



SONARGAON UNIVERSITY

RESEARCH MONOGRAPH ON

“FUNDAMENTAL RIGHTS IN BANGLADESH: CONSTITUTIONAL PROVISIONS AND THEIR IMPACT”

*This Research paper is submitted in partial fulfilment of the
requirement for the degree of **Master of Laws (LL.M.)**
under Sonargaon University.*

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From beginning of my research, I am personally indebted to some book writers for their kind and valuable writings. Thanks to all from the bottom of my heart.

Signature

Certification by the Research Adviser

This is to certify that the research monograph titled “Fundamental Rights in Bangladesh: Constitutional Provisions and Their Impact” submitted by Ms. Reshma Akter, ID No: LLM 2502033010, has been carried out under my active supervision and guidance as a partial requirement for the fulfillment of the Master of Laws (LL.M.) at the Department of Law, Sonargaon University. To the best of my knowledge, the work presented in this monograph is the original effort of the student and has not been submitted elsewhere for the award of any degree, diploma, or other academic qualification.

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Declaration

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Letter of Transmittal

To,

Sharmin Jahan Runa

Assistant Professor & Head of the Department

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Sonargaon University (SU), Dhaka.

Subject: For the submission of Research Monograph titled “Fundamental Rights in Bangladesh: Constitutional Provisions and Their Impact”

Dear Madam,

With due respect and humble submission, I am honoured to present my Research Monograph entitled “Fundamental Rights in Bangladesh: Constitutional Provisions and Their Impact”, which has been prepared as a partial requirement for the completion of my Master of Laws (LL.M) under the Department of Law at Sonargaon University.

This research has been carried out with utmost sincerity and dedication. I have made every effort to maintain the required academic standards and present a comprehensive analysis on the chosen topic. I respectfully submit this work for your kind perusal and academic evaluation.

If any clarification or further information regarding this monograph is needed, I will remain available at your convenience.

Yours faithfully,

Reshma Akter

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List of Abbreviation

<u>AD</u>	<u>Appellate Division</u>
<u>ASK</u>	<u>Ain o Salish Kendra</u>
<u>BLAST</u>	<u>Bangladesh Legal Aid and Services Trust</u>
<u>CEDAW</u>	<u>Convention on the Elimination of All Forms of Discrimination against Women</u>
<u>CRC</u>	<u>Convention on the Rights of the Child</u>
<u>DLR</u>	<u>Dhaka Law Reports</u>
<u>HCD</u>	<u>High Court Division</u>
<u>ICCPR</u>	<u>International Covenant on Civil and Political Rights</u>
<u>ICESCR</u>	<u>International Covenant on Economic, Social and Cultural Rights</u>
<u>NGO</u>	<u>Non-Governmental Organization</u>
<u>NHRC</u>	<u>National Human Rights Commission</u>
<u>PIL</u>	<u>Public Interest Litigation</u>
<u>SPA</u>	<u>Special Powers Act</u>
<u>UDHR</u>	<u>Universal Declaration of Human Rights</u>
<u>UN</u>	<u>United Nations</u>
<u>UNDP</u>	<u>United Nations Development Programme</u>
<u>UPL</u>	<u>University Press Limited</u>
<u>FR</u>	<u>Fundamental Rights</u>
<u>HR</u>	<u>Human Rights</u>

Abstract

The Constitution of Bangladesh recognizes Fundamental Rights as essential guarantees for the protection of human dignity, liberty, equality, and justice. These rights, enshrined primarily in Part III of the Constitution, serve as the foundation of democratic governance and the rule of law. Since the independence of Bangladesh in 1971, Fundamental Rights have played a crucial role in shaping the relationship between the State and its citizens. They protect individuals from arbitrary state action and ensure equal treatment before the law.

This thesis examines the constitutional framework of Fundamental Rights in Bangladesh and evaluates their practical impact on society, governance, and the legal system. It analyzes the historical development of constitutional rights, the influence of international human rights instruments, and the judicial interpretation of constitutional provisions. Special attention is given to the role of the Supreme Court of Bangladesh in enforcing and expanding Fundamental Rights through landmark decisions.

The study further explores challenges affecting the realization of these rights, including constitutional limitations, emergency powers, political instability, socio-economic inequalities, and administrative inefficiencies. It also assesses the effectiveness of constitutional remedies and the evolving jurisprudence concerning rights such as equality before law, freedom of speech, freedom of religion, protection of life and personal liberty, and safeguards against arbitrary arrest and detention.

By critically examining constitutional provisions and judicial practices, the thesis demonstrates that although Bangladesh has established a comprehensive framework for Fundamental Rights, significant gaps remain between constitutional promises and practical implementation. Strengthening judicial independence, enhancing public awareness, improving governance, and ensuring accountability are identified as essential measures for the effective protection of Fundamental Rights.

Chapter I

INTRODUCTION

1.1 Background of the Study

Fundamental Rights are the basic rights and freedoms guaranteed to individuals by a constitution. They are designed to protect citizens against arbitrary actions by the State and to ensure the development of human personality, dignity, and liberty. In democratic societies, Fundamental Rights serve as the cornerstone of constitutional governance and the rule of law.

The Constitution of the People's Republic of Bangladesh, adopted on 4 November 1972 and effective from 16 December 1972, incorporates a comprehensive catalogue of Fundamental Rights under Part III. These rights reflect the aspirations of the people of Bangladesh who struggled for independence and self-determination. The framers of the Constitution sought to establish a society based on equality, justice, freedom, and respect for human dignity.

The recognition of Fundamental Rights is not unique to Bangladesh. Modern constitutions across the world guarantee rights such as equality before law, freedom of speech, freedom of religion, and protection of life and liberty. The constitutional experience of Bangladesh has been influenced by international human rights instruments, particularly the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and other international conventions.

Although constitutional guarantees exist, practical realization of rights remains a challenge. Political crises, emergency measures, preventive detention laws, restrictions on freedom of expression, and socio-economic disparities often affect the enjoyment of constitutional rights. Consequently, understanding the effectiveness and impact of Fundamental Rights in Bangladesh is of significant academic and practical importance.

1.2 Meaning of Fundamental Rights

Fundamental Rights are those rights which are considered essential for the physical, intellectual, moral, and spiritual development of individuals. They are protected by the Constitution and are enforceable through courts of law.

According to constitutional theory, Fundamental Rights differ from ordinary legal rights because:

- 1) They are constitutionally guaranteed.
- 2) They enjoy a higher legal status.
- 3) They are enforceable through constitutional remedies.
- 4) The State cannot arbitrarily interfere with them.
- 5) Any law inconsistent with Fundamental Rights may be declared void.

The Constitution of Bangladesh recognizes various civil and political rights designed to preserve individual liberty and democratic governance.

1.3 Historical Development of Fundamental Rights

The concept of Fundamental Rights evolved through centuries of political and legal development.

1.3.1 Magna Carta (1215)

The Magna Carta is often regarded as the first significant document limiting the powers of the ruler and recognizing certain rights of subjects. It introduced the idea that even the King is subject to law.¹

1.3.2 Petition of Right (1628)

The Petition of Right established protections against arbitrary taxation and imprisonment and strengthened parliamentary authority.²

1.3.3 Bill of Rights (1689)

The English Bill of Rights laid the foundation for constitutional government and recognized various civil liberties.³

1.3.4 American Declaration of Independence (1776)

¹ J.C. Holt, *Magna Carta* (2nd edn, Cambridge University Press 1992) 1.

² Geoffrey Robertson, *The Tyrannicide Brief* (Vintage Books 2006) 112.

³ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 183.

⁴ Thomas Jefferson, *Declaration of Independence* (1776).

⁵ Lynn Hunt, *Inventing Human Rights* (W.W. Norton 2007) 35.

The Declaration emphasized natural rights such as life, liberty, and the pursuit of happiness.⁴

1.3.5 French Declaration of the Rights of Man and Citizen (1789)

The French Revolution popularized the principles of liberty, equality, and fraternity.⁵

1.3.6 Universal Declaration of Human Rights (1948)

The UDHR established a global framework for the protection of human rights and influenced modern constitutions, including Bangladesh.⁶

1.8 Fundamental Rights and Human Rights

Human rights and Fundamental Rights are closely related but not identical.

Human rights are universal rights belonging to all persons by virtue of being human. Fundamental Rights are those rights recognized and protected by a specific constitution.

Thus, all Fundamental Rights are human rights, but not all human rights are constitutionally recognized as Fundamental Rights.

1.5 Constitutional Philosophy of Bangladesh

The Constitution of Bangladesh is founded upon four fundamental principles:

- Nationalism
- Socialism
- Democracy
- Secularism

These principles guide the interpretation and implementation of Fundamental Rights.⁷

The Constitution seeks to establish a society where citizens enjoy freedom, equality, and justice without discrimination.

1.6 Objectives of the Study

- The objectives of this thesis are:

General Objective

To examine the constitutional provisions relating to Fundamental Rights in Bangladesh and assess their impact on society and governance.

Specific Objectives

- To analyze the constitutional framework of Fundamental Rights.
- To examine judicial interpretation of constitutional rights.
- To evaluate constitutional remedies.
- To identify challenges affecting implementation.
- To recommend reforms for better protection.

1.7 Research Questions

The study seeks to answer the following questions:

- 1)What are Fundamental Rights under the Constitution of Bangladesh?
- 2)How effectively are these rights protected?
- 3)What role does the judiciary play?
- 4)What challenges affect implementation?
- 5)How can constitutional protection be strengthened?

1.8 Scope of the Study

The study focuses primarily on Part III of the Constitution of Bangladesh. It also considers relevant judicial decisions, constitutional amendments, and international human rights standards.

1.9 Methodology

This research adopts a doctrinal legal research methodology. Sources include:

- Constitution of Bangladesh
- Judicial decisions
- Statutes
- Books
- Journal articles
- International human rights instruments

Chapter II

Constitutional Framework of Fundamental Rights in Bangladesh

2.1 Introduction

Fundamental Rights constitute one of the most significant features of the Constitution of Bangladesh. They provide legal protection to citizens against arbitrary exercise of governmental power and ensure the preservation of human dignity, liberty, equality, and justice. The inclusion of Fundamental Rights in the Constitution reflects the commitment of the State to democratic governance and the rule of law.

The Constitution of the People's Republic of Bangladesh guarantees a comprehensive set of Fundamental Rights under Part III (Articles 26–47A). These provisions establish the legal foundation for protecting individual freedoms and maintaining a balance between State authority and personal liberty. Fundamental Rights are not merely political declarations; they are legally enforceable rights protected by constitutional remedies.

The constitutional framework of Fundamental Rights in Bangladesh has been influenced by various constitutional traditions, including the constitutions of the United Kingdom, the United States, India, Pakistan, and international human rights instruments. Since independence, the judiciary has played a crucial role in interpreting these rights and expanding their scope to address contemporary challenges.

This chapter examines the constitutional framework governing Fundamental Rights in Bangladesh, including their nature, characteristics, constitutional status, enforceability, and relationship with other constitutional provisions.

2.2 Concept of Constitutional Rights

A constitution serves as the supreme law of a State. Constitutional rights are those rights that derive their authority directly from the Constitution and enjoy special protection against governmental interference.

Fundamental Rights differ from ordinary legal rights in several important respects. First, they originate from the Constitution rather than ordinary legislation. Second, they

cannot be taken away by executive action. Third, any law inconsistent with Fundamental Rights may be declared unconstitutional by the courts. Fourth, individuals whose rights are violated may seek constitutional remedies before the Supreme Court.

The constitutional protection of rights is essential in democratic societies because it limits governmental power and safeguards individual freedoms. Without constitutional guarantees, citizens would be vulnerable to arbitrary actions by public authorities.

2.3 Historical Background of Fundamental Rights in Bangladesh

The constitutional development of Fundamental Rights in Bangladesh cannot be understood without considering the historical experiences of the region.²

2.3.1 Colonial Period

During British colonial rule, the people of Bengal were subject to various restrictive laws limiting political freedom and civil liberties. Constitutional protections were limited, and executive authority often prevailed over individual rights.⁸

The struggle against colonial domination contributed to the development of constitutional consciousness and demands for civil rights.

2.3.2 Pakistan Period (1947–1971)

After the partition of India in 1947, East Bengal became part of Pakistan. The Constitution of Pakistan recognized certain Fundamental Rights, but their implementation was often undermined by military rule and political instability.⁹

The people of East Pakistan experienced political discrimination, economic inequality, and suppression of democratic rights. These experiences significantly influenced the constitutional aspirations of Bangladesh after independence.

2.3.3 Liberation War and Constitutional Development

The Liberation War of 1971 was fought not only for territorial independence but also for democracy, equality, and human dignity. Following independence, the Constitution of Bangladesh was adopted in 1972.

² ⁸ M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 112.

⁹ Hamid Khan, *Constitutional and Political History of Pakistan* (Oxford University Press 2017) 245.

¹⁰ Kamal Hossain, *Bangladesh: Quest for Freedom and Justice* (UPL 2013) 95.

The framers of the Constitution recognized that protection of Fundamental Rights was essential for preventing future abuses of power and ensuring democratic governance.¹⁰

2.4 Constitutional Position of Fundamental Rights

Fundamental Rights are primarily contained in Part III of the Constitution.

Part III extends from Article 26 to Article 47A and contains a comprehensive list of rights and constitutional protections.

The constitutional position of Fundamental Rights may be summarized as follows:

They are constitutionally guaranteed.

They are enforceable through the Supreme Court.

Laws inconsistent with Fundamental Rights are void.

Governmental actions violating these rights may be challenged.

Courts possess power of judicial review.

These features demonstrate the superior constitutional status of Fundamental Rights within the legal system of Bangladesh.

2.5 Supremacy of the Constitution

The Constitution is the supreme law of Bangladesh. Article 7 expressly declares the supremacy of the Constitution and provides that any law inconsistent with the Constitution shall be void.¹¹

The principle of constitutional supremacy has significant implications for Fundamental Rights. Since Fundamental Rights form part of the Constitution, any legislation or executive action violating them may be invalidated by the courts.

Constitutional supremacy ensures that governmental institutions remain accountable to constitutional norms and prevents arbitrary exercise of power.

2.6 Article 26: Laws Inconsistent with Fundamental Rights

Article 26 serves as the constitutional foundation for the protection of Fundamental Rights.

According to Article 26:

- Existing laws inconsistent with Fundamental Rights become void to the extent of inconsistency.
- The State cannot make laws inconsistent with Fundamental Rights.
- Any law violating Fundamental Rights shall be void.

Article 26 performs two important functions.

- First, it protects citizens from unconstitutional legislation.
- Second, it empowers the judiciary to review the validity of laws.

This provision establishes the doctrine of constitutional supremacy and judicial review in Bangladesh.¹²

2.7 Nature and Characteristics of Fundamental Rights

Fundamental Rights possess several distinctive characteristics.

2.7.1 Constitutional Status

These rights derive their authority directly from the Constitution rather than ordinary legislation.³

2.7.2 Legal Enforceability

Fundamental Rights are enforceable through constitutional remedies provided under Article 102.

2.7.3 Limitation on State Power

The rights operate primarily as restrictions upon governmental authority.

2.7.4 Judicial Protection

The judiciary serves as the guardian and protector of Fundamental Rights.

2.7.5 Democratic Significance

Fundamental Rights promote democracy, accountability, and political participation.

2.7.6 Human Dignity

The rights seek to preserve individual dignity and personal autonomy.

^{3 11} Constitution of the People's Republic of Bangladesh 1972, Article 7.

2.7.7 Rule of Law

Fundamental Rights reinforce the principle that all persons and institutions are subject to law.

2.8 Classification of Fundamental Rights

The Constitution recognizes different categories of rights.

A. Equality Rights

These rights ensure equal treatment before law and prohibit discrimination.

Relevant Articles:

- Article 27
- Article 28
- Article 29

B. Personal Liberty Rights

These rights protect individual freedom and security.

Relevant Articles:

- Article 31
- Article 32
- Article 33

C. Freedom Rights

These rights guarantee freedom of movement, speech, association, profession, and assembly.

Relevant Article:

- Article 36–40

D. Religious Rights

These rights protect religious freedom and practice.

Relevant Articles:

- Article 41

E. Property Rights

Protection against arbitrary deprivation of property.

Relevant Article:

- Article 42

F. Procedural Rights

Protection against arbitrary arrest, detention, and criminal prosecution.

Relevant Articles:

- Article 33
- Article 35

2.9 Fundamental Rights and Fundamental Principles of State Policy

The Constitution contains both:

Fundamental Principles of State Policy (Part II)

Fundamental Rights (Part III)

Although both are constitutionally significant, they differ in nature and enforceability.

Fundamental Rights	Fundamental Principles
Legally enforceable	Not enforceable
Judicial remedies available	No direct remedies
No direct remedies	
Protect individual interests	Guide State policy
Found in Part III	Found in Part II

The relationship between these provisions has generated considerable constitutional debate.

Modern judicial interpretation seeks harmony between Fundamental Rights and State policy objectives.¹³

2.10 Judicial Review and Fundamental Rights

Judicial review is one of the most important constitutional mechanisms for protecting Fundamental Rights.

Judicial review enables courts to:

- Examine validity of laws.
- Review executive actions.
- Protect constitutional guarantees.
- Enforce rule of law.

The Supreme Court of Bangladesh has repeatedly emphasized that Fundamental Rights occupy a central position in the constitutional structure.

Through judicial review, courts ensure that governmental authorities act within constitutional limits.

2.11 Role of the Supreme Court

The Supreme Court acts as the guardian of the Constitution.

Its responsibilities include:

- Protection of Rights

The Court protects citizens against constitutional violations.

- Constitutional Interpretation

The Court interprets constitutional provisions and clarifies their meaning.

- Judicial Review

The Court invalidates unconstitutional laws and actions.

- Constitutional Remedies

The Court provides remedies under Article 102.

Over time, the Supreme Court has expanded the scope of rights through progressive constitutional interpretation.¹⁴

2.12 Relationship with International Human Rights Law

Bangladesh is a party to numerous international human rights instruments.

^{4 13} Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 156.

¹⁴ *Bangladesh Italian Marble Works Ltd v Bangladesh* 62 DLR (AD) 298.

These include:

Universal Declaration of Human Rights (UDHR)

International Covenant on Civil and Political Rights (ICCPR)

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

Convention on the Rights of the Child (CRC)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Although international treaties do not automatically become domestic law, courts frequently refer to international standards when interpreting constitutional rights.¹⁵

This approach strengthens the protection of human rights and aligns domestic jurisprudence with international norms.

2.13 Constitutional Amendments and Fundamental Rights

The constitutional framework has evolved through amendments.

Some amendments expanded constitutional protections, while others generated controversy concerning democratic governance and judicial independence.

The relationship between constitutional amendments and Fundamental Rights has raised important questions regarding:

- Constitutional identity
- Judicial review
- Separation of powers
- Basic structure doctrine

The Supreme Court has emphasized that constitutional amendments must respect fundamental constitutional principles.¹⁶

2.14 Challenges in the Constitutional Framework

Despite strong constitutional guarantees, several challenges persist.

¹⁵ BNWLA v Government of Bangladesh 14 BLC 694.

¹⁶ Anwar Hossain Chowdhury v Bangladesh 41 DLR (AD) 165.

- Political Challenges

Political conflicts occasionally affect constitutional governance and rights protection.

- Administrative Challenges

Inefficiency and bureaucratic obstacles may hinder effective enforcement.

- Legal Challenges

Outdated legislation sometimes conflicts with constitutional principles.

- Socio-Economic Challenges

Poverty and inequality limit practical enjoyment of rights.

- Awareness Challenges

Many citizens remain unaware of their constitutional rights and available remedies.

These challenges demonstrate that constitutional guarantees alone are insufficient without effective implementation.

2.15 Importance of Fundamental Rights in Bangladesh

Fundamental Rights play a vital role in national development.

They:

- Protect individual liberty.
- Promote democratic participation.
- Ensure governmental accountability.
- Preserve human dignity.
- Strengthen rule of law.
- Encourage social justice.
- Prevent abuse of power.
- Foster constitutionalism.

A democratic society cannot function effectively without meaningful protection of Fundamental Rights.

Chapter III

Right to Equality under the Constitution of Bangladesh

3.1 Introduction

The Right to Equality is one of the most fundamental and indispensable constitutional rights guaranteed under the Constitution of Bangladesh. Equality is the foundation upon which a democratic society is built. Without equality, other rights and freedoms become meaningless because discrimination and unequal treatment prevent individuals from enjoying their constitutional entitlements.

The Constitution of Bangladesh recognizes equality as a core constitutional value and incorporates several provisions to ensure that all citizens receive equal protection and equal opportunities. The principle of equality reflects the aspiration of the Constitution to establish a society free from discrimination, exploitation, and arbitrary distinctions based on religion, race, caste, sex, place of birth, or other irrelevant factors.⁶

Historically, the people of Bangladesh experienced various forms of discrimination during colonial rule and the Pakistan period. Economic inequality, political exclusion, linguistic discrimination, and unequal access to public opportunities contributed significantly to the struggle for independence. Consequently, the framers of the Constitution considered equality to be an essential constitutional guarantee necessary for ensuring justice and national unity.¹⁷

The Right to Equality is primarily embodied in Articles 27, 28, and 29 of the Constitution. These provisions collectively seek to ensure equality before the law, prohibit discrimination, and guarantee equal opportunity in public employment. Together, they establish a constitutional framework designed to protect citizens against unjust treatment while promoting social justice and inclusive development.

This chapter examines the constitutional basis of equality, analyzes relevant constitutional provisions, discusses judicial interpretations, evaluates practical impacts, and identifies challenges affecting the realization of equality in Bangladesh.

⁶ ¹⁷ Kamal Hossain, Bangladesh: Quest for Freedom and Justice (UPL 2013) 115.

3.2 Concept and Meaning of Equality

Equality is a complex and multidimensional concept. In constitutional law, equality generally means that all persons are entitled to equal protection of the law and should not be subjected to arbitrary discrimination.

The principle does not require that every individual be treated identically in all circumstances. Rather, equality requires that persons who are similarly situated should be treated similarly, while reasonable distinctions may be made where justified by legitimate objectives.

Modern constitutional theory recognizes two important dimensions of equality

3.2.1 Formal Equality

Formal equality refers to equal treatment before the law. Under this approach, laws should apply equally to all persons without unjust distinctions.

Formal equality seeks to eliminate direct discrimination and arbitrary classifications. It emphasizes neutrality and uniformity in legal treatment. However, critics argue that formal equality may fail to address historical disadvantages and structural inequalities affecting certain groups.¹⁸

3.2.2 Substantive Equality

Substantive equality goes beyond identical treatment and focuses on achieving actual equality in practice. It recognizes that different groups may require special measures to overcome historical disadvantages and social barriers.

For example, women, persons with disabilities, and disadvantaged communities may require affirmative measures to ensure meaningful equality. Substantive equality therefore seeks not only equal treatment but also equal outcomes and opportunities.

The Constitution of Bangladesh reflects elements of both formal and substantive equality by prohibiting discrimination while simultaneously allowing special provisions for disadvantaged groups.⁷

3.3 Constitutional Foundation of Equality

⁷ ¹⁸ Hilaire Barnett, *Constitutional and Administrative Law* (13th edn, Routledge 2022) 502.

¹⁹ Constitution of the People's Republic of Bangladesh 1972, Preamble and Articles 8–25.

Equality occupies a central place within the constitutional structure of Bangladesh. The Preamble commits the State to establishing a society characterized by equality, justice, and human dignity. Furthermore, the Fundamental Principles of State Policy emphasize social and economic equality as essential objectives of governance.¹⁹

The constitutional commitment to equality reflects several important values:

- Human dignity
- Social justice
- Democratic participation
- National unity
- Rule of law
- Equal citizenship

These values guide judicial interpretation and legislative action concerning equality rights.

The Constitution recognizes that equality is not merely a legal principle but also a social objective requiring continuous efforts by the State and society.

3.4 Article 27: Equality Before Law and Equal Protection of Law

Text of Article 27

Article 27 provides:

”All citizens are equal before law and are entitled to equal protection of law.”²⁰

Although brief, Article 27 is one of the most powerful constitutional provisions in Bangladesh.

3.4.1 Equality Before Law

The phrase “equality before law” originated from British constitutional theory and particularly from the writings of A.V. Dicey.

Equality before law means that:

No person is above the law.

Every individual is subject to ordinary law.

Government officials are equally accountable.

Special privileges are generally prohibited.

This principle rejects arbitrary power and establishes legal accountability for all individuals regardless of social status, wealth, or political influence.⁸

In a constitutional democracy, equality before law ensures that governmental authorities cannot exercise power arbitrarily.

3.4.2 Equal Protection of Law

The concept of equal protection of law originated from the United States Constitution.

Equal protection requires that:

- Similar persons receive similar treatment.
- Laws operate fairly and consistently.
- Unreasonable classifications are prohibited.
- Legitimate distinctions must be rationally justified.

Equal protection therefore focuses not only on the content of laws but also on their practical application.

Courts examine whether legislative classifications are reasonable and whether they serve legitimate governmental objectives.

3.4.3 Importance of Article 27

Article 27 serves several important constitutional functions.

First, it protects citizens from arbitrary governmental action.

Second, it strengthens the rule of law by ensuring legal accountability.

Third, it promotes fairness and justice within the legal system.

Fourth, it provides a constitutional basis for challenging discriminatory laws and practices.

Finally, it reinforces democratic governance by ensuring equal citizenship.

^{8 20} Constitution of the People's Republic of Bangladesh 1972, Article 27.

The Supreme Court has repeatedly emphasized the significance of Article 27 as a foundational constitutional guarantee.²¹

3.5 Article 28: Prohibition of Discrimination

Article 28 provides detailed protections against discrimination.

The Article represents one of the strongest constitutional commitments to equality within the Constitution of Bangladesh.⁹

3.5.1 Article 28(1): Non-Discrimination

Article 28(1) states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth.²²

This provision protects citizens against discriminatory governmental action and ensures equal treatment regardless of personal characteristics.

The constitutional prohibition applies to:

- Legislative actions
- Executive decisions
- Administrative practices
- Public policies

The inclusion of religion, race, caste, sex, and place of birth reflects the framers' determination to eliminate social divisions and discriminatory practices.

3.5.2 Article 28(2): Equal Access to Public Places

Article 28(2) guarantees equal access to public places and institutions.

No citizen may be subjected to discrimination regarding access to:

- Educational institutions
- Public facilities
- Places of entertainment
- Public services

⁹ ²¹ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 233.

²² Constitution of the People's Republic of Bangladesh 1972, Article 28.

This provision promotes social inclusion and prevents segregation.

Equal access is essential for preserving dignity and ensuring full participation in public life.

3.5.3 Article 28(3): Equality of Women

Article 28(3) provides that women shall have equal rights with men in all spheres of the State and public life.

This provision represents a major constitutional commitment to gender equality.

Historically, women in many societies faced significant legal, political, and economic disadvantages. The Constitution seeks to eliminate these inequalities and promote equal participation.

Gender equality encompasses:

- Political participation
- Education
- Employment
- Public service
- Social opportunities
- Legal rights

The constitutional guarantee serves as an important foundation for women's empowerment in Bangladesh.

3.5.4 Article 28(4): Special Provisions for Women and Children

Article 28(4) authorizes the State to make special provisions in favor of women, children, and backward sections of citizens.

This provision recognizes that genuine equality sometimes requires affirmative measures.

Examples include:

- Reserved seats for women
- Educational scholarships
- Social welfare programs

- Employment initiatives

Special protections for vulnerable groups

Such measures do not violate equality because their purpose is to reduce existing inequalities and promote substantive equality.²³

3.6 Article 29: Equality of Opportunity in Public Employment

Public employment plays a crucial role in ensuring equal participation in governance.

Article 29 guarantees equality of opportunity in public service.

3.6.1 Equal Opportunity

Article 29(1) provides that there shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.

This principle ensures that appointments and promotions should be based primarily on merit and competence rather than discriminatory considerations.

- Equal opportunity promotes:
- Fair competition
- Administrative efficiency
- Public confidence
- National integration

3.6.2 Prohibition of Discrimination

Article 29(2) prohibits discrimination in public employment based on religion, race, caste, sex, or place of birth.

This protection seeks to ensure fairness in recruitment, promotion, and service conditions.

Government employment is often associated with social prestige and economic security. Therefore, equal access to public employment is an important aspect of constitutional equality

3.6.3 Reservations and Special Measures

Article 29(3) permits special measures for disadvantaged groups.

Such measures may include:

Regional representation

Women's participation

Opportunities for backward communities

Special recruitment programs

These provisions seek to balance merit with social justice.

3.7 Judicial Interpretation of Equality Rights

The Supreme Court of Bangladesh has played an important role in interpreting equality provisions.

Judicial decisions have clarified the meaning of equality and expanded constitutional protections.

The courts have emphasized that equality is not merely a formal concept but a substantive constitutional commitment requiring fairness, reasonableness, and justice.²⁴

Judicial interpretation has helped ensure that equality remains a living constitutional principle capable of addressing evolving social challenges.

3.8 Equality and Gender Justice

Gender equality remains one of the most important dimensions of constitutional equality.

Despite constitutional guarantees, women continue to face challenges including:

Economic disparities

Workplace discrimination

Gender-based violence

Unequal social expectations

The Constitution provides a legal foundation for addressing these issues through legislation, policy reforms, and judicial intervention.

Significant progress has been made in women's education, political participation, and employment. However, achieving complete gender equality remains an ongoing challenge.¹⁰

3.9 Equality and Minority Rights

Equality also requires protection of religious, ethnic, and cultural minorities.

Minority communities contribute significantly to the diversity and cultural heritage of Bangladesh.

Constitutional equality requires:

Equal citizenship

Equal legal protection

Equal access to opportunities

Protection against discrimination

Ensuring minority rights strengthens social harmony and national unity.

3.10 Challenges to Equality in Bangladesh

Despite constitutional guarantees, several challenges remain.

- Economic Inequality

Poverty continues to affect access to education, healthcare, and employment opportunities.

- Gender Inequality

Women often face barriers in both public and private spheres.

- Regional Disparities

Differences in development between regions affect equality of opportunity.

- Social Prejudice

¹⁰ ²³ Constitution of the People's Republic of Bangladesh 1972, Article 28(4).

²⁴ Bangladesh Italian Marble Works Ltd v Bangladesh 62 DLR (AD) 298.

Traditional attitudes sometimes undermine constitutional commitments.

- Administrative Weaknesses

Ineffective implementation may limit practical realization of rights.

These challenges demonstrate the gap that can exist between constitutional ideals and social realities.

3.11 Impact of Equality Rights

The constitutional guarantee of equality has had significant impacts.

It has:

- Strengthened democratic governance.
- Improved access to education.
- Enhanced women's participation.
- Increased awareness of rights.
- Promoted legal accountability.
- Encouraged social inclusion.
- Expanded public opportunities.

The influence of equality rights extends beyond courts and legal institutions into broader social and political life.

Chapter IV

Right to Life and Personal Liberty under the Constitution of Bangladesh

4.1 Introduction

The Right to Life and Personal Liberty is widely regarded as the most important Fundamental Right guaranteed by the Constitution of Bangladesh. All other constitutional rights become meaningless if an individual is deprived of life, liberty, or security. For this reason, constitutional democracies throughout the world place special emphasis on protecting life and personal freedom against arbitrary governmental action.

In Bangladesh, the Right to Life and Personal Liberty is primarily protected through Articles 31, 32, and 33 of the Constitution. These provisions establish constitutional safeguards against unlawful actions by the State and ensure that every citizen is treated in accordance with law. Together, these articles seek to preserve human dignity, personal security, fairness, and justice.

The importance of these rights cannot be overstated. Life is the foundation upon which all other rights rest, while personal liberty allows individuals to develop their personalities, express their beliefs, pursue education and employment, and participate in social and political life. Without constitutional protection of life and liberty, democratic governance cannot exist.

Since the adoption of the Constitution in 1972, the Supreme Court of Bangladesh has gradually expanded the interpretation of these provisions. Initially, the right to life was understood narrowly as protection against physical death. Over time, however, judicial decisions recognized that life includes much more than mere physical existence. It encompasses dignity, health, environmental protection, access to justice, and other conditions necessary for meaningful human existence.²⁵

This chapter examines the constitutional provisions protecting life and liberty, judicial interpretation of these rights, the issue of preventive detention, constitutional safeguards against arbitrary arrest, and the practical impact of these rights on Bangladeshi society.

4.2 Philosophical Foundations of the Right to Life and Liberty

The concept of life and liberty has deep philosophical roots.

Natural law theorists such as John Locke argued that every human being possesses certain inherent rights, including life, liberty, and property. These rights exist prior to the creation of the State and cannot legitimately be taken away without lawful justification.²⁶

The American Declaration of Independence recognized life and liberty as inalienable rights. Similarly, the French Declaration of the Rights of Man and Citizen emphasized liberty as a fundamental attribute of human existence.

Modern human rights instruments continue this tradition. The Universal Declaration of Human Rights recognizes that every person has the right to life, liberty, and security of person.²⁷

The Constitution of Bangladesh reflects these principles by recognizing life and liberty as fundamental constitutional guarantees.¹¹

4.3 Article 31: Protection of Law

Text and Meaning

Article 31 provides:

”To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen.”²⁸

Article 31 serves as the constitutional foundation for the rule of law in Bangladesh.

The provision establishes that:

- Every citizen is entitled to legal protection.
- Governmental actions must be authorized by law.
- Arbitrary exercise of power is prohibited.
- Citizens are entitled to fairness and justice.

¹¹ ²⁵ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 287.

²⁶ John Locke, *Second Treatise of Government* (1689) ch II.

²⁷ Universal Declaration of Human Rights 1948, Article 3.

²⁸ Constitution of the People’s Republic of Bangladesh 1972, Article 31.

The concept of “protection of law” goes beyond merely having laws on the statute books. It requires effective legal mechanisms capable of safeguarding individual rights against abuse of power.¹²

4.4 Rule of Law and Article 31

The doctrine of rule of law is central to Article 31.

Rule of law means that:

- Government is subject to law.
- Public officials are accountable.
- Legal procedures must be followed.
- Arbitrary power is prohibited.
- Courts remain independent.

The Constitution rejects the idea that government authorities may act according to personal preference or political convenience. Every action must be legally justified.

The Supreme Court has repeatedly emphasized that rule of law constitutes a basic feature of the Constitution.²⁹

Without rule of law, constitutional rights cannot be effectively protected.

4.5 Article 32: Protection of Life and Personal Liberty

Constitutional Provision

Article 32 provides:

”No person shall be deprived of life or personal liberty save in accordance with law.”³⁰

Although this provision contains only a few words, it is among the most significant constitutional guarantees.

The Article protects two fundamental interests:

- Life
- Personal liberty

¹² ²⁹ Anwar Hossain Chowdhury v Bangladesh 41 DLR (AD) 165.

³⁰ Constitution of the People’s Republic of Bangladesh 1972, Article 32.

Governmental authorities cannot interfere with these interests except through lawful procedures.

4.6 Meaning of the Right to Life

Initially, the right to life was interpreted narrowly as protection against unlawful killing.

Modern constitutional jurisprudence has adopted a much broader approach.

The right to life now includes:

- Human dignity
- Physical security
- Mental well-being
- Access to healthcare
- Environmental protection
- Access to justice
- Safe working conditions
- Protection from torture
- Basic necessities of life

The Supreme Court has recognized that life means more than mere animal existence. It includes all conditions necessary for living with dignity and self-respect.³¹

4.7 Right to Human Dignity

Human dignity is an essential component of the right to life.

Every individual possesses inherent worth and deserves respect regardless of social status, religion, gender, ethnicity, or economic condition.

- Protection of dignity requires:
- Freedom from degrading treatment
- Equal respect before law
- Protection against humiliation
- Recognition of personal autonomy

Modern constitutional interpretation increasingly views dignity as the foundation of all human rights.

4.8 Environmental Protection and the Right to Life

One of the most important developments in constitutional law has been the recognition of environmental rights as part of the right to life.

Environmental degradation can directly threaten human health and survival.

Issues affecting constitutional rights include:

- Air pollution
- Water contamination

Deforestation

- Industrial pollution
- Climate change

The Supreme Court has recognized that a healthy environment is essential for meaningful enjoyment of life.³²

Citizens cannot fully exercise their rights if environmental conditions endanger health and well-being.

4.9 Right to Health

Health is increasingly recognized as an integral component of the right to life.

Without adequate healthcare, individuals may be unable to enjoy other constitutional rights.

The right to health includes:

- Access to medical services
- Public health measures
- Disease prevention
- Emergency healthcare
- Safe drinking water
- Although healthcare rights are not explicitly included among Fundamental Rights, courts have often interpreted life broadly enough to encompass essential health protections.

4.10 Right to Education and Human Development

Education plays a crucial role in enabling individuals to enjoy a meaningful life.

Illiteracy and lack of educational opportunities often lead to poverty, exclusion, and social disadvantage.

- Education contributes to:
- Personal development
- Economic opportunity
- Democratic participation
- Social mobility

The constitutional commitment to human dignity supports the recognition of education as an important aspect of life and development.

4.11 Personal Liberty: Meaning and Scope

Personal liberty refers to freedom from unlawful restraint or detention.

It includes the freedom to:

- Move freely
- Make personal choices
- Pursue lawful activities
- Express individual identity
- Participate in society
- Liberty is essential for personal autonomy and democratic citizenship.

Governmental restrictions upon liberty must be justified by law and implemented through fair procedures.

4.12 Freedom from Arbitrary State Action

A major purpose of Articles 31 and 32 is to protect citizens against arbitrary governmental action.

Arbitrariness occurs when decisions are made without legal authority, fairness, or rational justification.

Examples include:

Unlawful detention

Abuse of executive power

The Constitution requires that all governmental actions affecting life or liberty comply with legal standards and procedural fairness.

4.13 Article 33: Safeguards as to Arrest and Detention

Article 33 provides important procedural safeguards against arbitrary arrest and detention.

These safeguards are crucial because personal liberty may easily be abused by powerful state institutions.

The Article establishes several protections.

4.13.1 Right to be Informed of Grounds of Arrest

A person who is arrested must be informed of the reasons for arrest.

This requirement serves several purposes:

- Prevents secret detention.
- Ensures transparency.
- Allows preparation of a legal defense.
- Protects against abuse.

An individual cannot effectively challenge detention without knowing the reasons for arrest.

4.13.2 Right to Consult a Lawyer

An arrested person has the right to consult and be defended by a legal practitioner.

Legal representation is essential because individuals often lack the knowledge necessary to protect their rights during criminal proceedings.

Lawyers help ensure:

- Fair treatment
- Due process
- Effective defense
- Protection against coercion

4.13.3 Production Before a Magistrate

Article 33 requires that an arrested person be brought before a magistrate within twenty-four hours.

This safeguard prevents indefinite detention by law enforcement agencies.

Judicial supervision helps ensure that detention remains lawful and justified.

The requirement reflects the constitutional commitment to personal liberty and judicial oversight.

4.14 Preventive Detention

Preventive detention remains one of the most controversial aspects of constitutional law in Bangladesh.¹³

Unlike ordinary detention, preventive detention is based on the belief that a person may engage in harmful activities in the future.

The Constitution permits preventive detention under certain circumstances.³³

4.14.1 Purpose of Preventive Detention

Preventive detention is generally justified on grounds such as:

1. National security
2. Public order
3. State security
4. Prevention of serious crimes

Governments argue that preventive detention is necessary to address threats before harm occurs.

4.14.2 Criticism of Preventive Detention

Critics argue that preventive detention poses serious risks to constitutional liberty.

Major criticisms include:

1. Lack of criminal conviction.
2. Potential political misuse.

¹³ ³³ Constitution of the People's Republic of Bangladesh 1972, Article 33.

3. Restriction of civil liberties.
4. Risk of arbitrary detention.

Human rights advocates often view preventive detention as incompatible with democratic principles unless strictly limited.

4.14.3 Judicial Control over Preventive Detention

The Supreme Court has emphasized that preventive detention powers must be exercised cautiously and strictly according to law.

Courts frequently review detention orders to ensure compliance with constitutional requirements.

Judicial review serves as an important safeguard against abuse.

4.15 Custodial Torture and Constitutional Protection

Torture represents one of the most serious violations of human dignity and personal liberty.

The Constitution's protection of life and liberty strongly opposes torture and inhuman treatment. Torture undermines:

- Human dignity
- Rule of law
- Fair trial rights
- Public confidence

Efforts to prevent custodial torture remain essential for effective protection of constitutional rights.

4.16 Impact of Life and Liberty Rights in Bangladesh

The constitutional protection of life and liberty has had significant impacts.

These include:

- Legal Impact

Development of constitutional jurisprudence and stronger judicial review.

- Political Impact

Increased accountability of public authorities.

- Social Impact

Greater awareness of constitutional rights.

- Human Rights Impact

Improved protection against abuses of power.

- Democratic Impact

Strengthening of constitutional governance and rule of law.

4.17 Challenges in Realization of Life and Liberty Rights

Despite constitutional guarantees, several challenges remain:

- Preventive detention practices.
- Delays in the justice system.
- Prison overcrowding.
- Allegations of custodial abuse.
- Limited access to legal services.
- Administrative inefficiencies.

These challenges highlight the need for continued reform.

4.18 Conclusion

The Right to Life and Personal Liberty occupies a central position within the constitutional framework of Bangladesh. Articles 31, 32, and 33 provide essential protections against arbitrary governmental action and establish the legal foundation for human dignity, liberty, and justice. Although challenges remain, these constitutional guarantees continue to serve as powerful instruments for protecting individual freedom and promoting democratic governance.

Chapter V

Freedom Rights under the Constitution of Bangladesh

5.1 Introduction

Freedom is one of the basic foundations of democracy. The Constitution of Bangladesh guarantees several freedoms to ensure the development of individual personality and participation in public life. These freedoms are contained mainly in Articles 36 to 40 of the Constitution. They include freedom of movement, assembly, association, thought and conscience, speech, profession, and occupation. These rights are not absolute and may be restricted in the interests of public order, morality, security, and sovereignty of the State.³⁵

5.2 Freedom of Movement (Article 36)

Article 36 guarantees every citizen the right to move freely throughout Bangladesh, reside in any place, and leave and re-enter the country.

This freedom promotes:

- National integration
- Economic opportunity
- Personal liberty
- Social mobility

However, reasonable restrictions may be imposed for public health, security, and public interest.³⁶

5.3 Freedom of Assembly (Article 37)

Citizens have the right to assemble peacefully and without arms.¹⁴

This freedom is essential because it:

- Encourages democratic participation
- Allows public protest

¹⁴ ³⁵ Constitution of Bangladesh, Arts 36–40.

³⁶ Constitution of Bangladesh, Art 36.

³⁷ Constitution of Bangladesh, Art 37.

- Promotes collective expression

The State may impose restrictions to maintain public order and security.³⁷

5.4 Freedom of Association (Article 38)

Citizens may form associations, unions, organizations, and political parties.

This right strengthens:

- Democracy
- Trade union activities
- Civil society participation
- Political pluralism

Reasonable restrictions may be imposed in the interests of morality and public order.³⁸

5.5 Freedom of Thought and Conscience (Article 39)

Freedom of thought and conscience is one of the most important constitutional freedoms.

Individuals have the right to:

- Hold personal beliefs
- Develop opinions
- Express ideas

This freedom supports intellectual growth and democratic governance.³⁹

5.6 Freedom of Speech and Expression

Freedom of speech enables citizens to criticize governmental actions and participate in¹⁵ public debate.

It promotes:

- Accountability
- Transparency
- Political participation

^{15 38} Constitution of Bangladesh, Art 38.

³⁹ Constitution of Bangladesh, Art 39.

- Press freedom

However, restrictions may apply regarding defamation, public order, state security, and morality.⁴⁰

5.7 Freedom of Profession and Occupation (Article 40)

Citizens have the right to choose any lawful profession, occupation, trade, or business.

This freedom contributes to:

- Economic development
- Individual autonomy
- Employment opportunities

The State may regulate professions for public welfare and safety.⁴¹

5.8 Conclusion

Freedom rights are essential for democratic governance and human development. They enable citizens to participate actively in political, social, and economic life while ensuring accountability and transparency.

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¹⁶ ⁴⁰ Mahmudul Islam, Constitutional Law of Bangladesh 320.

⁴¹ Constitution of Bangladesh, Art 40.

Chapter VI

Freedom of Religion and Cultural Rights

6.1 Introduction

Freedom of religion is one of the most important Fundamental Rights guaranteed by the Constitution of Bangladesh. Religion plays a significant role in the lives of many people and often forms an important part of personal identity, culture, morality, and social life. In a democratic society, individuals must have the freedom to choose, practice, and express their religious beliefs without fear of discrimination or persecution.

Bangladesh is a multicultural and multi-religious country where people belonging to different religious communities live together. The major religions practiced in Bangladesh include Islam, Hinduism, Buddhism, and Christianity. The Constitution seeks to ensure peaceful coexistence among these communities by guaranteeing freedom of religion and protecting cultural diversity.

The constitutional framework relating to religious freedom is primarily contained in Article 41 of the Constitution. Additionally, constitutional principles such as equality before law, non-discrimination, and secularism contribute to the protection of religious liberty. The Constitution recognizes that every citizen, regardless of religious affiliation, is entitled to equal dignity and equal protection of law.⁴²

This chapter discusses the constitutional provisions relating to freedom of religion, the relationship between religion and the State, protection of cultural rights, minority rights, judicial interpretation, and the impact of religious freedom on Bangladeshi society.¹⁷

6.2 Concept of Freedom of Religion

Freedom of religion is a universally recognized human right. It refers to the liberty of individuals to adopt, practice, observe, and express their religious beliefs without unlawful interference from the State or other persons.

Religious freedom includes several dimensions:

¹⁷ ⁴² Constitution of the People's Republic of Bangladesh 1972, Art 41.

⁴³ Universal Declaration of Human Rights 1948, Art 18.

- Freedom of Belief
- Every individual has the right to hold religious beliefs according to personal conscience.
- Freedom of Worship
- Individuals may perform religious rituals and ceremonies.
- Freedom of Religious Practice
- Citizens may follow religious teachings and customs.
- Freedom of Religious Propagation
- People may communicate and share their religious beliefs with others.
- Freedom from Religious Coercion
- No individual should be compelled to adopt or abandon a religion against their will.

These aspects collectively form the foundation of religious liberty in modern constitutional democracies.⁴³

6.3 Constitutional Basis of Religious Freedom

The Constitution of Bangladesh recognizes freedom of religion as a Fundamental Right.

The constitutional protection of religion reflects the belief that spiritual and religious choices are matters of personal conscience that deserve legal protection.

The Constitution seeks to achieve a balance between:

- Religious freedom.
- Equality before law.
- Social harmony.
- Public order.

The constitutional framework does not permit discrimination solely on religious grounds and recognizes equal citizenship regardless of faith.

Religious liberty is therefore closely connected with other Fundamental Rights such as equality, freedom of expression, freedom of association, and personal liberty.

6.4 Article 41: Freedom of Religion

Article 41 serves as the principal constitutional provision protecting religious freedom.

The Article guarantees every citizen the right to profess, practice, and propagate religion subject to law, public order, and morality.⁴⁴

This constitutional guarantee reflects the commitment of Bangladesh to religious tolerance and pluralism.

6.4.1 Freedom to Profess Religion

The right to profess religion means that individuals may openly declare and identify themselves with a particular faith.

Citizens may:

- Adopt a religion.
- Express religious beliefs.
- Publicly identify with a religious community.
- The State cannot arbitrarily interfere with these choices.

This aspect of religious freedom protects personal conscience and individual autonomy.¹⁸

6.4.2 Freedom to Practice Religion

The Constitution protects the right of individuals to practice their religion.

Religious practice may include:

- Prayer.
- Worship.
- Religious festivals.
- Observance of rituals.
- Religious ceremonies.

These activities form an essential part of religious life and cultural identity.

Protection of religious practice helps preserve diversity and social harmony.

6.4.3 Freedom to Propagate Religion

The Constitution also guarantees the freedom to propagate religion.

^{18 44} Constitution of the People's Republic of Bangladesh 1972, Art 41.

Propagation means communicating religious beliefs and sharing religious teachings with others.

This freedom allows religious communities to:

Conduct religious discussions.

Publish religious materials.

Organize educational activities.

Promote religious understanding.

However, propagation does not include coercion or forced conversion.

The constitutional protection is intended to facilitate peaceful communication of religious beliefs while respecting the rights of others.

6.5 Limitations on Religious Freedom

Although religious freedom is a Fundamental Right, it is not absolute.

The Constitution permits restrictions in certain circumstances.

Restrictions may be imposed to protect:

- Public Order

Religious activities must not threaten public peace and security.

- Morality

Practices contrary to public morality may be regulated.

- Health and Safety

Certain activities may be restricted to protect public health.

- Rights of Others

Religious freedom must be exercised in a manner that respects the rights and freedoms of other individuals.

The purpose of these limitations is not to suppress religion but to ensure social harmony and public welfare.⁴⁵

6.6 Secularism and the Constitution of Bangladesh

Secularism occupies an important place in the constitutional history of Bangladesh.

The original Constitution of 1972 recognized secularism as one of the four fundamental principles of State policy.

Secularism in the Bangladeshi context does not mean opposition to religion. Rather, it means:

- Equal treatment of all religions.
- Religious neutrality of the State.
- Protection against religious discrimination.
- Respect for religious diversity.

The constitutional principle of secularism seeks to ensure that citizens of all faiths enjoy equal dignity and equal protection under the law.⁴⁶

6.7 Religious Tolerance and Social Harmony

Religious tolerance is essential for maintaining peace and stability in a diverse society.

Tolerance means respecting the rights of others to hold beliefs that may differ from one's own.

The Constitution encourages:

- Mutual respect.
- Peaceful coexistence.
- Interfaith harmony.
- Equal citizenship.

Religious tolerance contributes significantly to national unity and democratic development.

A society characterized by tolerance is better able to protect human rights and prevent conflict.

6.8 Cultural Rights and Constitutional Protection

Culture forms an important aspect of human identity.

Bangladesh is home to diverse cultural traditions, languages, customs, and communities.

Protection of cultural rights ensures that individuals and groups may preserve and develop their cultural heritage.

Cultural rights include:

- Preservation of traditions.
- Protection of language.
- Promotion of cultural practices.

Participation in cultural life.

The Constitution recognizes the importance of cultural diversity and seeks to protect the rich cultural heritage of the nation.⁴⁷

6.9 Rights of Ethnic and Indigenous Communities

Bangladesh contains several ethnic and indigenous communities with distinct languages, traditions, and cultural identities.¹⁹

Protection of these communities contributes to:

- Cultural diversity.
- Social inclusion.
- Equality.
- Human dignity.

Constitutional principles support efforts to preserve the cultural heritage of these communities and ensure equal treatment before law.

Respect for diversity strengthens national unity by recognizing the value of different cultural traditions.

6.10 Religious Minorities in Bangladesh

Religious minorities constitute an important part of Bangladeshi society.

¹⁹ ⁴⁵ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 341.

⁴⁶ Constitution of the People's Republic of Bangladesh 1972, Art 12.

⁴⁷ Kamal Hossain, *Bangladesh Constitution: Trends and Issues* (UPL) 215.

The Constitution guarantees equal protection to all citizens regardless of religion.

Minority communities enjoy rights relating to:

- Religious worship.
- Property ownership.
- Education.
- Cultural expression.
- Participation in public life.

Protection of minority rights is an important measure of democratic governance and constitutionalism.

The State bears responsibility for ensuring that minority communities are protected against discrimination and violence.

6.11 Judicial Interpretation of Religious Freedom

The judiciary plays an important role in protecting religious freedom.

Courts interpret constitutional provisions and resolve disputes involving religious rights.

Judicial interpretation generally emphasizes:

- Equality before law.
- Religious tolerance.
- Constitutional supremacy.
- Protection of minorities.

Through judicial review, courts ensure that governmental actions affecting religion remain consistent with constitutional principles.⁴⁸

The judiciary therefore serves as an important safeguard against violations of religious liberty.

6.12 International Human Rights Standards

Freedom of religion is recognized by numerous international human rights instruments.

These include:

1. Universal Declaration of Human Rights (UDHR).
2. International Covenant on Civil and Political Rights (ICCPR).
3. Convention on the Rights of the Child (CRC).

International law recognizes that every person has the right to freedom of thought, conscience, and religion.⁴⁹

Bangladesh, as a member of the international community, seeks to uphold these principles through constitutional and legal protections.²⁰

6.13 Challenges to Religious Freedom

Despite constitutional guarantees, several challenges continue to affect the realization of religious freedom.

- Social Tensions

Misunderstandings and prejudices may occasionally create tensions among communities.

- Discrimination

Certain groups may experience unequal treatment in practice.

- Lack of Awareness

Many citizens remain unaware of constitutional protections.

- Cultural Marginalization

Some minority communities face difficulties preserving cultural traditions.

Addressing these challenges requires cooperation among governmental institutions, civil society, educational organizations, and community leaders.

6.14 Impact of Religious Freedom in Bangladesh

Religious freedom has had significant positive impacts on Bangladeshi society.

These include:

²⁰ ⁴⁸ Mahmudul Islam, Constitutional Law of Bangladesh 345.

⁴⁹ International Covenant on Civil and Political Rights 1966, Art 18.

- Promotion of Social Harmony

Constitutional protections encourage peaceful coexistence among religious communities.

- Protection of Human Dignity

Individuals may freely follow personal beliefs and convictions.

- Strengthening Democracy

Religious liberty supports pluralism and democratic participation.

- Cultural Development

Religious and cultural diversity enriches national life.

- Protection of Minority Rights

Constitutional safeguards contribute to equality and inclusion.

These impacts demonstrate the importance of religious freedom in maintaining a democratic and inclusive society.

6.15 Conclusion

Freedom of religion and cultural rights constitute essential components of the constitutional framework of Bangladesh. Through Article 41 and related constitutional principles, the Constitution guarantees the right to profess, practice, and propagate religion while promoting equality, tolerance, and social harmony.

Chapter VII

Constitutional Remedies and Judicial Enforcement of Fundamental Rights

7.1 Introduction

The protection of Fundamental Rights would be meaningless if there were no effective mechanism for their enforcement. A right without a remedy is merely a declaration and cannot provide real protection to citizens. Recognizing this principle, the Constitution of Bangladesh not only guarantees Fundamental Rights but also provides constitutional remedies for their enforcement.

The Constitution entrusts the judiciary, particularly the High Court Division of the Supreme Court, with the responsibility of protecting constitutional rights. Through judicial review and writ jurisdiction, courts act as guardians of the Constitution and ensure that governmental authorities act within constitutional limits.

Constitutional remedies are therefore regarded as the backbone of the Fundamental Rights system. They provide citizens with a legal mechanism to challenge unconstitutional laws, unlawful administrative actions, and violations of constitutional rights. Through these remedies, the Constitution transforms Fundamental Rights from theoretical promises into enforceable legal protections.⁴⁷

This chapter examines the constitutional framework of remedies, the role of judicial review, the writ jurisdiction of the High Court Division, and the significance of judicial enforcement in protecting Fundamental Rights in Bangladesh.

7.2 Importance of Constitutional Remedies

Constitutional remedies occupy a special place within constitutional law because they guarantee the practical effectiveness of rights.

Fundamental Rights become meaningful only when citizens can seek protection from courts against violations. If no remedy exists, constitutional rights remain merely symbolic declarations.

Constitutional remedies perform several important functions:

Protection of Individual Rights

They enable individuals to challenge unlawful actions affecting their rights and freedoms.

Limitation of Governmental Power

Governmental institutions must operate within constitutional boundaries and remain accountable for violations.

Enforcement of Constitutional Supremacy

Constitutional remedies ensure that the Constitution remains the supreme law of the land.

Promotion of Rule of Law

Remedies reinforce the principle that all persons and institutions are subject to law.

Strengthening Democracy

Judicial enforcement protects democratic values by preventing arbitrary exercises of power.

For these reasons, constitutional remedies are often described as the “heart and soul” of Fundamental Rights protection.⁴⁸

7.3 Article 44: Right to Constitutional Remedies

Article 44 of the Constitution provides the constitutional foundation for enforcing Fundamental Rights.

The Article guarantees the right of every citizen to move the High Court Division for enforcement of Fundamental Rights.

The significance of Article 44 lies in the fact that it converts constitutional guarantees into enforceable legal claims.²¹

Article 44 serves several important purposes:

- It recognizes access to constitutional justice as a constitutional right.

²¹ ⁴⁷ Constitution of the People’s Republic of Bangladesh 1972, Art 44.

⁴⁸ Mahmudul Islam, Constitutional Law of Bangladesh (3rd edn, Mullick Brothers 2012) 512.

- It empowers citizens to challenge violations of Fundamental Rights.
- It strengthens judicial protection of constitutional freedoms.
- It reinforces accountability of public authorities.

Without Article 44, many constitutional guarantees would remain ineffective because citizens would lack a direct mechanism for enforcement.⁴⁹

7.4 Article 102: Power of the High Court Division

Article 102 is one of the most important provisions in the Constitution.

This Article empowers the High Court Division to issue orders and directions necessary for enforcing Fundamental Rights and ensuring legality of governmental actions.

Article 102 establishes the constitutional basis of judicial review in Bangladesh.

Through this provision, the High Court Division may:

- Review executive actions.
- Review administrative decisions.
- Examine the legality of detention.
- Declare unlawful actions void.
- Protect constitutional rights.
- Ensure compliance with constitutional requirements.

The powers granted under Article 102 make the judiciary a central institution in constitutional governance.⁵⁰

7.5 Concept of Judicial Review

Judicial review refers to the authority of courts to examine whether laws and governmental actions comply with the Constitution.

The doctrine is based on the principle that the Constitution is the supreme law of the State.²²

Where a law or governmental action conflicts with the Constitution, courts possess the power to invalidate such actions.

²² ⁴⁹ Constitution of the People's Republic of Bangladesh 1972, Art 44.

⁵⁰ Constitution of the People's Republic of Bangladesh 1972, Art 102.

Judicial review performs several important functions:

- Constitutional Supremacy

It ensures that governmental institutions remain subordinate to the Constitution.

- Protection of Rights

Courts protect individuals from unconstitutional actions.

- Balance of Power

Judicial review maintains equilibrium among different branches of government.

- Accountability

Government officials remain accountable for unlawful conduct.

Judicial review has become one of the most effective mechanisms for protecting constitutional rights in Bangladesh.⁵¹

7.6 Writ Jurisdiction of the High Court Division

The High Court Division exercises writ jurisdiction under Article 102.

Writs are extraordinary legal remedies designed to protect rights and prevent unlawful actions.²³

The Constitution recognizes several important writs.

7.7 Habeas Corpus

Meaning

The term Habeas Corpus literally means “produce the body.”

This writ protects personal liberty by requiring authorities to produce a detained person before the court and justify the legality of detention.

Importance

Habeas Corpus is considered one of the most effective safeguards against unlawful imprisonment.

²³ ⁵¹ Anwar Hossain Chowdhury v Bangladesh 41 DLR (AD) 165

It ensures:

Protection against arbitrary detention.

Judicial supervision of detention.

Preservation of personal liberty.

Accountability of law enforcement agencies.

Constitutional Significance

Whenever a person is unlawfully detained, the court may order immediate release.

This writ serves as a powerful instrument for protecting personal freedom.⁵²

7.8 Mandamus**Meaning**

Mandamus means “we command.”

This writ is issued to compel a public authority to perform a legal duty that it has failed or refused to perform.

Purpose

Mandamus ensures that public officials fulfill their legal obligations.

Examples include:

Performance of statutory duties.

Implementation of lawful decisions.

Execution of public responsibilities.

Importance

The writ promotes administrative accountability and prevents abuse of power through inaction.

7.9 Certiorari**Meaning**

Certiorari is issued to quash unlawful decisions made by lower courts, tribunals, or public authorities.

Grounds

The writ may be issued where:

- Jurisdiction is exceeded.
- Legal errors occur.
- Principles of natural justice are violated.
- Decisions are arbitrary or unreasonable.

Importance

Certiorari helps maintain legality and fairness within administrative processes.

7.10 Prohibition

Meaning

The writ of Prohibition prevents lower courts, tribunals, or authorities from acting beyond their jurisdiction.

Purpose

The objective is preventive rather than corrective.

Instead of correcting an unlawful action after it occurs, Prohibition stops the action before completion.

Significance

This writ protects citizens from unlawful exercises of authority and preserves constitutional legality.

7.11 Quo Warranto

Meaning

Quo Warranto means “by what authority.”

The writ challenges the legal basis upon which an individual occupies a public office.

Purpose

It prevents unlawful occupation of public positions.

Importance

Quo Warranto promotes transparency and accountability in public administration.

It ensures that only legally qualified persons hold public office.

7.12 Public Interest Litigation (PIL)

One of the most significant developments in constitutional law has been the growth of Public Interest Litigation.

Traditionally, only persons directly affected by a violation could seek judicial remedies.

However, modern constitutional jurisprudence recognizes that many public issues affect large groups of people who may be unable to approach courts individually.

Public Interest Litigation allows concerned individuals and organizations to seek judicial intervention on behalf of affected communities.

Areas of PIL

Public Interest Litigation has been used in matters involving:

- Environmental protection.
- Human rights.
- Women's rights.
- Child protection.
- Labor rights.
- Rights of disadvantaged groups.

PIL has significantly expanded access to constitutional justice in Bangladesh.⁵³

7.13 Role of the Supreme Court in Protecting Fundamental Rights

The Supreme Court acts as the guardian of the Constitution.

Its responsibilities include:

1. Constitutional Interpretation

The Court determines the meaning and scope of constitutional provisions.

2. Judicial Review

The Court examines the legality of governmental actions.

3. Protection of Citizens

The Court protects individuals against constitutional violations.

4. Preservation of Democracy

The Court safeguards democratic principles and constitutional governance.

Over the years, the Supreme Court has delivered numerous landmark decisions that strengthened the protection of Fundamental Rights.

7.14 Judicial Activism and Constitutional Development

Judicial activism refers to the proactive role played by courts in protecting constitutional values.²⁴

In Bangladesh, judicial activism has contributed significantly to:

Expansion of the right to life.

Environmental protection.

Human rights protection.

Government accountability.

Protection of vulnerable groups.

Through progressive interpretation, courts have adapted constitutional rights to changing social realities.⁵⁴

7.15 Challenges in Judicial Enforcement

Despite significant achievements, several challenges continue to affect judicial enforcement.

- Delay in Judicial Proceedings

²⁴ ⁵² Constitution of the People's Republic of Bangladesh 1972, Art 102(2)(b)(i).

⁵³ Dr Mohiuddin Farooque v Bangladesh 48 DLR (AD) 438.

⁵⁴ Anwar Hossain Chowdhury v Bangladesh 41 DLR (AD) 165.

Lengthy litigation often reduces the effectiveness of remedies.

- High Litigation Costs

Many citizens cannot afford legal proceedings.

- Lack of Legal Awareness

Citizens may be unaware of available constitutional remedies.

- Administrative Obstacles

Implementation of judicial decisions may sometimes face difficulties.

- Case Backlog

Large numbers of pending cases place pressure on judicial institutions.

Addressing these challenges remains essential for strengthening constitutional justice.

7.16 Significance of Constitutional Remedies in Bangladesh

Constitutional remedies have transformed the protection of rights in Bangladesh.

Their significance includes:

Strengthening democracy.

Protecting citizens against abuse.

Preserving constitutional supremacy.

Enhancing accountability.

Promoting human rights.

Strengthening rule of law.

Encouraging good governance.

Without constitutional remedies, Fundamental Rights would lack practical effectiveness.

Chapter VIII

Limitations and Suspension of Fundamental Rights

8.1 Introduction

Fundamental Rights are essential for the protection of liberty, equality, justice, and human dignity. However, no constitutional system in the world recognizes these rights as completely absolute. The exercise of individual rights must sometimes be balanced against the interests of society, public order, national security, and the welfare of the State. For this reason, the Constitution of Bangladesh permits certain limitations and restrictions on Fundamental Rights under specific circumstances.²⁵

The Constitution seeks to maintain a balance between individual freedom and collective interests. While citizens enjoy various constitutional freedoms, these freedoms must be exercised responsibly and in accordance with law. Excessive restrictions may threaten democracy, whereas unlimited freedom may create disorder and instability. Therefore, constitutional limitations are intended to preserve harmony between individual rights and public interests.⁵²

This chapter examines the constitutional basis of restrictions on Fundamental Rights, emergency provisions, preventive detention, judicial approaches toward restrictions, and the constitutional principles governing the suspension of rights.

8.2 Nature of Constitutional Limitations

Fundamental Rights are not unlimited privileges. The Constitution recognizes that under certain circumstances the State may impose restrictions to protect larger public interests.

Constitutional limitations are based on the idea that individual rights exist within society and must be exercised in a manner that respects the rights of others. For example, freedom of speech does not permit incitement to violence, and freedom of assembly does not authorize activities that threaten public security.

²⁵ ⁵² Constitution of the People's Republic of Bangladesh 1972, Part III.

The purpose of constitutional limitations is not to destroy rights but to regulate their exercise in a reasonable manner. Such limitations must be lawful, necessary, and proportionate to the objective sought to be achieved.

A democratic government must therefore strike a careful balance between protecting liberty and maintaining social order.

8.3 Reasonable Restrictions on Fundamental Rights

Many Fundamental Rights guaranteed by the Constitution are subject to reasonable restrictions imposed by law.

The concept of “reasonable restriction” means that restrictions must not be arbitrary, excessive, or discriminatory. They must be imposed for legitimate constitutional purposes and should be proportionate to the needs of society.

Restrictions may generally be imposed in the interests of:

Public Order

Public order refers to the maintenance of peace, safety, and stability within society. Activities that threaten public order may be regulated by law.

State Security

The State may restrict certain activities that endanger national security, sovereignty, or territorial integrity.

Public Morality

Certain limitations may be imposed to preserve moral standards recognized by society.

Public Health

Restrictions may be necessary to protect citizens from health risks and public emergencies.

Protection of Rights of Others

One person’s freedom cannot be exercised in a way that violates the rights of another person.

The Constitution therefore permits restrictions that are necessary for maintaining a democratic and orderly society.⁵³

8.4 Restrictions on Freedom of Speech and Expression

Freedom of speech and expression is one of the most important constitutional freedoms. However, Article 39 allows restrictions in certain circumstances.

The State may impose limitations relating to:

Security of the State.

Friendly relations with foreign states.

Public order.

Decency and morality.

Contempt of court.

Defamation.

Incitement to offences.

These restrictions seek to balance freedom of expression with social responsibility.

Courts generally examine whether such restrictions are reasonable and consistent with constitutional principles. The judiciary plays an important role in ensuring that limitations do not become instruments for suppressing legitimate criticism or democratic participation.²⁶

8.5 Restrictions on Freedom of Assembly and Association

The Constitution guarantees freedom of assembly and association under Articles 37 and 38. These freedoms are essential for democratic participation and collective action.

Nevertheless, restrictions may be imposed to protect:

Public order.

Public safety.

National security.

²⁶ ⁵³ Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012) 387.

Public morality.

For example, authorities may regulate public gatherings to prevent violence or disruption. Similarly, organizations engaged in unlawful activities may face legal restrictions.

The objective of these limitations is to ensure that constitutional freedoms are exercised responsibly and peacefully.

8.6 Preventive Detention under the Constitution

One of the most controversial limitations on personal liberty is preventive detention.

Preventive detention differs from ordinary imprisonment because it is based on the possibility that an individual may engage in harmful activities in the future rather than punishment for a crime already committed.

The Constitution permits preventive detention under specific circumstances. The justification generally relates to:

National security.

Public order.

Protection of the State.

Prevention of serious threats.

Supporters argue that preventive detention enables authorities to address threats before significant harm occurs.

However, critics contend that preventive detention creates risks of abuse because individuals may be deprived of liberty without criminal conviction.

For this reason, constitutional safeguards and judicial review remain essential in cases involving preventive detention.⁵⁴

8.7 Emergency Provisions and Suspension of Rights

The Constitution contains provisions enabling the State to respond to extraordinary situations through emergency measures.

A state of emergency may be declared when serious threats arise, such as:

War.

External aggression.

Internal disturbances.

Threats to national security.

During an emergency, certain constitutional rights may be restricted or suspended.

The rationale behind emergency powers is that extraordinary circumstances may require extraordinary governmental measures to protect the nation and restore stability.

However, emergency powers must be exercised cautiously because they have the potential to affect democratic freedoms and individual liberties.

Constitutional history demonstrates that emergency powers should be subject to strict legal controls to prevent misuse.²⁷

8.8 Judicial Review of Restrictions

The judiciary plays a crucial role in reviewing restrictions imposed upon Fundamental Rights.

Courts examine whether:

Restrictions are authorized by law.

The purpose of the restriction is legitimate.

The restriction is reasonable.

Constitutional procedures have been followed.

Judicial review serves as an important safeguard against arbitrary governmental action.

The Supreme Court has repeatedly emphasized that constitutional limitations must be interpreted narrowly and applied consistently with democratic principles.

Through judicial review, courts help maintain a balance between governmental authority and individual freedom.⁵⁵

8.9 Balancing Individual Rights and Public Interest

²⁷ ⁵⁵ Anwar Hossain Chowdhury v Bangladesh 41 DLR (AD) 165.

One of the most difficult tasks in constitutional law is balancing individual rights with public interests.

Absolute freedom may undermine public safety and social order, while excessive restrictions may destroy democracy and constitutionalism.

The Constitution seeks to maintain equilibrium between:

Liberty and security.

Individual rights and collective welfare.

Freedom and responsibility.

Courts, legislatures, and administrative authorities all play important roles in maintaining this balance.

A democratic society requires both effective protection of rights and responsible governance.

8.10 Challenges in the Application of Restrictions

Several challenges arise in the application of constitutional restrictions.

Risk of Abuse

Government authorities may occasionally use restrictions excessively.

Political Misuse

Emergency powers and preventive detention may sometimes be criticized for political reasons.

Lack of Awareness

Citizens may not fully understand constitutional limitations and protections.

Administrative Problems

Implementation of restrictions may not always comply with legal standards.

These challenges highlight the importance of judicial oversight and constitutional accountability.

8.11 Importance of Constitutional Safeguards

Constitutional safeguards ensure that limitations do not become instruments of oppression.

Such safeguards include:

Judicial review.

Access to courts.

Constitutional remedies.

Procedural protections.

Transparency and accountability.

These mechanisms help preserve the democratic character of the Constitution even during periods of crisis.

Without effective safeguards, constitutional freedoms could easily be undermined.

8.12 Conclusion

Although Fundamental Rights occupy a central place in the Constitution of Bangladesh, they are not absolute. The Constitution permits reasonable restrictions and, in exceptional circumstances, temporary suspension of certain rights in order to protect public order, national security, and collective welfare. However, such limitations must always remain subject to constitutional principles, judicial review, and the rule of law.

The effectiveness of constitutional governance depends upon maintaining an appropriate balance between individual liberty and public interest. Excessive restrictions threaten democracy, while the absence of restrictions may undermine social stability. Therefore, constitutional limitations must be carefully applied to ensure that the fundamental values of freedom, justice, equality, and human dignity remain protected.

Chapter IX

Impact of Fundamental Rights in Bangladesh

9.1 Introduction

Fundamental Rights are among the most significant features of the Constitution of Bangladesh. These rights are intended to protect individuals from arbitrary governmental actions and to promote justice, equality, liberty, and human dignity. Since the adoption of the Constitution in 1972, Fundamental Rights have played an important role in shaping the legal, political, social, and economic development of Bangladesh.

The impact of Fundamental Rights can be observed in various aspects of national life. They have strengthened democratic governance, enhanced judicial accountability, promoted social justice, improved awareness of human rights, and influenced public policy. At the same time, challenges such as poverty, political instability, administrative inefficiency, and lack of awareness have limited their full realization.

This chapter evaluates the overall impact of Fundamental Rights in Bangladesh and examines their influence on different sectors of society.

9.2 Impact on Democratic Governance

One of the most important impacts of Fundamental Rights has been the strengthening of democratic governance.

Democracy requires the protection of civil liberties such as freedom of speech, freedom of assembly, freedom of association, and equality before law. These rights enable citizens to participate in political activities, express opinions, criticize governmental policies, and engage in public debates.

Fundamental Rights contribute to democracy by:

Protecting political participation.

Encouraging public accountability.

Supporting free discussion of public issues.

Preventing abuse of governmental power.

Strengthening opposition activities.

Without constitutional protection of rights, democratic institutions would be vulnerable to authoritarian tendencies.⁵⁷

9.3 Impact on Rule of Law

The Constitution establishes the principle that all persons and institutions are subject to law.

Fundamental Rights reinforce the rule of law by ensuring that governmental actions remain within constitutional limits. Citizens may challenge unlawful decisions before the courts and seek constitutional remedies.

The judiciary has frequently used Fundamental Rights provisions to review executive actions and protect citizens from arbitrary treatment.

As a result, the concept of constitutional supremacy has become an important feature of Bangladesh's legal system.⁵⁸

9.4 Impact on Judicial Development

The protection of Fundamental Rights has significantly influenced the development of constitutional jurisprudence in Bangladesh.²⁸

The Supreme Court has delivered numerous landmark judgments concerning:

Equality before law.

Freedom of expression.

Right to life.

Environmental protection.

Judicial independence.

Constitutional remedies.

²⁸ ⁵⁷ Constitution of Bangladesh, Arts 37–39.

⁵⁸ Constitution of Bangladesh, Art 7.

⁵⁹ Bangladesh Italian Marble Works Ltd v Bangladesh 62 DLR (AD) 298.

Through these decisions, the judiciary has expanded the meaning and scope of constitutional rights.

Judicial activism has played a major role in ensuring that constitutional rights remain relevant to contemporary social realities.⁵⁹

9.5 Impact on Human Rights Protection

Fundamental Rights have strengthened the broader human rights framework in Bangladesh.

These rights have contributed to:

Protection against discrimination.

Protection from arbitrary detention.

Promotion of fair trial rights.

Protection of vulnerable groups.

Recognition of human dignity.

Human rights organizations frequently rely on constitutional provisions to advocate for reforms and challenge violations.

The constitutional framework provides an important legal foundation for protecting individual freedoms and promoting justice.⁶⁰

9.6 Impact on Women's Rights

The Constitution guarantees equality between men and women and permits special measures for women.

As a result, significant progress has been made in:

Female education.

Women's employment.

Political participation.

Access to public services.

Leadership opportunities.

Women now participate actively in various sectors including government, business, education, law, and civil society.

Although challenges remain, constitutional guarantees have contributed substantially to women's empowerment.⁶¹

9.7 Impact on Minority Communities

Fundamental Rights protect religious and cultural minorities by guaranteeing equality before law and freedom of religion.²⁹

These constitutional protections help:

Promote social harmony.

Protect cultural diversity.

Prevent discriminatory treatment.

Strengthen national unity.

The Constitution recognizes that all citizens deserve equal respect and protection regardless of religious or cultural background.

Protection of minority rights remains essential for maintaining an inclusive democratic society.⁶²

9.8 Impact on Freedom of Expression

Freedom of expression has become one of the most influential constitutional rights.

This freedom enables citizens to:

Share opinions.

Criticize public policies.

Participate in political discussions.

Access information.

²⁹ Universal Declaration of Human Rights 1948.

⁶¹ Constitution of Bangladesh, Art 28.

⁶² Constitution of Bangladesh, Arts 27 and 41

Promote accountability.

Media organizations, journalists, academics, and civil society groups rely heavily on constitutional protections for freedom of expression.

The growth of public discourse and civic engagement demonstrates the importance of this right in modern Bangladesh.⁶³

9.9 Impact on Environmental Protection

Judicial interpretation of the right to life has expanded constitutional protection to environmental issues.

Environmental protection is now increasingly viewed as a constitutional concern because environmental degradation directly affects human health and survival.³⁰

Fundamental Rights have contributed to:

Environmental litigation.

Public awareness campaigns.

Judicial intervention against pollution.

Protection of natural resources.

These developments illustrate how constitutional rights can adapt to emerging challenges.⁶⁴

9.10 Socio-Economic Impact

Fundamental Rights have indirectly influenced socio-economic development.

Although many socio-economic rights are contained within the Fundamental Principles of State Policy rather than Part III, constitutional rights continue to support development by:

Promoting equality.

Encouraging educational opportunities.

³⁰ Constitution of Bangladesh, Art 39.

⁶⁴ Dr Mohiuddin Farooque v Bangladesh 48 DLR (AD) 438.

Strengthening legal security.

Supporting fair employment practices.

Enhancing access to justice.

A stable constitutional system creates favorable conditions for economic growth and social development.

9.11 Public Awareness of Rights

Over time, citizens have become increasingly aware of their constitutional rights.

This awareness has been promoted through:

Educational institutions.

Media coverage.

Judicial decisions.

Human rights organizations.

Civil society initiatives.

Greater awareness enables individuals to challenge violations and demand accountability from public authorities.

An informed citizenry is essential for effective constitutional governance.⁶⁵

9.12 Challenges Affecting the Impact of Fundamental Rights

Despite significant achievements, several challenges continue to affect the realization of Fundamental Rights.

Poverty

Economic hardship often prevents citizens from fully enjoying constitutional rights.

Illiteracy

Limited educational opportunities reduce awareness of constitutional protections.

Political Instability

Political conflicts may undermine democratic freedoms.

Administrative Inefficiency

Weak implementation mechanisms affect enforcement.

Delays in Justice

Lengthy judicial proceedings may discourage individuals from seeking remedies.

Corruption

Corruption can weaken public confidence in legal institutions.

These challenges demonstrate that constitutional guarantees alone are insufficient without effective implementation.

9.13 Overall Assessment

The impact of Fundamental Rights in Bangladesh has been substantial and far-reaching.

They have:

Strengthened democracy.

Promoted accountability.

Expanded judicial protection.

Improved awareness of rights.

Encouraged social justice.

Protected human dignity.

Influenced public policy.

Although significant obstacles remain, Fundamental Rights continue to serve as essential instruments for constitutional governance and human development.

Chapter X

Findings, Recommendations and Conclusion

10.1 Introduction

This thesis has examined the constitutional provisions relating to Fundamental Rights in Bangladesh and analyzed their practical impact on society, governance, and the legal system.

The study demonstrates that Fundamental Rights constitute one of the most important features of the Constitution. They provide legal protection against arbitrary governmental action and promote justice, equality, liberty, and human dignity.

At the same time, the research reveals that the effectiveness of these rights depends not only on constitutional guarantees but also on proper implementation, judicial independence, public awareness, and institutional accountability.

10.2 Major Findings of the Study

The study has produced several important findings.

Finding 1: Strong Constitutional Framework

The Constitution of Bangladesh contains a comprehensive catalogue of Fundamental Rights under Part III.

These rights cover:

Equality.

Personal liberty.

Freedom of expression.

Freedom of religion.

Protection against discrimination.

Constitutional remedies.

The constitutional framework is broadly consistent with international human rights standards.⁶⁶

Finding 2: Judiciary Plays a Crucial Role

The Supreme Court has played an essential role in protecting and expanding Fundamental Rights.

Judicial interpretation has transformed constitutional rights into practical protections capable of addressing modern challenges.

Landmark decisions have strengthened constitutional governance and accountability.

Finding 3: Right to Life Has Expanded Significantly

The right to life is no longer limited to protection against physical death.

Judicial interpretation now includes:

Human dignity.

Environmental protection.

Health concerns.

Fair treatment.

Access to justice.

This represents one of the most important developments in constitutional jurisprudence.

Finding 4: Gap Between Law and Practice

Although constitutional guarantees are strong, practical implementation remains imperfect.

Many citizens continue to face obstacles such as:

Poverty.

Lack of awareness.

Delays in justice.

Administrative barriers.

This gap remains a major challenge.

Finding 5: Rights Have Strengthened Democracy

Fundamental Rights have contributed significantly to democratic governance by promoting participation, accountability, transparency, and public debate.

They have become important safeguards against arbitrary exercise of power.

10.3 Recommendations

10.3.1 Strengthening Judicial Independence

Judicial independence should be further strengthened to ensure impartial enforcement of constitutional rights.

Independent courts are essential for protecting citizens against abuse of power.

10.3.2 Increasing Public Awareness

Government institutions, universities, and civil society organizations should conduct awareness programs concerning constitutional rights.

Citizens cannot effectively protect rights they do not understand.

10.3.3 Improving Access to Justice

Legal services should be made more accessible, particularly for disadvantaged groups.

Measures may include:

Expanded legal aid.

Reduced litigation costs.

Simplified procedures.

10.3.4 Reforming Preventive Detention Practices

Preventive detention laws should be applied cautiously and subject to strict judicial oversight.

Constitutional liberty requires strong safeguards against arbitrary detention.

10.3.5 Enhancing Human Rights Education

Educational institutions should incorporate constitutional and human rights education into academic curricula.

This would promote constitutional culture and responsible citizenship.

10.3.6 Administrative Accountability

Public officials should be held accountable for actions that violate constitutional rights.

Effective accountability mechanisms increase public confidence in government institutions.

10.3.7 Protection of Vulnerable Groups

Additional measures should be adopted to protect:

Women.

Children.

Persons with disabilities.

Ethnic minorities.

Economically disadvantaged citizens.

Substantive equality requires special attention to vulnerable groups.

10.4 Future Prospects of Fundamental Rights in Bangladesh

The future of Fundamental Rights in Bangladesh depends upon continued commitment to constitutional values.

Several positive developments offer reasons for optimism:

Increased public awareness.

Growth of civil society.

Expanding constitutional jurisprudence.

Greater emphasis on human rights.

If supported by effective institutions and democratic governance, these developments can strengthen constitutional protection in the future.

10.5 Conclusion

Fundamental Rights represent the heart of the Constitution of Bangladesh. They embody the nation's commitment to democracy, justice, liberty, equality, and human

dignity. Since independence, these rights have played a crucial role in shaping the legal and political development of the country.

The Constitution provides a strong framework for protecting individual freedoms, and the judiciary has contributed significantly to the evolution of constitutional rights through progressive interpretation. Nevertheless, challenges such as poverty, administrative inefficiency, political tensions, and limited awareness continue to affect implementation.

The study concludes that Fundamental Rights have had a profound positive impact on Bangladesh. They have strengthened democratic governance, enhanced judicial accountability, promoted social justice, and protected human dignity. Continued efforts to improve implementation and enforcement will ensure that the constitutional promises of freedom, equality, and justice become realities for all citizens.

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