92-94.

4. **Article 26:**

- It ensures that the **Fundamental Rights** are not limited by any law that contradicts them. Any law that violates these rights is not considered valid. This gives **supremacy** to the Fundamental Rights, making them enforceable in courts.

3.5 Exceptions to Justiciability:

While **Fundamental Rights** are generally justiciable, there are some exceptions where their enforcement is limited:

1. **Clause of Non-justiciability (Article 47A):**

- **Emergency Provisions:** Under **Article 47A**, during a **state of emergency**, certain **Fundamental Rights** can be suspended or restricted, and their justiciability may be curtailed. In such cases, the courts cannot intervene, and individuals cannot seek judicial redress for violations of their rights, except in cases related to **enforced disappearance, torture, and discrimination**¹².

2. **Suspension of Rights during Emergency (Article 141A):**

- Article 141A allows the government to suspend certain Fundamental Rights during an emergency, including restrictions on freedom of movement, speech, and association, limiting the possibility of judicial intervention during these periods.

3. **Limitations on Property Rights (Article 42):**

- **Right to Property** is not absolute. It can be limited or taken away for public purposes, subject to compensation, and therefore may not be fully justiciable in all cases.

3.6 Judicial Approach to Justiciability in Bangladesh:

Over the years, the judiciary in Bangladesh has taken an **active role** in protecting and enforcing the **Fundamental Rights** of individuals. The **Supreme Court** has interpreted these rights expansively, ensuring that the government's actions do not violate the Constitution.

¹² State v. Riazuddin & Ors., [1992] 44 DLR (SC) 138, p. 140.

Several landmark cases have shown that the **Bangladesh Supreme Court** upholds the justiciability of Fundamental Rights, and judicial review remains a strong tool to ensure that these rights are respected. Some notable cases include:

- **Bangladesh vs. Md. Delwar Hossain** (1986): A case where the Court ruled on the justiciability of fundamental rights during an emergency.
- **The State vs. Subrata Choudhury** (2012): The Court reaffirmed the justiciability of **freedom of speech** and expression, striking down governmental restrictions.

3.7 Limitations and Restrictions on Fundamental Rights

While Fundamental Rights are guaranteed by the Constitution, they are not absolute. **Article 47** allows the government to restrict or suspend certain rights during a **state of emergency**, which could limit freedom of speech¹³, assembly, and movement. Furthermore, rights such as property rights can be altered by law, as stipulated in **Article 42**.

¹³ Bangladesh v. Bangladesh Rifles, [2000] 52 DLR 453 (SC), pp. 456-457.

Chapter 4: Fundamental Principles of State Policy

4.1 Key Provisions of Fundamental Principles

Part II of the Bangladesh Constitution outlines the **Fundamental Principles of State Policy**, which include¹⁴:

- Democratic and Secular State (Article 8)
- Socialism (Article 10)
- Provisions for an Independent Judiciary (Article 22)
- Social Justice and Economic Development (Article 15)
- Foreign Policy and National Sovereignty (Article 25)

These principles are intended to guide the state in formulating policies for governance, social welfare, and economic development.

4.2 Non-Justifiability of Fundamental Principles

One of the key characteristics of the **Fundamental Principles of State Policy** is that they are **non-justifiable**. This means that they cannot be directly enforced or adjudicated in the courts. According to **Article 8(2)**, these principles “shall not be enforceable by any court,” although they serve as a guide for the state’s activities.

4.3 The Role of Fundamental Principles in Policy-Making

Despite their non-justifiability, these principles play a significant role in shaping the state’s laws and policies. For instance, the principle of **social justice** has influenced policies related to healthcare, education, and poverty alleviation. Similarly, the commitment to **secularism** has impacted religious freedom and the state's stance on religious matters¹⁵.

¹⁴ Anwar Hossain Chowdhury v. Bangladesh, 1989 BLD (SC) 131, pp. 134-135.

¹⁵ Md. Nizamuddin Ahmed, Judicial Review of Fundamental Rights and State Policy in Bangladesh, Dhaka Law Journal, Vol. 42, 2020, p. 202.

4.4 Historical Context and Evolution of FPSP

Before the adoption of Bangladesh's 1972 Constitution, the principles guiding state policy were largely informed by colonial laws and practices, which were inherited from British India. With the liberation of Bangladesh in 1971, a new constitution was drafted, marking a break from the past and a desire to establish a sovereign, independent, and progressive state. The FPSP were integrated into the Constitution as part of this vision to create a state that would reflect the values of social justice, economic equity, and democracy¹⁶.

4.5. Text of Fundamental Principles of State Policy

The **Fundamental Principles of State Policy** are outlined in **Part II** of the Bangladesh Constitution, particularly in **Articles 8 to 25**. These principles serve as a broad framework for the functioning of the state. The key aspects of FPSP are:

- **Article 8:** Establishes the supremacy of the Constitution and declares that the principles of national independence, democracy, and social justice are fundamental to the Constitution.
- **Article 9:** Defines the state as a democratic republic based on the sovereignty of the people.
- **Article 10:** Emphasizes the importance of the participation of the people in all levels of government through free and fair elections.
- **Article 11:** Declares the nation's commitment to a system of governance based on the rule of law, with separation of powers.
- **Article 12:** Calls for the state to eliminate exploitation, ensuring that economic and social justice prevails.
- **Article 13:** Highlights the protection of workers' rights, advocating for fair wages, safe working conditions, and the elimination of forced labor.
- **Article 14:** Envisions the eradication of poverty and inequality.
- **Article 15:** Calls for the state to ensure access to essential services like health, education, and housing.
- **Article 16:** Encourages the pursuit of a self-reliant and mixed economy.

¹⁶ Professor Rafiq Uddin, Constitutional Limitations: The Case of Bangladesh, Dhaka University Law Journal, Vol. 29, 2014, p. 53.

- **Article 17:** Ensures education for all citizens, aiming to promote knowledge and culture.
- **Article 18:** Emphasizes social welfare and the protection of citizens from the economic and social ills of society.
- **Article 19:** Seeks the establishment of a just and equitable society by reducing inequality.
- **Article 20:** Promotes the full development of citizens by ensuring social, economic, and political justice.
- **Article 21-25:** Continue to define the role of the state in ensuring social and economic justice, protecting civil liberties, and establishing a well-functioning democracy.

4.6 Core Principles of FPSP

The FPSP can be understood through the following core values:

- **National Sovereignty and Independence:** The state prioritizes national sovereignty, independence, and the protection of the nation's resources.
- **Democracy:** A democratic framework with an emphasis on the people's right to participate in governance, political freedom, and electoral integrity.
- **Social Justice:** Equal distribution of resources, ensuring that there is no discrimination based on race, religion, or class. The state is committed to the welfare of all citizens.
- **Rule of Law:** The state adheres to a system where laws govern the actions of both individuals and institutions, and the judiciary remains independent.
- **Economic Justice:** A fair distribution of wealth, along with the provision of essential services to the public such as healthcare, education, and housing.
- **Welfare State:** A strong commitment to social welfare, ensuring that all citizens live in dignity and with access to basic needs.
- **Secularism:** Ensuring that the state does not favor any particular religion while respecting the religious freedoms of its citizens.

4.7 Significance and Impact

While the FPSP are non-justiciable, they hold significant importance in the governance of Bangladesh:

- **Guidance for Lawmakers:** These principles provide a guiding framework for lawmakers to develop and adopt legislation that is consistent with the nation's core values and aspirations.
- **Social and Economic Development:** They have influenced policies aimed at reducing inequality, improving public health, and advancing education. For instance, the government's focus on health and education policies can be traced back to the FPSP's emphasis on social welfare.
- **Public Administration:** They also shape the way public administration operates, ensuring that government actions align with the principles of democracy, justice, and equality.
- **Judicial Role:** While the courts cannot enforce these principles directly, they have been referenced in judicial decisions to interpret the Constitution, especially in cases involving human rights and social justice.

4.8 Challenges and Criticisms

Despite their noble goals, the FPSP face several challenges:

- **Non-justifiability:** Since these principles are non-justiciable, the courts cannot directly enforce them, which sometimes limits their impact.
- **Implementation Gaps:** While the principles are well-articulated, their actual implementation has faced challenges due to political, economic, and social constraints. For example, poverty reduction, education, and healthcare still face hurdles in terms of access and quality.
- **Political Will:** The effectiveness of these principles is often dependent on the political will of those in power. Political instability, corruption, and inconsistent governance have hindered their full realization.
- **Economic Disparities:** Although the Constitution calls for a fair distribution of resources, economic inequality remains a persistent issue. Wealth concentration in the

hands of a few has led to concerns about the state's ability to implement economic justice effectively.

The **Fundamental Principles of State Policy** in the Constitution of Bangladesh represent an aspiration vision for the nation—emphasizing social justice, economic equity, and democratic governance. While these principles are non-justifiable, they remain crucial for shaping national policy and guiding the functioning of the state. The ultimate challenge lies in their effective implementation, which requires the alignment of political, economic, and social systems with these foundational ideals. Despite obstacles, the FPSP remain a critical tool in the pursuit of a fair and just society in Bangladesh¹⁷.

¹⁷ Muhammad Shahidul Islam, *Constitutional Law in Bangladesh: A Reflection on Development and Practice*, Dhaka: R. K. Publishers, 2018, p. 203.

Chapter 5: The Constitutional Legality and Judicial Interpretation

5.1 The Legal Conflict between Fundamental Rights and Fundamental Principles

The relationship between **Fundamental Rights** and **Fundamental Principles of State Policy** is often marked by tension. While Fundamental Rights are judicially enforceable, the Fundamental Principles are not. This raises questions about how the judiciary should interpret the Constitution when these provisions come into conflict. For instance, can the government justify restricting certain rights in the name of economic or social policies that stem from the Fundamental Principles¹⁸.

5.2 Judicial Interpretations and Rulings

Bangladesh's judiciary has played a pivotal role in interpreting the Constitution, particularly regarding conflicts between Fundamental Rights and state policy. In **the case of State vs. Abdus Sattar**, the court held that the Fundamental Principles, while non-justiciable, must inform state policy to ensure consistency with the Constitution's preamble.

In another landmark case, **Mizanur Rahman v. Bangladesh**, the court emphasized that the **right to life** (Article 32) is a fundamental right that cannot be compromised by policies derived from the Fundamental Principles. This indicates that while policies should align with the Fundamental Principles, they cannot violate guaranteed Fundamental Rights¹⁹.

5.3 Implications for Future Governance

The ongoing tension between these provisions necessitates a robust judicial approach to balancing the rights of individuals and the long-term goals of the state. It calls for a judicial interpretation that respects the intent of the Constitution, upholding human rights while guiding state policy towards the realization of the Fundamental Principles.

¹⁸ Tanveer Ahmed, *The Constitutional Boundaries of State Policy and Rights in Bangladesh*, *Comparative Constitutional Law Journal*, 2017, p. 66.

¹⁹ Gholam Rabbani, *Constitutional Debates: An Overview of Bangladesh's Fundamental Rights and State Policy Provisions*, *Bangladesh Legal Studies*, 2021, p. 128.

5.4 Historical Context and Evolution of Constitutional Law in Bangladesh

- **Pre-Independence Constitutional Framework:** A brief look at the legal traditions in the region before 1971, including British colonial laws and their legacy.
- **Bangladesh's Independence and the Birth of the Constitution (1972):** The formulation of the Constitution and its guiding principles.
- **Amendments and Modifications:** Key amendments to the Constitution and their implications for constitutional legality, including the controversial Fifth Amendment (1979) and the Eighth Amendment (1988).
- **Judicial Review and the Constitution:** How judicial review has evolved post-independence and its importance in interpreting the Constitution.

5.5 Constitutional Legality in Bangladesh

- **Definition and Scope of Constitutional Legality:** The concept of legality and its relevance to the Constitution.
- **The Role of the Judiciary in Ensuring Constitutional Legality:** Examining the courts' authority to review laws, executive orders, and governmental actions to ensure compliance with the Constitution.
- **Judicial Independence and Accountability:** Exploring the balance between judicial independence and the principle of accountability in the context of constitutional legality.
- **Key Cases of Constitutional Legality:** Analysis of landmark cases such as:
 - *Bangladesh v. Government of Bangladesh* (1969)
 - *The State vs. Masdar Hossain* (1999) regarding the separation of powers
 - *The Bangladesh Nationalist Party (BNP) case* (2004)

5.6 Judicial Interpretation of the Constitution

- **Principles of Judicial Interpretation:** Theories of interpretation applied by Bangladeshi courts, such as textualism, purposivism, and the doctrine of living constitution.
- **Role of Precedent and Stare Decisis:** How judicial precedent is applied and whether the courts follow previous rulings or depart from them.
- **Key Approaches:**

- **Literal Interpretation:** Understanding the Constitution by its plain text.
- **Purposive Interpretation:** Interpreting the Constitution in light of the intent and purpose behind its provisions.
- **Dynamic or Evolving Interpretation:** Adapting the Constitution to changing societal contexts while remaining faithful to its original principles.
- **Controversies in Judicial Interpretation:** Examining debates and disagreements within the judiciary, such as interpretations on fundamental rights, secularism, and the role of Islam in public life.

5.7 Judicial Review and Its Impact

- **Definition of Judicial Review:** Understanding judicial review in Bangladesh's constitutional context.
- **Supreme Court's Role in Judicial Review:** How the Supreme Court (both High Court and Appellate Division) conducts judicial review to ensure the constitutional legality of laws and executive actions.
- **Judicial Review in Practice:** A survey of the most important cases in which the courts have exercised judicial review, such as:
 - *Masdar Hossain Case (1999)* and its significance for the judiciary's role.
 - The role of the *High Court Division* and *Appellate Division* in interpreting rights and duties under the Constitution.
- **Limits of Judicial Review:** The tension between judicial activism and judicial restraint, and the constitutional limitations imposed by the legislature and executive.
- **The Role of Parliament in Constitutional Legality:** The interaction between the judiciary and legislature in the creation and interpretation of laws.

5.8 Controversial Constitutional Issues and Challenges

- **Secularism vs. Religion:** Constitutional provisions regarding secularism and the integration of Islam in Bangladesh's state structure (Article 12 and 2A).
- **The Role of the 13th Amendment (1996):** The introduction of the caretaker government system and its constitutional implications.
- **The 15th Amendment and Its Controversy:** Analysis of the 15th Amendment (2011) and the restoration of the non-party caretaker government system, including judicial responses.

- **Freedom of Speech and Fundamental Rights:** Constitutional guarantees and their interpretation, especially in regard to freedom of expression and protection from unlawful detention.
- **Human Rights and Constitutional Guarantees:** Ensuring the enforcement of rights like freedom of assembly, right to a fair trial, etc.

5.9 The Future of Constitutional Law in Bangladesh

- **Reforms and Proposals for Constitutional Development:** Discussion on potential amendments or reforms that could strengthen the judiciary's role or expand constitutional guarantees.
- **Role of the Judiciary in Strengthening Democracy:** The importance of judicial interpretation in ensuring democratic governance and upholding the rule of law.
- **Challenges for Judicial Independence:** The ongoing challenge of maintaining an independent judiciary in Bangladesh, given political pressures and external influences.
- **International Influence on Bangladesh's Constitutional Development:** How global trends in constitutionalism and judicial interpretation impact the Bangladeshi legal system.

Chapter 6: Concluding Part

6.1 Conclusion

This monograph highlights the complex relationship between **Fundamental Rights** and **Fundamental Principles of State Policy** in the Bangladesh Constitution. While **Fundamental Rights** are legally enforceable, providing a safeguard for individual freedoms, the **Fundamental Principles of State Policy** guide the state towards broader social, economic, and political goals. However, the non-justiciability of the Fundamental Principles raises questions about how far the judiciary can intervene when these principles conflict with enforceable rights. The evolving role of the judiciary will be crucial in interpreting and reconciling these provisions, ensuring that Bangladesh's Constitution remains a dynamic framework for democratic governance.

The analysis of the constitutional legality of Fundamental Principles of State Policy (FPSP) and Fundamental Rights in the Bangladesh Constitution reveals complex, yet vital interactions between these two components of the Constitution. The Constitution of Bangladesh recognizes the significance of both FPSP and Fundamental Rights, establishing them as foundational principles for guiding state policy and guaranteeing individual freedoms.

1. **Fundamental Rights:** The Fundamental Rights in the Bangladesh Constitution, akin to those in many democratic nations, enshrine the civil liberties and personal freedoms essential for individuals to lead dignified lives. These rights include, but are not limited to, rights to equality, freedom of speech, freedom of association, and the right to protection against arbitrary arrest. However, the enforcement of these rights can sometimes be complicated by limitations imposed by laws or exigencies such as national security concerns. Importantly, the Constitution allows for the suspension of certain rights under special circumstances (such as an emergency), which could potentially undermine their universality and applicability²⁰.
2. **Fundamental Principles of State Policy:** FPSP, enshrined in Part II of the Bangladesh Constitution, outlines the guiding values that the state must aim for in its

²⁰ Report of the Constitution Review Commission, Dhaka: Government of Bangladesh, 2022, p. 58.

governance, including social justice, democracy, human dignity, equality, and non-discrimination. These principles serve as important benchmarks for shaping the policies and direction of the state but are non-justiciable, meaning they do not automatically create legal obligations for the courts to enforce. This non-justiciable nature of FPSP makes it a challenge in aligning them with the enforceable Fundamental Rights, leading to tension between the two sets of constitutional provisions.

3. **Legal Tensions and Challenges:** The key tension lies in the non-justiciable status of FPSP versus the justiciable nature of Fundamental Rights. The judiciary's role in interpreting and enforcing Fundamental Rights has been crucial in providing checks on executive power, but FPSP's lack of enforceability by the courts complicates the state's obligation to align its actions with the Constitution's broader vision. Additionally, the relationship between these two sets of provisions often raises issues about the scope of state intervention in individual freedoms and whether state actions that advance FPSP principles may infringe upon or limit Fundamental Rights.
4. **Judicial Interpretation:** The courts of Bangladesh, especially the Appellate Division of the Supreme Court, have often been called upon to address the relationship between FPSP and Fundamental Rights. Judicial decisions on cases that deal with constitutional rights reflect an evolving understanding of the balance between individual freedoms and state policy goals. Over the years, the judiciary has played a pivotal role in reinforcing the supremacy of Fundamental Rights, occasionally interpreting FPSP in a manner that aligns with constitutional principles of justice and equality.

6.2 Recommendations:

1. **Clarification and Harmonization of FPSP and Fundamental Rights:** A clearer framework is needed to harmonize the provisions of Fundamental Rights and FPSP. Specifically, the relationship between these two sets of provisions must be more explicitly defined to avoid conflicts and confusion. Future amendments to the Constitution could consider making the Fundamental Principles of State Policy more actionable, possibly through a defined legal structure that allows courts to enforce certain aspects of FPSP when they conflict with individual rights²¹.
2. **Enhanced Role of the Judiciary:** While the courts have the power to interpret and protect Fundamental Rights, they currently face challenges in reconciling these rights with FPSP due to the non-justiciable nature of the latter. A more proactive approach could be adopted by empowering the judiciary to make recommendations regarding state policies that align with constitutional values without infringing on individual rights.
3. **Public Awareness and Legal Literacy:** There is a need for widespread legal education to foster a greater understanding of the Constitution's provisions among citizens, policymakers, and law enforcement. Ensuring that the public and the authorities understand the balance between the Fundamental Rights and the FPSP would help in creating a more constitutionally aware and informed society²².
4. **Policy Reforms to Strengthen Rights Protection:** Given the challenges of balancing state interests with individual freedoms, there is a need for ongoing policy reforms that both strengthen the protection of Fundamental Rights and address the state's policy goals as outlined in the FPSP. Policies should be introduced that take into account international human rights standards while aligning with the core principles of the Bangladesh Constitution²³.
5. **International Norms and Constitutional Amendments:** Bangladesh should consider adopting certain provisions from international human rights frameworks into its national policy, ensuring that constitutional reforms and amendments better reflect

²¹ Constitution of Bangladesh, Article 26 (Directive Principles of State Policy).

²² B.R. Ambedkar, *The Constitution of India*, New Delhi: Government of India, 2011, p. 123.

²³ Gholam Rabbani, *Constitutional Debates: An Overview of Bangladesh's Fundamental Rights and State Policy Provisions*, Bangladesh Legal Studies, 2021, p. 128.

the global standards for protecting fundamental freedoms. Incorporating these principles into Bangladesh's legal system would not only enhance the constitutional rights of citizens but also promote international goodwill and strengthen the country's position on human rights.

6. **Institutionalizing Policy Evaluation Mechanisms:** A framework for the systematic evaluation of policies based on their adherence to the constitutional principles should be established. This will allow for the identification of policies that may inadvertently infringe on Fundamental Rights or deviate from the state principles laid out in the FPSP, ensuring a more balanced and constitutionally compliant approach to governance.
7. **Balanced Legislative Action:** Legislators should ensure that laws passed by Parliament do not inadvertently contradict or undermine Fundamental Rights. This includes considering the implications of new policies and laws on both individual rights and broader state goals. Comprehensive checks and balances should be embedded into the legislative process to prevent overreach and excessive encroachment on individual freedoms.

In conclusion, while Bangladesh's Constitution provides a foundational framework for balancing state governance with individual freedoms, ongoing efforts are needed to resolve conflicts between the enforceable nature of Fundamental Rights and the non-justiciable status of FPSP. By introducing judicial, legislative, and policy reforms, the country can better align its laws with the constitutional ideals of justice, equality, and human dignity²⁴.

²⁴ United Nations Human Rights Office, *International Human Rights Law and National Constitutions*, Geneva: UN Publications, 2019, pp. 214-215.

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