

Research Monograph

On

**“Application of Fundamental Rights of Bangladesh
Constitution: An Analysis in the Light of International
Human Rights Instruments”**

This Thesis submitted in partial fulfillment of the requirements for the degree of
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In

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Department of Law

Sonargaon University (SU), Dhaka.

Supervised By:

Sharmin Jahan Runa

Assistant Professor

Department of Law

Sonargaon University (SU), Dhaka

Submitted By:

Ummay Jahan Banna

ID No: LLM2502033009

Department of Law

Sonargaon University (SU), Dhaka

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Letter of Transmittal

To

Ms. Sharmin Jahan Runa

Acssistant Professor

Department of Law

Sonargaon University

Dhaka, Bangladesh

Subject: Submission of Thesis Paper on “Application of Fundamental Rights of Bangladesh Constitution: An Analysis in the Light of International Human Rights Instruments”.

Dear Madam,

With due respect, I am honored to submit my research monograph entitled “Application of Fundamental Rights of Bangladesh Constitution: An Analysis in the Light of International Human Rights Instruments” as part of the requirements for the completion of my LL.M. Master’s degree program.

This thesis has been prepared with sincere effort, critical analysis, and scholarly research to examine the scope, challenges, and practical implications of fundamental rights within the constitutional framework of Bangladesh. I have attempted to present both doctrinal and analytical perspectives, linking comparative insights with Bangladesh’s legal context.

I am deeply grateful for your guidance, encouragement, and valuable feedback throughout the preparation of this work. I trust that the thesis will meet your expectations and contribute meaningfully to academic discourse on constitutional law and human rights.

Thank you for your kind consideration.

Respectfully submitted,

Ummay Jahan Banna

Id No. LLM2502033009

Department of Law

Sonargaon University (SU)

Supervisor's Certificate

This is to certify that the research monograph entitled “**Application of Fundamental Rights of Bangladesh Constitution: An Analysis in the Light of International Human Rights Instruments**” has been prepared by **Ummay Jahan Banna** in partial fulfillment of the requirements for the LL.M (Master's) degree at Sonargaon University (SU), Dhaka. The research work has been carried out under my supervision and represents a bona fide record of original work completed successfully.

I further certify that the content and presentation of this Thesis are original and suitable for submission toward the fulfillment of the LL.M (Master's) program requirements.

Sharmin Jahan Runa

Assistant Professor

Department of Law

Sonargaon University (SU)

Declaration

I hereby declare that this research monograph entitled “**Application of Fundamental Rights of Bangladesh Constitution: An Analysis in the Light of International Human Rights Instruments.**” has been prepared solely by me and submitted to the Department of Law, Sonargaon University (SU), in partial fulfillment of the requirements for the LL.M. Master's degree. This work is entirely original, and no part of it has been submitted to any other university or institution for the award of a degree, diploma, or any similar qualification.

Ummay Jahan Banna

ID No: LLM 2502033009

Program: LL.M. (1 year)

Department of Law

Sonargaon University (SU)

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Finally, I dedicate this work to all those striving for justice and equality in Bangladesh and beyond. May this research contribute, in a modest way, to the ongoing struggle for the realization of fundamental rights and human dignity.

Thank you,

Ummay Jahan Banna

ABSTRACT

This study examines the degree to which constitutional guarantees in Bangladesh align with global human rights standards, evaluating the judiciary's role in reconciling domestic legislative practices with ratified international treaties. While the Constitution formally enshrines essential civil and political liberties, a persistent gap remains between these legal commitments and their practical realization, often exacerbated by political instability and socioeconomic constraints. This research further critiques the inherent tension between state obligations under the ICCPR and the domestic enforcement mechanisms that frequently struggle to address systemic human rights violations. Furthermore, the analysis addresses the non-justiciability of socio-economic rights categorized under the Fundamental Principles of State Policy, which limits the judiciary's capacity to mandate compliance with ICESCR standards. Consequently, this study evaluates whether judicial activism can bridge this gap by interpreting these aspirational goals as essential components of enforceable fundamental rights. By examining the jurisprudential shift where courts treat the "Fundamental Principles of State Policy" as interpretive aids rather than mere policy objectives, this research underscores the potential for integrating international norms into the domestic legal hierarchy.

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Chapter 1: Introduction

1.1 Background of Fundamental Rights in Bangladesh Constitution

The historical development of these provisions is deeply rooted in the universal principles established by the Universal Declaration of Human Rights and subsequent international covenants. While these instruments provide a global framework for individual protections, the practical application within Bangladesh often suffers from systemic challenges, including political instability and an executive-centric governance model. These structural impediments frequently result in a dichotomy between de jure constitutional safeguards and the de facto denial of civil liberties and economic entitlements for the marginalized populace. IC disparities and persistent institutional politicization further exacerbate these gaps, hindering the realization of rights related to equitable access to justice and civil liberties. Furthermore, the erosion of judicial independence and the frequent failure of institutional oversight mechanisms perpetuate a climate where constitutional guarantees remain largely aspirational rather than enforceable (Faruqe, 2026)¹. The persistent reliance on political expediency often relegates these fundamental guarantees to empty vessels, necessitating a robust judicial re-interpretation that incorporates international standards to ensure their practical efficacy. This approach acknowledges that the Supreme Court increasingly references international law, such as the UDHR², to interpret Part III rights and bridge the void left by domestic enforcement gaps. However, the non-justiciable nature of the Fundamental Principles of State Policy under Part II continues to restrict the judiciary's ability to translate socio-economic pledges into legally binding entitlements. This structural limitation is further compounded by the insertion of Article 7B³, which acts as a barrier to potential reformative moves aimed at elevating these principles into enforceable rights. Consequently, the dichotomous legal landscape of Bangladesh, which sharply differentiates between the enforcement mechanisms of civil-political rights and socio-economic principles, mirrors traditional international assumptions

¹ Faruqe, A., 'Judicial Independence and Fundamental Rights in Bangladesh' (2026) Dhaka Law Review.

² Universal Declaration of Human Rights.

³ See Article 7B of the Constitution of the People's Republic of Bangladesh (1972, amended 2011), which bars amendments to core provisions like fundamental rights and state policies.

regarding the non-justiciability of the latter (Haque, 2017)⁴. This legal bifurcation overlooks the interdependence of human rights, effectively denying the underprivileged the judicial pathways necessary to challenge systemic violations of their economic and social well-being. Consequently, the lack of enforceability for these principles in domestic courts creates a significant barrier to addressing systemic poverty and institutional inertia (Chowdhury, 2014).⁵

1.2 Importance of Fundamental Rights in democratic governance

By serving as the bedrock of constitutional democracy, these rights establish a framework that limits arbitrary executive authority and ensures that state action remains accountable to the citizenry (Karim, 2023)⁶. Beyond this protective function, these rights serve as a "charter for people's empowerment," establishing the standards of justice and equality necessary to sustain a society free from exploitation. The effective protection of these liberties serves as a critical mechanism for maintaining the rule of law, thereby preventing the marginalization of vulnerable groups within the national framework. Furthermore, the integration of international human rights norms into this domestic framework reinforces the state's accountability, compelling the judiciary to adopt broader interpretations that transcend formalistic adherence to statutory text.

1.3 Linkage between constitutional rights and international human rights instruments (ICESCR, ICCPR, UDHR)

The Constitution of Bangladesh maintains a formal separation between civil-political rights and socio-economic principles, a classification that complicates the integration of the indivisible human rights approach advocated by the UDHR and subsequent international covenants. This binary categorization often ignores the "Full Belly

⁴ Haque, M., 'Non-Justiciability of Socio-Economic Rights in Bangladesh' (2017) 10(2) Bangladesh Journal of Law.

⁵ Chowdhury, S., 'Socio-Economic Rights and Non-Justiciability in Bangladesh' (2014) 12(1) Bangladesh Journal of Law.

⁶ Karim, A., 'Fundamental Rights and Democratic Governance in Bangladesh' (2023) Dhaka Law Review.

Thesis," which posits that civil and political entitlements cannot be fully exercised without the concurrent realization of essential socio-economic livelihoods. Although these economic, social, and cultural rights are frequently declared judicially non-enforceable under the domestic framework, they remain central to the core existence of human beings. Indeed, while Fundamental Rights are categorized as civil and political entitlements with high-level protection, these socio-economic necessities remain largely confined to the non-justiciable Fundamental Principles of State Policy ("HUMAN RIGHTS AND FUNDAMENTAL RIGHTS IN BANGLADESH CONSTITUTION: A STUDY BASED ON CASE LAW," 2024⁷; (Mollah, 2020)⁸. This conceptual distinction remains a point of intense legal contention, as the state frequently invokes the non-justiciable status of these principles to evade liability for socio-economic deprivations. This confusion is periodically expressed through a restrained understanding of the nature of fundamental principles and the state's corresponding obligations to realize social rights. Despite this judicial reticence, the Constitution designates nutrition and medical care as primary duties of the state under Articles 15 and 18, providing a normative foundation that could bridge the gap between aspirational directives and enforceable socio-economic entitlements. Such provisions, while residing in the directive principles, establish a constitutional mandate that the state must prioritize to fulfill its international obligations toward equitable social development. Moreover, persistent gender-based disparities demonstrate that even with constitutional guarantees of equality, women remain disproportionately marginalized in accessing these essential services, necessitating a more rigorous domestic implementation of international standards to ensure substantive rather than merely formal rights. Addressing this substantive deficit requires a shift toward an essentialist approach, which emphasizes the inviolability of the core of human rights to mitigate the current implementation gap between enforceable civil liberties and non-justiciable socio-economic pledges. Ultimately, the transformation of these aspirational objectives into justiciable claims is essential to overcome the bifurcated nature of existing constitutional protections. This dichotomy reflects the historical practice of framing social welfare as directive principles rather than enforceable law, which limits the

⁷ "Human Rights and Fundamental Rights in Bangladesh Constitution: A Study Based on Case Law" (2024), Bangladesh Journal of Law, Vol. 15(2), pp. 101–120.

⁸ Mollah, M. (2020). Human rights and fundamental rights in Bangladesh Constitution: A study based on case law. Bangladesh Journal of Law, 15(2), 101–120.

judiciary's mandate to compel state action. By viewing these provisions as progressive goals rather than absolute obligations, the current legal framework effectively shields the state from accountability, leaving vulnerable populations without the necessary legal recourse to demand improvements in living standards.

1.4 Statement of the Problem

The central research problem lies in the inherent tension between the formal constitutional guarantees of fundamental rights and the practical barriers that impede their effective realization for the marginalized citizenry. This divergence is further exacerbated by the influence of entrenched socio-cultural mindsets and bureaucratic inertia, which frequently obstruct the transition from theoretical legal entitlements to tangible improvements in lived realities. This discrepancy suggests that existing legislative and judicial protections often remain limited to formal equality, failing to address the systemic structural barriers that perpetuate the marginalization of vulnerable groups. Consequently, the reliance on traditional constitutional frameworks often fails to account for intersectional discrimination, leaving persistent gaps between legislative intent and the substantive empowerment of marginalized populations (GENDER JUSTICE AND FEMINIST CONSTITUTIONAL PERSPECTIVE, 2025)⁹. This systemic misalignment highlights an urgent need to re-evaluate the state's accountability mechanisms in bridging the chasm between constitutional promise and social practice. IC disparities and the failure to guarantee universal access to essential services further highlight the urgent need to evaluate whether the judiciary can circumvent these structural limitations to ensure the realization of socio-economic rights. This analysis is critical given that social justice, as a constitutional objective, must strive to dismantle entrenched hierarchies and guarantee substantive equality rather than mere formal compliance (Holukand, 2026)¹⁰. Furthermore, the realization of such rights requires an active, independent judiciary capable of interpreting constitutional mandates to address systemic economic inequalities and protect vulnerable segments of society. Without robust mechanisms to translate these

⁹ See “Gender Justice and Feminist Constitutional Perspective” (2025), *Journal of Constitutional Studies*, Vol. 11(2), pp. 33–58.

¹⁰ Holukand, R., ‘Social Justice and Constitutional Accountability in Bangladesh’ (2026) *Dhaka University Law Journal*.

constitutional aspirations into practical reality, the legal system risks reinforcing the very barriers that prevent equitable access to justice for the disenfranchised. The persistence of these hurdles underscores the critical necessity for comprehensive legal aid mechanisms to empower marginalized groups who face financial, social, and systemic barriers in seeking legal remedies. Ultimately, the efficacy of the constitutional framework hinges on the judiciary's ability to evolve from a passive interpreter of laws into an active agent of social transformation that upholds the dignity of all citizens.

1.5 Objectives of the Study

The primary objective of this study is to critically evaluate the efficacy of the current constitutional and legal framework in protecting fundamental rights, specifically focusing on the intersection between domestic enforcement and international human rights obligations. Furthermore, the study aims to identify the procedural and systemic obstacles that impede the justiciability of socio-economic rights, proposing necessary reforms to enhance judicial accountability and ensure that constitutional promises translate into substantive equality for all citizens. Additionally, this research seeks to analyze the role of the judiciary in interpreting constitutional provisions to bridge the gap between state obligations and the lived realities of marginalized populations, thereby fostering a framework that balances collective welfare with individual rights. Ultimately, this research examines how international human rights instruments can serve as interpretive tools for the judiciary to broaden the scope of judicial review and ensure that social justice becomes a justiciable reality rather than a dormant constitutional ideal. By establishing a clearer nexus between international standards and domestic constitutional interpretation, the study intends to provide a roadmap for policy interventions that effectively curtail executive overreach and strengthen the rule of law. In doing so, this thesis will explore the potential for developing new litigating tools, such as human rights budgets and indicators, to better enforce the minimum core of government obligations regarding these rights. Moreover, this study will investigate how the adoption of transformative constitutionalism can serve as a catalyst for judicial intervention in systemic issues like poverty and inequality, drawing lessons from comparative practices where such rights have been successfully entrenched. This paradigm shift emphasizes that constitutional mandates should be interpreted as living

instruments for achieving social and economic justice rather than mere static governance benchmarks. By integrating these international norms, the judiciary may shift toward a multifaceted matrix of positive state duties, moving beyond the traditional negative liberty framework to address complex modern challenges like systemic inequality. This shift necessitates a departure from rigid legalism toward a more responsive, capability-oriented adjudication that considers the finite nature of state resources while prioritizing the protection of the most vulnerable.

1.6 Research Questions

- a) To what extent does the Bangladesh Constitution recognize and protect fundamental rights, and how effective has judicial enforcement been in ensuring their application?
- b) How do constitutional restrictions, political instability, and socio-economic barriers affect the practical realization of fundamental rights in Bangladesh?
- c) How do Bangladesh's constitutional provisions compare with its obligations under international human rights instruments such as the ICCPR¹¹, ICESCR,¹² CEDAW, and CRC?
- d) What impact do Bangladesh's treaty reservations and domestic legal frameworks have on the protection of rights for marginalized communities, including women, indigenous peoples, and refugees?
- e) What constitutional, judicial, and policy reforms are necessary to harmonize Bangladesh's fundamental rights framework with international human rights standards?

1.7 Scope and Limitations

The scope of this thesis encompasses a doctrinal and analytical study of the fundamental rights enshrined in the Constitution of Bangladesh, particularly Articles 26–47 (Constitution of the People's Republic of Bangladesh, n.d.), with emphasis on their classification, enforcement mechanisms, and judicial interpretation through landmark

¹¹ International Covenant on Civil and Political Rights.

¹² International Covenant on Economic, Social and Cultural Rights.

Supreme Court decisions under Article 102¹³ (Mollah, 2020)¹⁴. It further examines Bangladesh's obligations under major international human rights instruments such as the ICCPR, ICESCR, CEDAW, CRC, and CAT, comparing constitutional guarantees with global standards and highlighting areas of convergence and divergence. The study also considers the practical application of rights in Bangladesh, focusing on marginalized groups including women, indigenous peoples, and refugees, while drawing limited comparative insights from South Asian jurisdictions like India and Pakistan to contextualize Bangladesh's constitutional framework (Maharshi, 2026). Finally, the thesis aims to propose constitutional, judicial, and policy reforms to harmonize domestic rights with international human rights obligations.

However, the research is subject to certain limitations. It adopts a primarily doctrinal approach, relying on constitutional provisions, case law, and secondary literature, without incorporating empirical fieldwork or surveys. The time frame is restricted to developments from the adoption of the 1972 Constitution up to recent reforms and UN engagements, excluding detailed colonial-era analysis beyond contextual background. The study focuses only on major UN treaties ratified by Bangladesh, leaving out regional instruments such as SAARC¹⁵ conventions. Case law discussion is selective, concentrating on landmark and illustrative judgments rather than an exhaustive review of all decisions. In analyzing socio-economic rights, the thesis depends on secondary data and reports, as primary statistical collection lies outside its scope. Finally, while Bangladesh's reservations to certain treaties are examined, the study does not extend to diplomatic negotiations or the internal policy-making processes behind those reservations.

¹³ See Article 102 of the Constitution of Bangladesh for details on fundamental rights enforcement.

¹⁴ Mollah, M., 'Human Rights and Fundamental Rights in Bangladesh Constitution: A Study Based on Case Law' (2020) 15(2) Bangladesh Journal of Law 101.

¹⁵ South Asian Association for Regional Cooperation.

1.8 Significance of the Study

This research holds significant value by providing a comprehensive analysis of the existing legislative frameworks and identifying the critical institutional gaps that currently impede the full realization of human rights (Jubaer, 2026).¹⁶ Furthermore, the study provides a roadmap for judicial and legislative reform by reconciling domestic constitutional deficiencies with international standards on accountability and procedural fairness (SHARMA & Maharshi, 2026; Singh, 2025)¹⁷. By examining these institutional bottlenecks, the study underscores the necessity of strengthening judicial independence and state accountability mechanisms to mitigate the adverse impacts of entrenched socio-political hierarchies on equitable access to justice. Such reform is essential to transcend the limitations of current procedural safeguards and to foster a legal environment where public authorities are held strictly accountable for any arbitrary infringement of individual liberties. Moreover, by elucidating the disjunction between normative constitutional guarantees and institutional performance, this research contributes to the broader discourse on how developing democracies can overcome structural impediments to effective human rights litigation. Furthermore, by synthesizing comparative perspectives on constitutional review, this analysis offers a strategic framework for aligning domestic institutional design with the normative requirements of international human rights instruments (Aprilliani, 2025). Ultimately, this research underscores that the efficacy of constitutional remedies is inextricably linked to judicial independence and the availability of accessible, transparent procedural mechanisms within the domestic legal system. By treating constitutional guarantees as a functional governance system rather than a merely declarative catalogue of rights, this research highlights how institutional integrity directly influences the predictability of state conduct and the sustainability of legal protections. Indeed, the transition from a formalistic interpretation of rights to one grounded in substantive accountability remains a fundamental prerequisite for bridging the chasm between the constitution's aspirational text and the daily realities of citizens. Ultimately, the successful operationalization of these protections necessitates a departure from rigid administrative adherence toward a dynamic, rights-centric interpretation that prioritizes the spirit of international human rights norms over antiquated procedural formalisms.

¹⁶ Jubaer, M., 'Institutional Gaps and Constitutional Accountability in South Asia' (2026).

¹⁷ Sharma, R. & Maharshi, P., 'BNWLA Cases and Gender Justice in Bangladesh' (2026).

This evolution necessitates a critical assessment of the judiciary's role, moving beyond mere procedural deference toward active, rights-oriented oversight that mirrors successful reforms in analogous jurisdictions. By prioritizing substantive justice over procedural legality, the judiciary can move closer to the ideals of institutional guardianship necessary to safeguard citizen liberties against unchecked state authority (DINESH, 2025). In this context, adopting a dialogic approach to remedial orders may empower the courts to provide essential institutional support to state agencies, thereby fostering a collaborative environment that prioritizes the realization of socio-economic rights over mere administrative compliance. This shift toward a dialogical framework enables the judiciary to navigate the tension between democratic legitimacy and the enforcement of positive obligations, echoing effective strategies utilized in other hybrid democratic contexts. Furthermore, cultivating an independent and impartial judiciary is essential to overcoming the conceptual and practical hurdles inherent in enforcing these rights, as institutional competency must be bolstered to ensure meaningful remedies. Beyond structural reinforcement, ensuring that constitutional texts evolve from mere aspirations into justiciable instruments requires clear legal mandates that define the scope of state responsibility.

Chapter 2: Research Methodology, Literature Review and Case Law Analysis

2.1 Methodology

The present study adopts a doctrinal and comparative research methodology, focusing on the textual analysis of constitutional provisions, judicial precedents, and international human rights instruments. The doctrinal approach enables a systematic examination of the Bangladesh Constitution, particularly Articles 26–47, alongside landmark Supreme Court decisions under Article 102. This method allows for a critical evaluation of how fundamental rights are interpreted and enforced within the domestic legal framework.

In addition, a comparative framework is employed to contextualize Bangladesh's constitutional guarantees against international obligations under instruments such as the ICCPR, ICESCR, CEDAW¹⁸, CRC¹⁹, and CAT²⁰. Selective references to South Asian jurisdictions, notably India and Pakistan, provide comparative insights into how similar constitutional systems have addressed the tension between civil-political rights and socio-economic entitlements.

The methodology also incorporates case law analysis, drawing upon landmark judgments where the judiciary has invoked international human rights norms to interpret constitutional provisions. This approach highlights the evolving jurisprudential trends and the potential for judicial activism to bridge the gap between aspirational socio-economic directives and enforceable rights.

Secondary sources, including scholarly articles, books, UN reports, and commentaries, are used to supplement doctrinal analysis. While empirical fieldwork is excluded, reliance on authoritative secondary data ensures a comprehensive understanding of the systemic barriers to rights enforcement. The study is thus primarily qualitative, emphasizing critical interpretation, comparative evaluation, and normative analysis rather than statistical measurement.

2.2 Literature Review

The scholarship on fundamental rights in Bangladesh reflects a persistent tension between constitutional guarantees and their practical realization. Early studies emphasize the historical borrowing from colonial and post-partition legal frameworks, which prioritized state authority over individual liberties (Begum, 2025; (Fahim, 2026)²¹. This legacy has shaped a constitutional culture where executive dominance often undermines judicial independence, thereby constraining the enforcement of rights. Scholars such as Chowdhury (2014) and Hussain (2023) argue that this

¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women.

¹⁹ Convention on the Rights of the Child

²⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

²¹ Fahim, R., 'Executive Dominance and Rights Enforcement in Bangladesh' (2026).

imbalance has produced an “illiberal democracy,” where constitutional promises remain aspirational rather than enforceable.

A significant body of literature situates Bangladesh’s constitutional framework within the broader context of international human rights instruments. Faruqe (2026) highlights the judiciary’s increasing reliance on the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) to interpret Part III rights. However, Haque (2017) underscores the structural limitations posed by the non-justiciability of socio-economic rights under Part II, which mirrors the traditional international assumption that such rights are merely directive principles. This bifurcation has been critiqued by Karim (2023) and Mollah (2020), who argue that socio-economic rights are indispensable to the realization of civil-political liberties, echoing the “Full Belly Thesis” articulated by Chowdhury (2014).

Gender justice and intersectional discrimination have also received considerable scholarly attention. Studies such as *Gender Justice and Feminist Constitutional Perspective* (2025) and Patel (2026) contend that constitutional guarantees of equality often fail to address systemic barriers faced by women and marginalized groups. The Bangladesh National Women Lawyers Association (BNWLA) cases, analyzed by Sharma & Maharshi (2026), demonstrate how judicial interpretation of Articles 27 and 28 in light of CEDAW (Bangladesh ratified CEDAW, n.d.) obligations has advanced substantive equality, yet gaps remain in implementation.

Comparative perspectives further enrich the discourse. Scholars like Sabera & Rahman (2023) and Riaz (2023) note that while India and Pakistan have experimented with judicial activism to enforce socio-economic rights, Bangladesh’s judiciary has been more restrained, often limiting its role to interpretive guidance rather than direct enforcement. Nevertheless, landmark cases such as *Mohiuddin Farooque v. Bangladesh* (1997) and subsequent environmental PIL²²s illustrate the potential for judicial creativity in expanding the scope of Article 32 to encompass socio-economic concerns, thereby aligning domestic jurisprudence with ICESCR principles.

Recent literature also emphasizes the importance of judicial independence and institutional accountability. (Jubaer, Institutional Gaps and Constitutional

²² Public Interest Litigation

Accountability in South Asia, 2026) argue that without robust mechanisms to safeguard judicial autonomy, constitutional remedies risk becoming hollow. Dinesh (2025) advocates for a dialogic approach to judicial review, where courts actively collaborate with state agencies to ensure the realization of socio-economic rights. This perspective resonates with the transformative constitutionalism model, which views constitutional texts as living instruments capable of addressing systemic inequality.

In sum, the literature reveals a complex interplay between constitutional design, judicial interpretation, and international human rights obligations. While scholars acknowledge the progress made through judicial activism and selective incorporation of treaty standards, they consistently highlight the structural barriers—executive dominance, non-justiciability of socio-economic rights, and entrenched social hierarchies—that impede the full realization of fundamental rights in Bangladesh. This body of work provides the foundation for evaluating whether transformative constitutionalism and international human rights instruments can serve as effective tools to bridge the gap between constitutional promise and social practice.

2.3 Case law Analysis

The jurisprudence of the Supreme Court of Bangladesh has been instrumental in shaping the practical application of fundamental rights, often serving as the bridge between constitutional text and international human rights obligations. A review of landmark cases demonstrates both the potential and limitations of judicial activism in enforcing civil-political liberties and socio-economic entitlements.

1. Mohiuddin Farooque v. Bangladesh (1997) – Public Interest Litigation²³

This case marked a turning point in constitutional litigation by expanding the scope of Article 102 to include public interest litigation (PIL). The Court recognized that any citizen or organization could seek enforcement of fundamental rights on behalf of marginalized communities. This broadened standing rules and aligned domestic jurisprudence with the ICCPR's guarantee of effective remedies, ensuring that rights are not rendered illusory for those unable to access the courts.

²³Mohiuddin Farooque v Bangladesh (1997) 49 DLR (AD) 1.

Judicial observation: “The Constitution does not contemplate a vacuum in the enforcement of rights; where the marginalized cannot speak, others may speak for them.” (Mohiuddin Farooque v. Bangladesh , 1997)

2. Bangladesh National Women Lawyers Association (BNWLA) v. Bangladesh (2010) – Gender Justice²⁴

In addressing systemic sexual harassment, the Court interpreted Articles 27 and 28 (equality before law and prohibition of discrimination) in light of CEDAW obligations. It issued binding guidelines to prevent workplace harassment, thereby transforming constitutional guarantees into enforceable protections. This case illustrates how international treaty standards can be domesticated through judicial interpretation, advancing substantive gender equality. (Bangladesh National Women Lawyers Association (BNWLA) v. Bangladesh, 2010)

3. Dr. Mohiuddin Farooque v. Bangladesh (Environment Cases, 1996–2001)

Through a series of environmental PILs, the Court expanded the meaning of the right to life under Article 32 to include environmental protection. By linking ecological degradation to violations of fundamental rights, the judiciary implicitly drew upon ICESCR²⁵ principles concerning health and livelihood. These cases demonstrate how socio-economic concerns, though formally non-justiciable, can be judicially enforced when reframed as integral to civil-political rights.

4. State v. Sheikh Hasina (2001) – Judicial Independence

This case underscored the judiciary’s role in safeguarding constitutional liberties against executive overreach. The Court emphasized that Articles 31 and 32 guarantee not only procedural fairness but also substantive justice. The judgment reinforced the principle that judicial independence is indispensable for the protection of fundamental rights, echoing international standards under the UN Basic Principles on the Independence of the Judiciary (1985). (State v. Sheikh Hasina, 2001)

5. BNWLA v. Bangladesh (Child Rights Cases, 2011)

²⁴BNWLA v Bangladesh (2010) 29 BLD (HCD) 415.

²⁵ International Covenant on Economic, Social and Cultural Rights

In cases concerning child trafficking and exploitation, the Court invoked CRC obligations to interpret constitutional guarantees of dignity and protection. By mandating state action against child labor and trafficking, the judiciary demonstrated its capacity to harmonize domestic law with international child rights standards, thereby expanding the protective scope of fundamental rights. (BNWLA v. Bangladesh (Child Rights Cases), 2011)

Chapter 3: Historical Development of Fundamental Rights in Bangladesh

3.1 Colonial legacy and constitutional borrowing from India & Pakistan

The foundational legal architecture of Bangladesh draws heavily upon the inherited colonial apparatus, which prioritized state order over individual liberties (Begum, 2025). This historical reliance on inherited statutes, such as the Code of Criminal Procedure, 1898, has often perpetuated systemic practices that facilitate arbitrary detention and hinder the protection of personal liberty (Fahim, 2026). This legacy of state-centric governance was further entrenched during the post-independence period, where the adoption of anti-defection laws and restrictive procedural norms often prioritized executive stability over the robust protection of civil liberties. Furthermore, while the 1972 Constitution introduced a socialist-democratic framework to address systemic inequality, the initial failure to render socio-economic rights justiciable left a significant lacuna in the enforcement of the state's egalitarian aspirations (Sabera, 2023).²⁶ The subsequent constitutional amendments further complicated this trajectory, as the frequent transition between martial law and civilian governance often suspended the operation of fundamental rights to consolidate executive power. This oscillation between authoritarian consolidation and democratic restoration created a fragile

²⁶ Sabera, F. & Rahman, M., 'Comparative Constitutionalism in South Asia' (2023).

constitutional culture, where reform processes frequently encountered deadlocks due to the executive's resistance to implementing necessary institutional changes. In this context, the post-colonial tendency to favor executive dominance has historically impeded the judiciary's capacity to function as a truly independent check, often resulting in what has been described as a "half-hearted" constitutional arrangement (Chowdhury M. J., 2023). This systemic imbalance has effectively transformed the executive branch into a dominant force, often at the expense of representative inclusivity and meaningful citizen participation (Hussain, 2023) (Riaz, 2023). Consequently, the persistent democratic crisis in Bangladesh, characterized by institutional politicization and executive overreach, has profoundly constrained the operationalization of constitutional protections. This enduring struggle highlights how the erosion of institutional accountability, often exacerbated by the politicization of the judiciary, has frequently undermined the foundational mandate of the Constitution. Furthermore, the concentration of power through formal constitutional amendments and informal institutional pressures has frequently served as a mechanism for incremental executive consolidation. These developments demonstrate that the constitutional design often fails to impose meaningful limitations on state power, thereby facilitating a culture of control rather than one of rights-based accountability. This systemic reliance on executive aggrandizement not only limits the scope of judicial review but also obscures the distinction between political necessity and constitutional obligation (Jubaer, *Illiberal Democracy and Constitutional Accountability in South Asia*, 2026). The prevalence of these structural imbalances has fostered an environment of "illiberal democracy," where partisan interests frequently supersede the institutional separation of powers intended to safeguard individual rights (Chowdhury, 2014). Moreover, the erosion of judicial independence and the suppression of civil society reflect a broader trend where institutional strength, rather than nominal legal frameworks, is the primary determinant of democratic resilience (*Democratic Resilience or Autocratic Drift? Institutional Challenges in Bangladesh*, 2025). Addressing these challenges requires not only technical legislative reforms to rebalance the separation of powers but also a fundamental strengthening of the judiciary's capacity to act as a barrier against executive overreach.

3.2 Drafting of the 1972 Constitution and incorporation of rights

The drafters sought to balance individual civil liberties with the state's obligation to foster an egalitarian society, drawing upon a synthesis of international human rights norms and post-colonial aspirations for national sovereignty. However, this foundational vision was soon tested by the socio-political realities of a newly independent nation, where the tension between urgent development goals and the protection of fundamental freedoms created a complex, often contradictory, constitutional environment. The subsequent era witnessed recurring constitutional instability as executive overreach and institutional politicization frequently undermined the judiciary's role as a reliable guardian of these rights. The persistent democratic crisis, characterized by the suppression of civil society and the concentration of executive authority, has consistently stifled the realization of these egalitarian objectives. These systematic violations, manifesting as enforced disappearances and the curtailment of free speech, illustrate a transition toward a governance model centered exclusively on the executive branch rather than the constitutional mandate of a "People's Republic". The systemic centralization of power has effectively marginalized the socio-economic and cultural entitlements of the impoverished demographic, leaving their fundamental rights largely unenforceable. Inequality, exacerbated by corruption and institutional weaknesses, further undermines the equitable distribution of resources, leaving marginalized populations unable to seek legal redress for the deprivation of their basic rights. Consequently, the resulting constitutional stalemates demonstrate that sustainable rights protection requires more than formal recognition; it necessitates the restoration of institutional legitimacy and the active safeguarding of judicial independence. Specifically, the legislative entrenchment of non-justiciable socio-economic principles in 1972, combined with the restrictive barriers to constitutional reform introduced by Article 7B in 2011, continues to insulate the state from meaningful accountability regarding basic human needs. This institutional insulation mirrors broader regional trends where systemic corruption and judicial resource constraints effectively obstruct access to justice, regardless of the progressive nature of the underlying normative framework. Such obstacles underscore that the mere articulation of rights within a constitution remains insufficient to guarantee their realization if the underlying political culture fails to prioritize institutional equilibrium and the rule of law. Effective implementation of these rights necessitates the

development of a robust network of ancillary supporting institutions, as formal guarantees remain largely aspirational in the absence of mechanisms that facilitate access to justice for marginalized groups (Brinks, 2024). Indeed, the persistent gap between constitutional rhetoric and ground realities mirrors regional challenges where political instability and systemic impunity continue to hinder the development of a sustainable rights-based framework. Furthermore, the lack of explicit procedural mandates for the enforcement of these rights renders them vulnerable to executive disregard, reinforcing a cycle of constitutional stagnation. This reality is further compounded by the persistent denial of access to justice for vulnerable populations, as the absence of effective legal aid and judicial autonomy renders constitutional promises illusory. This widening gap between the normative constitutional framework and actual enforcement highlights the critical necessity for independent judicial oversight to bridge the divide between legal theory and societal protection. Consequently, the reform of institutional mechanisms is essential to resolve existing constitutional stalemates and ensure that the judiciary functions as a credible, independent guarantor of democratic resilience.

3.3 Evolution through constitutional amendments (e.g., 5th, 8th, 15th Amendments)

The procedural trajectory of these amendments has often been marked by a shift toward consolidating executive authority, frequently at the expense of established judicial oversight mechanisms and the integrity of protected rights (AL-ARSHANI, 2025). This pattern of formalistic modification often mirrors regional tendencies where amendments are utilized to weaken the separation of powers and erode the institutional safeguards necessary for protecting human rights. Such constitutional restructuring often prioritizes the expansion of executive reach over the institutional mediation required to channel social and political forces, rendering these guarantees increasingly uncertain. Moreover, the persistent reliance on formal constitutional amendments to address socio-political grievances often masks the underlying failure to organize power effectively, leading to a disconnection between stated human rights and their practical implementation. This trend reflects broader patterns in Muslim-majority jurisdictions where the pressure of political crises often hinders the sustainability of formal reforms, ultimately prioritizing executive consolidation over robust constitutionalism.

Ultimately, these structural shifts demonstrate how "parchment barriers" fail to provide substantive protections when the legislature systematically weakens the institutional mechanisms intended to restrain state power. As these systems grapple with the dualities of their legal frameworks, the lack of robust mechanisms for entrenchment frequently results in constitutional designs that struggle to reconcile divine normativity with the exigencies of modern democratic governance. This tension underscores the necessity of institutional reforms and inclusive governance to ensure that constitutional frameworks effectively mediate between entrenched traditional norms and the requirements of the rule of law. The ongoing reliance on state-centric religious legitimization often creates a crisis of accountability, as traditional interpretive authorities are frequently subsumed by executive interests to justify restrictive regulatory environments. Such institutional hybridization frequently exacerbates normative ambiguity, leaving the judiciary to navigate the precarious balance between state-sanctioned religious edicts and universal human rights commitments. Moreover, this struggle is further complicated by the political exploitation of religious law, which often facilitates a narrow interpretation of constitutional mandates to the detriment of human rights and social justice. This systemic tension is further exacerbated by the instrumentalization of constitutional amendments, which often prioritize political preservation over the harmonization of democratic liberties with prevailing socio-religious norms. In this context, the tension between universal rights and specific religious interpretations often compromises the protection of minorities, as existing legal frameworks frequently fail to resolve contradictions between domestic legislation and international obligations. These structural challenges underscore that the formal adoption of constitutionalism requires more than mere text; it demands an unwavering commitment to the separation of powers and the protection of universal human rights as a check against executive overreach. Furthermore, the persistent challenge of reconciling these diverse legal traditions remains central, as the integration of religious imperatives into a modern constitutional structure often creates structural tensions that may undermine the rule of law. Consequently, the long-term viability of Bangladesh's constitutional project depends on mitigating the institutional friction between religion-legal mandates and universal human rights standards, which currently complicates the state's capacity to uphold international commitments.

3.4 Judicial activism and landmark cases shaping rights (e.g., Kudrat-E-Elahi Panir, Anwar Hossain Chowdhury)

The judiciary has frequently acted as a critical arbiter in interpreting the scope of constitutional guarantees against executive overreach, often balancing community-specific values with the broader requirements of democratic governance. However, this judicial role remains fraught with complexity, particularly when navigating the intersection of secular legal principles and the persistent influence of religious personal laws. While the judiciary has occasionally expanded rights through creative interpretation, these efforts are often hindered by the state's tendency to reconcile secular legal aspirations with entrenched religious conservatism. This ongoing judicial struggle is further complicated by the fact that personal status laws, while serving as a foundational element of religious identity, often entrench systemic inequalities that conflict with the equal protection guarantees envisioned in the 1972 Constitution (Rahman, 2026). Furthermore, the reliance on a liberal-individualist framework within the constitution has been criticized for failing to explicitly safeguard minority identities, effectively assimilating them into the dominant culture at the expense of substantive group protections. Moreover, the structural dependence of the judiciary on executive appointments frequently undermines its capacity to serve as an independent check against state-sponsored violations, such as extrajudicial encounters or systemic discrimination.

3.5 Comparative note with South Asian constitutional developments

The constitutional experiences of neighboring states, such as Sri Lanka and India, highlight how ethno-religious identity politics can fundamentally challenge the stability of liberal democratic norms and the rule of law. Similar to these regional trends, Pakistan's trajectory demonstrates how institutional weaknesses and the influence of entrenched social hierarchies have historically constrained the effective realization of civil liberties. The judiciary in these jurisdictions often contends with the paradox of protecting constitutional supremacy while simultaneously navigating the state's reliance on religious doctrine for political legitimacy. This recurring reliance on judicial intervention as a mechanism for political crisis management has often compromised the impartiality of the bench, frequently forcing courts to oscillate between resistance and

complicity toward authoritarian structures. Ultimately, these regional parallels underscore that the efficacy of fundamental rights protection in Bangladesh rests not merely on constitutional text, but on the judiciary's ability to resist executive co-optation while fostering a jurisprudence that transcends localized, restrictive interpretations of identity. Furthermore, the intersection of these regional legal challenges highlights how constitutional identity remains a contested terrain, where the integration of religious sentiment and state-led secularism continues to complicate the realization of equitable protections (Hoque, 2024). Specifically, the struggle to reconcile individual guarantees with group-based protections reveals that while constitutional provisions are essential, they remain an insufficient condition for safeguarding the wellbeing of minority communities across South Asia (Mustafa, 2024). Consequently, these regional parallels indicate that Bangladeshi courts, much like their neighbors, often receive and reconfigure global norms through a lens influenced by both structural dependencies and the legacy of Indian jurisprudence. This cross-jurisdictional alignment suggests that South Asian judiciaries frequently utilize comparative borrowing to legitimize their own transformative agendas while addressing the specific socio-legal constraints inherent in their post-colonial frameworks. Furthermore, the emergence of such comparative methodology signifies a shift towards grounding constitutional analysis in the specific, contextual realities of South Asian jurisdictions rather than relying solely on imported Western liberal paradigms. This adaptive approach allows the Bangladeshi judiciary to navigate the tensions between colonial legal legacies and the necessity of indigenizing constitutional norms to better address domestic socio-political exigencies. However, this methodological shift is hindered by the lack of a coherent regional discourse, as judicial borrowing often occurs in a fragmented manner that prioritizes institutional survival over the development of a nuanced, home-grown constitutional identity. The persistent reliance on reproducing external constitutional frameworks without sufficient adaptation often leads to an incomplete implementation of international human rights norms, leaving the domestic legal order vulnerable to political polarization. Addressing these systemic vulnerabilities requires a move toward a more robust, indigenous constitutionalism that prioritizes the harmonization of international human rights obligations with the unique socio-religious realities of the region ("Comparative Constitutionalism in South Asia," 2012). This necessitates a critical departure from "intellectually parasitical" comparative practices that merely mirror Western legal

doctrines, favoring instead an integrated research strategy that acknowledges the specific political history of South Asian states. Such a recalibration of judicial methodology would allow for the development of strategies, akin to those observed in other jurisdictions within the Global South, to ensure that fundamental rights are not merely nominal but actively accessible to marginalized citizens. Ultimately, this shift toward a more contextualized jurisprudence requires that legal practitioners move beyond mere "judicial bricolage" to establish a cohesive regional discourse that reflects the actual practice of constitutional actors. This research agenda must therefore prioritize bottom-up analyses that account for the diverse cultural and political influences shaping the behavior of these actors within the South Asian landscape. By shifting the analytical focus toward the lived realities of these actors, scholars can bridge the persistent disjuncture between formalistic legal doctrine and the actual political practice observed in the region (Choudhry, 2015). Furthermore, this transition toward an inclusive-regional approach necessitates embedding constitutional debates within existing political history, thereby facilitating a more critical assessment of how 'global' standards are mediated by local socio-political exigencies. Such an investigation is essential for understanding how the colonial legacies inherent in South Asian constitutional drafting continue to haunt the enunciation of basic human rights. In particular, this analysis explores how post-colonial international law discourses continue to shape the interpretative methodologies used by domestic courts to navigate the interplay between state sovereignty and international human rights obligations. This critical inquiry reveals that these international frameworks are often perceived as Eurocentric impositions, complicating their harmonious integration into the socio-cultural landscape of South Asia. Moreover, the divergence between state-sanctioned norms and community-level interpretations often exacerbates this tension, rendering the practical application of rights contingent upon the specific institutional capacity and political will of the ruling administration.

Chapter 4: Constitutional Framework of Fundamental Rights in Bangladesh

4.1 Classification of rights (civil, political, socio-economic)

Fundamental rights are categorized into civil and political guarantees, such as the right to life, liberty, and equality, alongside socio-economic entitlements necessary for human dignity. These constitutional provisions are further reinforced by the Directive Principles of State Policy, which, while non-justiciable, provide a foundational normative framework for judicial interpretation regarding the realization of equitable socio-economic outcome. Moreover, the intersection of these constitutional safeguards with the judiciary's writ jurisdiction under Article 102 serves as a critical mechanism for ensuring state accountability, particularly when administrative actions infringe upon the substantive requirements of human dignity (Jahan, 2025). Conversely, the constitutional treatment of economic, social, and cultural rights remains largely aspirational in the Bangladeshi context, creating a significant enforcement gap that limits their justiciability as enforceable individual entitlements (Mohammad, 2022). This constitutional distinction, rooted in Article 8, mirrors the traditional international legal assumption that such rights lack the requisite clarity for judicial enforcement, thereby relegating them to the realm of policy rather than mandatory state obligation. Nonetheless, the Supreme Court has occasionally utilized international instruments, such as the UDHR, as interpretive tools to bridge this gap and establish normative standards for rights protection. This judicial strategy acknowledges that for the public to effectively assert civil and political liberties, there must be a simultaneous realization of essential socio-economic conditions, an approach reflecting the indivisibility of human rights as championed in the Universal Declaration of Human Rights. Despite the non-justiciable nature of these principles, the judiciary's reliance on international standards reflects a move toward interpreting constitutional obligations through the lens of human rights indivisibility. This practice highlights the ongoing struggle to reconcile the formal binary between justiciable civil-political rights and aspirational socio-economic entitlements (Chowdhury, 2008; “HUMAN RIGHTS AND FUNDAMENTAL RIGHTS IN BANGLADESH CONSTITUTION: A STUDY BASED ON CASE LAW,” 2024) (Chowdhury M. J., 2008). This judicial approach

emphasizes that while socio-economic rights are often categorized as directive principles to reflect their aspirational nature, their progressive realization remains essential for the core existence of human beings. Despite this recognized necessity, the persistence of a "legacy of denial" regarding the direct judicial enforcement of these rights continues to limit the efficacy of domestic legal protections. Nevertheless, the judiciary has increasingly leveraged expansive interpretations of the right to life to transform these non-justiciable commitments into de facto enforceable protections, mirroring trends observed in neighboring jurisdictions.

4.2 Justiciability and enforcement under Articles 26–47

Articles 26 through 47 establish the bedrock for fundamental rights, yet the explicit categorization of certain socio-economic entitlements as non-justiciable directive principles often constrains the court's capacity to mandate state compliance. This structural limitation creates a bifurcated legal landscape where civil and political liberties enjoy robust protection, while socio-economic welfare remains largely dependent on the state's discretionary policy commitments. This dichotomy mirrors broader regional trends where the judiciary must navigate the inherent tension between respecting state policy mandates and protecting essential human dignity. Consequently, the absence of an explicit constitutional mandate for the judicial enforcement of socio-economic rights often forces courts to rely on creative, expansive interpretations of the right to life to address systemic deprivations. This judicial strategy reflects a global discourse on the justiciability of socioeconomic rights, wherein courts seek to reconcile constitutional compartmentalization with the necessity of protecting the most vulnerable populations (Pillay, 2014). Furthermore, this pragmatic evolution aligns with comparative shifts in other jurisdictions, where courts have increasingly harmonized fundamental rights with directive principles to transform constitutional texts into dynamic instruments of social justice. In this context, the adoption of a "minimum core" approach could offer a viable pathway for the Bangladeshi judiciary to ensure basic needs are met without overstepping into legislative policy formulation. Additionally, the effective implementation of such standards requires moving beyond sporadic judicial intervention toward a coherent framework that recognizes the state's obligation to utilize maximum available resources for the progressive realization of

these entitlements (Karim, 2023)²⁷. Building upon this foundation, the judiciary has begun to treat certain state policy principles—such as medical care and food security—as implicit components of the right to life, effectively elevating them to de facto justiciable standards. These provisions underscore that constitutional mandates regarding nutrition and health serve as more than mere policy goals, functioning instead as essential benchmarks for the state’s duty to ensure individual survival. IC obstacles, such as extreme poverty and limited access to essential social services, continue to impede the practical realization of these rights for marginalized populations. To address these disparities, the judiciary must shift from an ad hoc approach to a more structured implementation framework that ensures the substantive delivery of basic health and educational services. Such an evolution requires the judiciary to avoid pedantic interpretations and instead adopt a purposive approach that integrates international human rights norms to promote social justice.

4.3 Role of the Supreme Court in protecting rights (writ jurisdiction under Article 102)

The Supreme Court exercises its expansive writ jurisdiction under Article 102 to act as a guardian of constitutional guarantees, frequently overcoming traditional barriers to justiciability by allowing public interest litigation to address systemic violations. In this capacity, the Court has increasingly extended its oversight even to private entities when they discharge public functions or operate under government supervision, thereby ensuring that constitutional protections are not bypassed by non-state actors. Furthermore, by emphasizing the state's primary duty to improve public health and provide essential social services as foundational obligations, the Court aligns domestic jurisprudence with the spirit of the ICESCR. This judicial activism serves as a vital bridge, transforming aspirational commitments into de facto justiciable protections for the most vulnerable populations. By adopting this methodology, the judiciary mirrors international legal standards which advocate that the right to life must not be construed restrictively, but rather as a positive obligation for states to actively combat malnutrition and improve life expectancy. Such proactive oversight further necessitates that the judiciary monitor the state's utilization of available resources to prevent systemic

²⁷ Karim, A., ‘Socio-Economic Rights Enforcement in South Asia’ (2023).

negligence in the delivery of critical social services. Moreover, institutional constraints such as political pressure and a backlog of cases frequently undermine the consistency of these judicial interventions, creating a precarious environment for long-term rights protection. Addressing these systemic impediments requires the establishment of specialized monitoring mechanisms to ensure that judicial pronouncements are not merely symbolic but result in measurable improvements to human rights standards. Ultimately, the development of a more robust framework for judicial oversight requires the adoption of innovative procedural tools, such as continuing mandamus and court-appointed commissions of enquiry, to ensure that executive compliance is actively managed beyond the initial judgment. Furthermore, the integration of multidisciplinary audits of public policy can assist the Court in scrutinizing budgetary priorities, thereby holding the state accountable for the "maximum of available resources" mandated by international human rights obligations. In this vein, mandating government progress reports or utilizing supervisory institutions to monitor compliance can effectively bridge the gap between abstract judicial orders and the tangible delivery of socio-economic services. These remedial measures, while inherently intrusive, may prove essential for addressing the chronic administrative incapacity that often stifles the executive branch's duty to provide basic social security. By adopting such dialogic or managerial remedies, the judiciary can foster institutional support that encourages state capacity-building rather than merely issuing individualistic relief. Such a transformative judicial role necessitates that the Court establishes a "circle of accountability," wherein legal opportunity structures are optimized to ensure that remedies are not simply appended to structurally failing service systems. This framework further necessitates that courts actively engage with stakeholders through participatory processes, allowing for the revision of judicial guidelines as new information regarding implementation barriers emerges. In this context, the adoption of innovative judicial remedies—such as structural relief—permits the court to move beyond individualized compensation toward a model that addresses systemic failures in governance. By employing such context-sensitive structural relief, the Court can ensure that remedial outcomes transcend mere litigation, fostering deep-seated reforms that compel the executive branch to align public policy with its human rights obligations. This approach requires the judiciary to balance the exercise of discretionary remedial power by prioritizing institutional complementarity, ensuring that judicial interventions stimulate administrative reform rather than merely duplicating

governmental functions. Indeed, shifting the remedial focus from individual compensation toward systemic oversight acknowledges that state negligence in the progressive realization of socio-economic rights often stems from underlying procedural dysfunctions in resource allocation. Consequently, adopting a two-track remedial strategy—combining immediate individual relief with long-term dialogic processes—may offer a sustainable path for bridging the gap between judicial mandates and the practical fulfillment of social rights. Moreover, acknowledging that judicial remedies for structural rights violations must function as policy-making interventions allows the Court to engage in agenda setting and policy evaluation, rather than simply issuing static directives. By systematically integrating judicial review into the formulation and evaluation of public policy, the Court can ensure that administrative actions are strictly measured against the state's international human rights obligations.

4.4 Limitations and restrictions (Reasonable Restrictions, Emergency Provisions)

On the justiciability of fundamental rights often arise from constitutional clauses that permit the suspension or narrowing of protections during periods of state emergency, which can inadvertently insulate executive action from judicial scrutiny. Furthermore, these restrictive provisions are frequently invoked to prioritize state security over individual liberties, creating systemic barriers that impede the judiciary from addressing structural violations of human rights. Such practices highlight an inherent tension within the constitutional order, where the broad discretionary powers granted to the executive risk undermining the judiciary's role as the final arbiter of rights. Additionally, the ambiguity surrounding "reasonable restrictions" often facilitates a judicial tendency toward deference in matters of public policy, where courts may perceive themselves as lacking the necessary expertise or political legitimacy to challenge executive trade-offs regarding resource allocation. This remedial hesitation often treats the challenge of designing effective relief as a problem independent of the substantive content of rights, a perspective that risks perpetuating a "rights essentialist" framework where judicial pronouncements remain disconnected from practical realities. To overcome this, courts must embrace structural processes that treat social deficits as complex, systemic failures rather than isolated legal breaches, thereby fostering a new language of accountability that bridges the gap between constitutional

promises and material reality. Ultimately, the efficacy of this judicial transformation depends on whether courts utilize their oversight capacity to align governmental programs with international standards, rather than merely relying on formalistic legal compliance. By ensuring that judicial remedies impose substantive obligations on the executive, courts can move beyond reactive adjudication to become active participants in the ongoing monitoring of state policy implementation. Moreover, in instances where crises or emergency powers are invoked, the judiciary must rigorously scrutinize whether such extraordinary measures remain proportional and necessary to avoid democratic regression.

4.5 Case law analysis on freedom of speech, equality, right to life, and fair trial

It reveals that courts frequently grapple with the tension between protecting individual liberties and upholding state security, often navigating the challenge of avoiding excessive deference that may inadvertently facilitate rule of law backsliding. To mitigate these risks, the judiciary must shift toward a model of rigorous, context-aware oversight that ensures emergency measures satisfy the standards of necessity and proportionality, even when faced with significant executive pressure. Such institutional vigilance is essential, as the unchecked application of emergency powers during crises frequently exacerbates risks for human rights infringements and undermines the stability of democracy (Jubaer, Institutional Gaps and Constitutional Accountability in South Asia, 2026). Furthermore, addressing these systemic vulnerabilities requires that the judiciary transition from a culture of deference to one of active oversight, viewing constitutional guarantees as an operating governance system that shapes the integrity of regulatory decision-making. This shift demands that judges prioritize a procedural assessment of how state policies are formulated, ensuring that deliberative and participatory standards are met before legitimizing contentious executive decisions. By resisting the "pull of deferentialism" that often obscures the essential components of judicial review, courts can prevent emergency and security considerations from being afforded exaggerated weight. In this context, the judiciary must cultivate an independent institutional capacity to challenge excessive executive discretion, ensuring that fundamental rights are not rendered nominal by the broad invocation of national security. Such institutional oversight is vital, as the lack of effective judicial review

over state security frameworks creates a vacuum where arbitrariness can undermine the constitutional rule of law. Moreover, the implementation of proportionality analysis serves as a critical safeguard against this trend, requiring that any state interference with civil liberties remains strictly tethered to a legitimate and proportionate public purpose. In this regard, the judiciary must move beyond a mechanistic application of balancing tests, which often masks a reflexive deference to executive policy, and instead adopt a transparent, evidence-based approach to assessing the necessity of government action.²⁸

Chapter 5: International Human Rights Instruments and Bangladesh

5.1 Overview of UDHR, ICCPR, ICESCR, CEDAW, CRC

These instruments serve as the foundational benchmarks for assessing domestic compliance, though their practical integration remains hampered by a governance model increasingly concentrated within the executive branch. This centralization of power has frequently marginalized the judiciary's capacity to enforce international obligations, resulting in a documented decline in civil liberties and the protection of essential socio-economic entitlements. Consequently, addressing these systemic obstacles necessitates a rigorous reform of the institutional structure, prioritizing the enhancement of judicial independence and the repeal of restrictive laws that impede the exercise of civil liberties. Furthermore, pervasive issues such as the systemic use of torture by security forces and the persistent reliance on arbitrary detention demonstrate that formal ratification of international conventions does not equate to effective domestic implementation. Specifically, the continued utilization of statutes such as the Special Powers Act, combined with the lack of institutional oversight, facilitates practices like enforced disappearances and extrajudicial detention that directly contravene Bangladesh's obligations under international human rights treaties (《State

²⁸ Kesavananda Bharati v State of Kerala (1973) AIR SC 1461.

Responsibilities and the Combatting Against Forced Disappearance in Bangladesh: Institutional and Legal Challenges» , 2025). Furthermore, the proliferation of stringent anti-terrorism legislation has been frequently weaponized to penalize political dissenters, journalists, and human rights defenders, thereby undermining the right to freedom of expression and privacy in direct violation of international standards (« Implications of Anti-Terrorism Laws on Civil Liberties: A Human Rights Perspective in Bangladesh» , 2025). Moreover, the systemic misuse of provisions such as Sections 54 and 167 of the Code of Criminal Procedure further compounds these challenges, leading to widespread procedural injustices that strip individuals of fair trial guarantees and access to counsel. These structural and operational impediments, characterized by the politicization of state institutions and weak oversight mechanisms, collectively hinder the realization of equitable access to justice for marginalized populations. Furthermore, the absence of an autonomous prosecutorial service creates significant investigative bias, leaving the judiciary to grapple with poor case preparation and low conviction rates that erode public confidence in the legal system. - Socio-economic inequalities further exacerbate these structural deficiencies, as the lack of adequate legal aid programs leaves vulnerable groups unable to effectively challenge human rights abuses or navigate the complexities of the justice system. To address these systemic barriers, there is an urgent need to bridge the gap between formal legal mechanisms and community-based resolution strategies, such as village courts or shalish, which often prove more accessible for minor disputes. However, the formal judicial system remains chronically burdened by severe case backlogs and inadequate infrastructure, which fundamentally obstruct the timely and equitable resolution of grievances. These socio-economic disparities, compounded by persistent corruption and the systemic marginalization of rural populations, create significant barriers to achieving equal access to justice within the formal criminal justice framework. This "paper justice" versus "real justice" dichotomy underscores how, despite the constitutional promise of equality, institutional bottlenecks and procedural rigidity consistently favor those with greater socio-political capital. Consequently, the failure to translate constitutional guarantees into practical outcomes necessitates a comprehensive overhaul of case management systems and a decentralization of legal aid services to ensure that marginalized communities are not effectively excluded from the protection of the law.

5.2 Bangladesh's ratification status and reservations

Despite signing core treaties like the ICCPR²⁹ and ICESCR,³⁰ the state frequently maintains reservations that create a legal disconnect between international mandates and domestic enforcement, particularly concerning discriminatory personal laws and the protection of minority rights. Moreover, the systemic lack of professional integrity among legal practitioners—ranging from judges to police—further exacerbates this ineffectiveness, transforming the justice sector into an arena characterized by inequity and widespread corruption. Furthermore, deep-seated societal issues—such as the culture of victim blaming and the stigma attached to seeking legal redress—effectively discourage citizens from pursuing their constitutional right to justice (Swarna, 2023). These sociocultural and institutional barriers are further aggravated by a justice system that remains structurally constrained by colonial-era legacies, often failing to provide meaningful recourse for the most vulnerable populations. Beyond these institutional constraints, the judiciary faces severe procedural delays, with a significant proportion of civil cases remaining pending for over five years, which effectively denies timely relief to the disenfranchised. Moreover, empirical data from the World Justice Project indicates that Bangladesh consistently ranks in the bottom quintile for civil justice affordability and freedom from discrimination, highlighting that the high cost of legal proceedings serves as a primary exclusionary mechanism. This systemic financial barrier is compounded by the fact that the vast majority of the population subsists below the poverty line, rendering the formal adjudication process functionally inaccessible for those without significant resources (Invention, 2015). Consequently, while government-mandated legal aid initiatives and District Legal Aid Offices seek to mitigate these fiscal burdens, they remain hindered by critical policy-related predicaments and limited institutional reach. Additionally, the state's approach to international human rights is often characterized by a selective application where mere ratification of treaties, such as the ICCPR or the Rome Statute, is frequently decoupled from the actual adoption of international fair trial standards into domestic governing acts. This disconnect is further exemplified by the prevalence of faulty investigations and the discretionary refusal of law enforcement to register cases, which systematically insulate perpetrators from accountability and undermine the rule of law. Furthermore,

²⁹ International Covenant on Civil and Political Rights (ICCPR), 1966

³⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

this culture of impunity is reinforced by institutional barriers that prioritize retributive outcomes over the restorative justice paradigms necessary to address deep-seated socio-cultural grievances. Ultimately, the complex interplay between formal constitutional guarantees and the reality of institutional voids creates a landscape where, despite legal frameworks, the practical realization of fundamental rights remains elusive for the broader citizenry. Consequently, the pervasive disconnect between constitutional mandates and administrative implementation necessitates a profound re-evaluation of institutional accountability mechanisms to dismantle the barriers of politicization and systemic impunity. Moving forward, future legislative reforms must prioritize the professionalization of law enforcement and the expansion of decentralized legal aid to ensure that justice is not merely an urban privilege but a tangible right for all citizens. Moreover, addressing the prevailing gap between judicial idealism and institutional decay requires robust accountability measures to curtail political influence and ensure that judicial independence remains protected from executive overreach. Furthermore, integrating international best practices for judicial oversight is essential to transforming these theoretical protections into reliable remedies for the marginalized. Such structural reforms are crucial, as similar South Asian contexts demonstrate that political instability and judicial bias often render constitutional protections ineffective for vulnerable groups, necessitating a shift toward community-driven legal empowerment. This paradigm shift requires a comprehensive review of existing colonial-era procedural codes to harmonize them with international human rights standards and bridge the gap between normative promises and institutional performance. Ultimately, overcoming the entrenched culture of impunity in the region demands that national legal frameworks evolve from symbolic declarations into robust, functional instruments of justice that prioritize the rights of the marginalized over the protection of elite interests (Khatiwada, 2024) (Nawaz, 2025).

5.3 Incorporation of international norms into domestic law

The legislative process frequently fails to translate ratified international obligations into binding domestic statutes, resulting in a persistent implementation gap where

international human rights standards remain aspirational rather than enforceable. This legislative inertia is further compounded by a judiciary that often prioritizes formalistic adherence to outdated procedural rules over the substantive realization of human rights, thereby limiting the scope for judicial activism to bridge the normative-practical divide. Moreover, the insufficient institutional capacity and lack of specialized training for law enforcement officials prevent the effective investigation of abuses, leaving victims without reliable avenues for legal redress. To mitigate these systemic vulnerabilities, it is imperative to invest significantly in judicial, prosecutorial, and investigative infrastructures, as the absence of such resources renders the protection of rights nearly impossible. Furthermore, the structural socio-political and economic barriers—such as systemic illiteracy and entrenched social hierarchies—often render these formal legal frameworks unworkable for marginalized populations, reinforcing the necessity for a shift toward community-driven legal empowerment (Sato, 2025). Such empowerment strategies must explicitly confront pervasive power asymmetries and systemic inequalities that prevent citizens from utilizing constitutional rights as effective tools for contestation. Rather than treating formal laws as definitive solutions, policymakers must recognize them as flexible tools that citizens can employ to challenge discriminatory norms and contest institutional inertia. Moreover, translating these constitutional guarantees into tangible realities requires addressing the “divergence between written law and ‘living law’” by ensuring that domestic actors do not perceive international obligations as external impositions.

5.4 Comparative analysis: constitutional rights vs. international obligations

The dissonance between these domains is frequently exacerbated by the dualist nature of the domestic legal system, where international treaty obligations often lack self-executing status and require enabling legislation that the state is frequently reluctant to enact. This legislative resistance often stems from a state preference for maintaining sovereign discretion over the interpretation of rights, effectively relegating international standards to a purely symbolic role. Additionally, the persistence of deeply embedded gendered power structures and socio-cultural barriers further limits the reach of these international norms, often subordinating individual rights to prevailing traditional values. Consequently, even when national and international legal instruments recognize

fundamental human rights, they are frequently undermined by patriarchal customary practices that prioritize social hierarchy over individual equality. This conflict highlights the necessity of reforming traditional legal structures to align with human rights standards while treating customary law as a dynamic, evolving framework rather than a static obstacle to justice. Ultimately, bridging this divide necessitates an interdisciplinary approach that reconciles constitutional imperatives with local socio-cultural realities to prevent the marginalization of vulnerable groups (Moalla, 2024). Moreover, the tension between formal constitutional guarantees and customary practices often results in a "normative dilemma" where discriminatory social hierarchies persist despite legislative efforts to codify universal human rights.

5.5 Case studies of compliance and divergence (e.g., freedom of religion, labor rights, gender equality)

The practical enforcement of fundamental rights in Bangladesh reveals a mixed record of compliance with international human rights standards. While certain judicial interventions have advanced rights protection, systemic barriers and political constraints continue to produce divergence from global norms. Three illustrative case studies—freedom of religion, labor rights, and gender equality—highlight this dual trajectory.

Freedom of Religion

Bangladesh's Constitution guarantees freedom of religion under Articles 41 and 28, aligning with ICCPR provisions on religious liberty. However, judicial enforcement has often been inconsistent. In *Bangladesh v. Professor Golam Azam* (1994) (*Bangladesh v. Professor Golam Aza*, 1994), the Court upheld restrictions on religiously motivated political activities, reflecting a cautious approach to balancing secular constitutional principles with religious freedoms. While this demonstrates compliance with international standards that permit restrictions for public order, critics argue that selective enforcement has disproportionately affected minority communities. Reports of attacks on Hindu temples and Ahmadiyya mosques underscore divergence from ICCPR obligations, as state protection has frequently been inadequate. Thus,

while constitutional text mirrors international commitments, practical enforcement remains uneven.

Labor Rights

Labor rights, particularly in the garment sector, illustrate the tension between economic development and human rights compliance. The Rana Plaza disaster (2013) exposed systemic failures in occupational safety, drawing global attention to Bangladesh's obligations under ICESCR and ILO³¹ conventions. Judicial responses, such as PILs filed by rights groups, compelled the state to adopt safety reforms and compensation schemes. Yet enforcement remains weak, with persistent violations of minimum wage standards and unionization rights. While the *Bangladesh National Women Lawyers Association v. Bangladesh* (2010) case advanced workplace protections against harassment, broader labor rights continue to suffer from inadequate monitoring and political resistance to union empowerment. This divergence highlights the gap between formal ratification of international labor standards and their substantive realization in practice.

Gender Equality

Gender equality has been a focal point of judicial activism, particularly through the domestication of CEDAW obligations. In *BNWLA v. Bangladesh* (2010), the Supreme Court issued binding guidelines to prevent workplace sexual harassment, marking a significant step toward compliance with international gender justice standards. Similarly, child rights cases invoking CRC obligations have expanded protections against trafficking and exploitation. However, persistent socio-cultural barriers—such as discriminatory inheritance laws and systemic underrepresentation of women in political institutions—demonstrate divergence from CEDAW's mandate for substantive equality. Scholars argue that while judicial interventions have created pockets of compliance, entrenched patriarchal norms and weak enforcement mechanisms continue to undermine gender justice.

³¹ "The Rana Plaza disaster (2013) exposed systemic failures in occupational safety, drawing global attention to Bangladesh's obligations under ICESCR and ILO conventions."

Chapter 6: Application and Challenges of Fundamental Rights in Bangladesh

6.1 Practical enforcement issues (judicial backlog, corruption, political influence)

Challenges such as persistent judicial backlogs and systemic administrative corruption significantly impede the timely adjudication of fundamental rights petitions, effectively denying victims access to justice. Furthermore, the interplay of religious norms and cultural traditions often obstructs the full implementation of constitutional reforms, particularly concerning the property and civil rights of women (“Intersection of Religion, Constitutional Law and International Norms from Women’s Property Rights in Bangladesh An Appraisal,” 2023 (Shahria, 2025)). These gendered disparities are compounded by the complex interaction between personal laws—such as those governing inheritance—and the constitutional mandate for equality, which frequently leaves women navigating a fragmented legal landscape. These sociocultural barriers, including patriarchal norms, exacerbate the difficulty for women in rural areas to seek and pursue legal remedies, even when formal protections are theoretically available (Mia, 2024). Moreover, the prevalence of these traditional practices often perpetuates systematic human rights violations, as customary governance frequently marginalizes vulnerable groups by prioritizing communal identity over individual legal protections. This necessitates a fundamental re-evaluation of how legal systems integrate human rights as a vehicle for human welfare, ensuring that the protection of dignity remains central to the nation's development. Ultimately, achieving the ideal of a "Sonar Bangla" requires reconciling these formal legal frameworks with the substantive realization of human rights to ensure that law functions as an instrument for universal human welfare rather than merely a theoretical guarantee (Haque M. E., 2022). Furthermore, the protection of ethnic and religious minorities remains a critical area where constitutional safeguards often fail to prevent systemic discrimination in education and employment (Rahman, 2024). These discrepancies are further complicated by the fact that the interpretation of rights is inherently subject to varying cultural and temporal contexts, which can hinder the uniform application of universal principles. This disconnect between codified provisions and lived realities underscores the necessity for

comprehensive legal reforms that prioritize accountability and the elimination of institutional barriers to justice. Specifically, the rigid adherence to religious personal laws regarding inheritance often results in a blatant disregard for the constitutional mandate of equality, systematically depriving women of property rights that are essential for their economic independence and self-determination (Bishnoi, 2025). . Such legal impediments necessitate a robust judicial approach that reconciles these entrenched religious norms with international legal instruments to ensure that women are not systematically excluded from the benefits of ownership and economic empowerment. Such efforts must be supported by targeted legal education initiatives, as the disparity between formal constitutional rights and the practical awareness of these protections often prevents marginalized individuals from seeking effective redress for rights violations. Additionally, the legal obstacles faced by minority groups, exacerbated by inconsistencies in domestic legislation and weak enforcement mechanisms, further highlight the systemic difficulty in safeguarding rights within a plural society. This challenge is further compounded by the politicization of oversight institutions, which often undermines the independence required to check executive power and hold state actors accountable for rights violations (Faruqe, 2026). This erosion of institutional autonomy not only diminishes the efficacy of constitutional remedies but also facilitates the persistence of discriminatory practices that remain largely unchecked by the judiciary. Consequently, the lack of clarity regarding the primacy of constitutional mandates over personal or customary laws continues to generate ambiguity in protecting the rights of religious minorities, often leaving their status vulnerable to the shifting interpretations of communal religious norms. This legislative ambiguity, coupled with the absence of a unified civil code, exacerbates legal uncertainty and reinforces the dominance of sectarian identities over the collective rights of the citizenry. This structural fragmentation mirrors regional patterns where the reliance on community-based legal autonomy, while preserving cultural identity, frequently compromises the uniform application of fundamental equality. The persistence of these intersectional challenges, defined by gender, ethnicity, and religion, underscores that international frameworks like CEDAW are frequently stifled by deep-seated social norms and the lack of robust institutional support. To address these systemic shortcomings, it is imperative to shift from a purely formalistic reliance on legislative drafting toward an integrated strategy that incentivizes the substantive transformation of patriarchal structures. Such a transition requires the judiciary to adopt

a more proactive role in interpreting domestic statutes through the lens of international obligations, thereby mitigating the enforcement gap inherent in plural legal systems. By harmonizing constitutional interpretation with global standards, the judiciary can better address the complexities of legal pluralism that often impede the realization of equal rights for all citizens. Moreover, bridging this enforcement gap requires a concerted effort to "vernacularize" human rights, ensuring that international norms are not merely imported but are effectively grounded in local social realities to foster meaningful compliance. This process necessitates active engagement with community leaders and stakeholders to reconcile the tension between state-level protections and non-state justice mechanisms, ultimately reducing the reliance on exclusionary customary practices. Addressing the limitations of current strategies requires moving beyond the formalistic demands for reform, as effective implementation must account for the context-specific realities of how non-state justice and religious doctrines interlock with state law. Without a nuanced understanding of these interlocking forces, international mechanisms like the CEDAW Committee often struggle to exert influence over domestic realities, as their standardized recommendations frequently fail to bridge the divide between state and non-state justice sectors (Campbell, 2016). Consequently, the fragmentary nature of international treaty implementation persists because domestic institutions often fail to address the underlying relational and social dynamics that perpetuate systemic discrimination. Ultimately, the disconnection between universal legal mandates and local implementation reveals that formal ratification of treaties is insufficient to overcome deep-seated socio-legal norms if domestic enforcement mechanisms remain weak or ideologically compromised. Bridging this divide demands a deliberate strategy that emphasizes the state's proactive and interventionist role in normalizing international standards within the everyday lived experience of citizens. This approach acknowledges that successful harmonization necessitates a flexible framework that respects both universal human rights principles and the intricacies of legitimate domestic legal traditions. Furthermore, given the prevalence of states that enter reservations to international treaties or prioritize cultural autonomy over standardized compliance, the domestic judiciary must develop rigorous mechanisms to monitor the actual impact of these reforms on vulnerable populations.

6.2 Socio-economic barriers to rights realization (poverty, inequality, lack of awareness)

That impede access to judicial remedies, particularly for those in informal sectors who disproportionately face the brunt of systemic exclusion. Furthermore, the failure of state authorities to address these structural inequalities is often rationalized through claims of resource constraints or the prioritization of prevailing cultural norms, which effectively marginalizes women and minority groups. This creates a cycle where the lack of institutionalized access to state justice drives vulnerable populations toward non-state tribunals, which, despite offering perceived community support, often operate without adherence to the human rights protections mandated by the Constitution or international instruments. This fragmentation creates a dualistic landscape where the reliance on non-state justice mechanisms frequently acts as an obstacle to the universalization of constitutional rights, reflecting a deeper tension between cultural autonomy and standardized legal protection. Furthermore, this reliance on parallel legal systems highlights the significant challenges inherent in harmonizing international obligations within a domestic framework that frequently resists unconditional primacy of external norms. This resistance often stems from a perception that international human rights standards impose rigid regulatory demands that conflict with national sovereignty and long-standing domestic political priorities. Consequently, the judiciary must navigate these competing mandates by fostering inter-jurisdictional dialogue that reconciles international legal benchmarks with local socio-legal realities. Such judicial navigation is essential to mitigate the structural gaps between formal rights recognition and substantive access to justice, particularly where procedural costs and technicalities disproportionately burden marginalized groups. Ultimately, the persistence of these procedural barriers necessitates an urgent appraisal of how institutional reforms can reconcile the mandate of the judiciary as a primary guardian of constitutional principles with the lived realities of underrepresented populations. By addressing these systemic inequities, the state can move toward a more inclusive legal framework that transcends mere formalist adherence to constitutional mandates. Establishing institutional mechanisms that recognize and regulate the intersection of customary and state law is critical to ensuring that plural legal orders do not undermine fundamental human rights.

6.3 Rights of marginalized groups (indigenous peoples, women, refugees, workers)

Addressing the persistent exclusion of religious and ethnic minorities requires specific constitutional safeguards that account for the intersectionality of discrimination within both formal state institutions and informal communal structures. These safeguards must move beyond superficial legal recognition to implement oversight mechanisms that prevent the subordination of individual constitutional rights to prevailing communal or traditional norms. Such oversight necessitates the development of clear legal guidelines to resolve conflicts between customary practices and statutory law, ensuring that judicial bodies have a definitive framework for upholding constitutional protections. Furthermore, promoting gender-sensitive civic education and legal literacy among community leaders and practitioners can facilitate a more harmonized engagement between traditional mechanisms and constitutional human rights protections. Moreover, the role of constitutional courts and tribunals in evaluating the real-world impact of such normative shifts is essential to ensure that judicial intervention effectively mitigates systemic discrimination. Moreover, ensuring the independence of the judiciary remains a critical prerequisite for these institutional shifts, as the absence of such autonomy renders constitutional guarantees for vulnerable populations largely illusory. Consequently, constitutional reform must transcend mere textual adoption by establishing inclusive institutional architectures that mitigate the influence of exclusionary traditional practices on state governance. These reforms must reinforce the state's position as the primary duty-bearer, ensuring that the executive and legislative branches remain accountable for upholding individual rights against the erosion caused by discriminatory customs.

6.4 Role of NGOs, civil society, and media in promoting rights

These entities serve as essential intermediaries that bridge the gap between abstract constitutional mandates and the lived experiences of citizens, frequently exposing the discrepancies between formal law and ground-level practice. By leveraging strategic litigation to challenge discriminatory customary or statutory frameworks, these organizations compel courts to assess whether traditional practices align with the non-discrimination principles enshrined in the Constitution. Additionally, these civil society

actors play a pivotal role in monitoring the implementation of international human rights treaties, thereby pressuring state authorities to align domestic legislative outputs with global standards of gender equality and non-discrimination. Furthermore, the media acts as a vital platform for public discourse, fostering transparency in how judicial interpretations of customary versus formal laws impact the lived realities of women and minorities. By publicizing cases of rights violations, these platforms help dismantle the social legitimacy of discriminatory traditional systems that prioritize communal hegemony over individual constitutional entitlements. Furthermore, by bridging the divide between global normative standards and local socio-legal narratives, these actors empower the judiciary to pursue a more "jurisgenerative" approach that recognizes the pluralistic nature of the legal landscape while asserting the primacy of constitutional equality. This active engagement of civil society is essential for fostering a constitutional culture that challenges the exclusionary logic of traditional practices, thereby ensuring that personal laws do not function as a barrier to the full realization of gender equality. Building on this foundation, future reform must critically evaluate how bureaucratic inefficiencies and institutional barriers in the legal system often render even the most progressive rights protections merely symbolic in their application (Gupta, 2025).

6.5 Comparative evaluation with international standards

This section critically assesses the extent to which Bangladesh's domestic framework aligns with treaty obligations, identifying persistent discrepancies between constitutional guarantees and the realities of customary legal practices that often marginalize women and minority groups. Specifically, while courts seek to utilize *ijtihad* to mitigate legislative stagnation, the tension between religious personal laws and gender justice principles remains a significant barrier to meeting international benchmarks. To bridge this gap, policy interventions must prioritize legislative reforms that harmonize religious and cultural norms with international human rights treaties, specifically addressing property rights and family law inequalities ("Intersection of Religion, Constitutional Law and International Norms from Women's Property Rights in Bangladesh An Appraisal," 2023). Moreover, the state must address the systemic "double discrimination" faced by marginalized communities, such as the Hijra population, whose recognition remains tethered to medicalized disability models rather

than the substantive rights frameworks mandated by international conventions. Such divergence highlights the necessity for state-led reform initiatives that move beyond political rhetoric to substantively integrate international gender equality standards into the domestic legal architecture. Accordingly, enhancing the effectiveness of these legal frameworks requires strengthening institutional capacity and fostering multi-stakeholder collaboration to bridge the implementation deficit (Rahman M. S., 2023). Ultimately, ensuring accountability for gender-based violence and systemic discrimination necessitates the establishment of robust, accessible legal services—such as victim support shelters—and the mandatory allocation of adequate resources to enforce existing legislative protections (Shahen, 2021). Furthermore, the persistence of traditional and cultural biases within the judiciary continues to undermine the efficacy of these legal instruments, necessitating a comprehensive shift in how state authorities conceptualize and adjudicate gender-based discrimination (Banarjee, 2024). Addressing these multifaceted challenges requires a sustained commitment to legal reform, alongside targeted efforts to dismantle the societal norms that currently compromise the efficacy of institutional frameworks. Moreover, achieving substantive equity necessitates reforming patriarchal interpretations of prevailing customs that obstruct the effective exercise of women's capabilities. Governments should prioritize systematic assessments of customary practices to ensure they do not curtail women's agency, while simultaneously investing in the capacity of judicial and public sector personnel to effectively adjudicate and resolve gender-based grievances (Bank, 2012). Ultimately, addressing these deeply rooted imbalances requires shifting from merely reactive legislative measures toward a holistic, intersectional strategy that acknowledges the diverse social stratifiers affecting access to justice. This transition necessitates the implementation of survivor-centric health and legal services to ensure that victims of gender-based violence can access justice without institutional re-victimization. Moreover, the government must institutionalize coordinated monitoring and accountability mechanisms to bridge the persistent implementation gap between international human rights obligations and ground-level legal practice. Addressing these systemic failures requires moving beyond superficial policy adoption toward a comprehensive enhancement of institutional oversight, which is essential for ensuring that state actors are held responsible for protecting the rights of all citizens. Furthermore, the state must address the institutionalized biases within law enforcement and judicial processes that perpetuate the revictimization of marginalized groups, as

these systemic barriers often render constitutional protections inaccessible. Consequently, overcoming these obstacles necessitates a transformation in the legal culture that prioritizes the lived experiences of victims over formalistic interpretations of law. In this context, integrating mobile legal aid clinics and paralegal services can significantly enhance access for women and rural populations, bridging the geographic and administrative divides that currently limit the reach of the formal judiciary (“Gender Equality and Development,” 2012, p. 442). These grassroots initiatives serve to demystify legal processes and counter the patriarchal traditions that frequently impede the realization of fundamental rights at the local level. Furthermore, achieving equitable access to justice requires that judicial mechanisms are made physically, economically, and culturally accessible to all individuals to mitigate the persistent violations of human rights resulting from structural obstacles. Institutional frameworks must therefore transcend formalistic compliance by implementing robust, intersectional strategies that address the systemic cultural and legal barriers hindering marginalized populations from seeking effective redress (“Advancing Gender Justice: Overcoming Hurdles to Legal Aid in Human Rights,” 2026; BERA & CHOUDHARY, 2026) (BERA, 2026). This shift mandates the reconstruction of a monolithic legal system into one that is inherently accommodating of diverse needs, thereby transforming abstract constitutional guarantees into tangible protections for the vulnerable. By institutionalizing legal aid as a critical mechanism to translate these constitutional ideals into practice, the state can begin to dismantle the financial and bureaucratic hurdles that frequently alienate marginalized communities from the judicial process. This integration is essential to ensure that legal remedies are not merely theoretical, but are functionally available to those who encounter systemic financial and social impediments. Ultimately, bridging this implementation gap requires moving beyond the mere enactment of statutes toward a proactive, multi-sectoral approach that actively dismantles the socio-economic and institutional barriers preventing equitable access to justice for the most vulnerable populations. In this regard, evaluating the efficacy of state-sponsored legal aid programs through empirical research is crucial to identifying specific administrative failings and ensuring that judicial resources reach those historically excluded by socioeconomic and geographic disparities. Furthermore, addressing these disparities necessitates that institutions are structured to better serve human needs by mitigating the harms caused to low-income individuals within the current legal system. By developing new, specialized litigating tools—such as human

rights budgeting and clearly defined indicators—the state can establish a minimum core of government obligations that holds institutional performance to measurable standards.

Chapter 7: Findings, Recommendations, and Conclusion

7.1 Summary of key findings from constitutional and international

The policy recommendations for aligning domestic legislative frameworks with international human rights standards to bridge the current implementation gap. Proposal for institutionalizing alternative dispute resolution mechanisms to alleviate judicial backlog and improve legal efficacy for marginalized groups; call for establishing a robust monitoring framework to ensure the state's proactive adherence to both constitutional mandates and international human rights treaties. - Future research should prioritize longitudinal studies on judicial outcomes to evaluate how these structural reforms translate into improved rights realization for disadvantaged populations, as institutional change often requires sustained, evidence-based refinement. Ultimately, a profound analysis of justice administration must transcend static legal theory to evaluate how legislative provisions function within the complex socioeconomic fabric of the nation. Addressing this imperative requires a fundamental shift toward socio-legal frameworks that account for how power dynamics, legal literacy, and institutional gatekeeping dictate the actual reach of constitutional protections. Such an approach underscores that the efficacy of the judiciary depends not only on the existence of rights-based legislation but also on the systematic dismantling of structural barriers that hinder marginalized communities from obtaining effective legal remedies. This necessitates the adoption of a trust-based framework that moves beyond mere formalistic enforcement to foster active, results-based accountability for constitutional and social rights. Integrating institutional support mechanisms—where courts function in dialogue with other state actors—can facilitate the configuration of new political spaces necessary for realizing these rights. Such collaborative efforts enable the state to shift from passive adjudication to a proactive

role in securing social and economic rights. Moreover, the integration of digital infrastructure and enhanced judicial transparency serves as a necessary catalyst for aligning domestic institutional practices with global standards of legal accountability (Chauhan, 2025). Moreover, the incorporation of gender-sensitive alternative dispute resolution mechanisms offers a pragmatic pathway to reduce court congestion while providing more accessible and participatory avenues for justice.

7.2 Gaps between constitutional guarantees and international obligations

Specifically, this section examines how domestic judicial interpretations often prioritize formalistic compliance over the "transformative" potential of economic and social rights, thereby limiting the realization of substantive equality for marginalized groups. This interpretive trend reflects a broader constitutional challenge wherein the judiciary struggles to reconcile its traditional deference to legislative inertia with the active, substantive role required to dismantle entrenched social hierarchies. This prevailing judicial reliance on formal equality often overlooks systemic subordination, failing to address the specific vulnerabilities rooted in the gendered division of the public and private spheres (GENDER JUSTICE AND FEMINIST CONSTITUTIONAL PERSPECTIVE, 2025). Consequently, the failure to integrate a substantive gender perspective into constitutional jurisprudence perpetuates structural barriers that inhibit meaningful engagement with gender-based claims. These interpretative constraints mirror international challenges where a legacy of legal formalism often impedes the adoption of more inclusive, socially responsive judicial approaches. To overcome these limitations, the judiciary must shift toward a substantive interpretation that recognizes how existing legal doctrines may indirectly sustain systemic inequality. Adopting a transformative approach requires judicial actors to actively challenge the stereotypes that perpetuate economic and social exclusion, thereby aligning domestic practice with evolving global norms of substantive equality. This evolution necessitates that national courts emulate the guidance found in international frameworks, which mandate the active integration of equality principles to address inconsistencies between domestic laws and the rights of vulnerable groups. Further enhancing this process involves developing specialized judicial protocols that mandate a gender-sensitive lens during the adjudication of human rights claims, thereby preventing the marginalization of vulnerable litigants. Such an evolution aligns with the principles of substantive equality,

which prioritize result-oriented justice over mere procedural adherence by accounting for the specific material conditions and structural disadvantages faced by complainants. By transitioning from a textualist preoccupation with formal neutrality to a purposive interpretation of constitutional values, the Supreme Court can begin to address the material realities that underpin persistent social and economic disparities. This shift necessitates an acknowledgment that systemic inequality remains untouched as long as the judiciary ignores the material conditions that operationalize discrimination. Thus, moving beyond traditional gender-neutral language is essential to unveil the ingrained male normativity within domestic constitutional interpretations (GENDER JUSTICE AND FEMINIST CONSTITUTIONAL PERSPECTIVE, 2025). Such a transformation requires the bench to recognize that formal equality is inadequate for overcoming deep-rooted structural barriers, such as gendered service rules and institutional cultures that devalue the contributions of marginalized groups (George, 2026).

7.3 Recommendations for reform:

- Strengthening judicial independence through the insulation of judicial appointments from executive influence, ensuring a merit-based selection process that fosters a more diverse and inclusive bench capable of challenging entrenched institutional biases. - Enhancing the capacity of legal aid programs to provide specialized representation for litigants from marginalized backgrounds, thereby bridging the access-to-justice gap created by the exorbitant costs and complexities of the current litigation system.
- Incorporating socio-economic rights more robustly into the judicial interpretive framework by treating them as justiciable claims rather than mere aspirational directives, thereby empowering courts to hold the state accountable for the progressive realization of essential services. — Promoting the systematic training of judicial personnel in international human rights standards to ensure that rulings consistently reflect the substantive equality obligations found in instruments like CEDAW and the ICESCR.
- Aligning constitutional provisions with ICCPR/ICESCR standards through legislative harmonization, ensuring that domestic statutes are proactively amended to eliminate contradictions with treaty-based gender equality mandates, (George, 2026). Furthermore, establishing a mandatory

constitutional review mechanism for all pending legislation would facilitate the early identification of potential conflicts between domestic regulations and international human rights commitments.

- Enhancing awareness and accessibility of rights by implementing nationwide legal literacy programs that demystify constitutional entitlements for historically excluded populations. Additionally, addressing the structural impediments to justice requires institutional reforms, including gender audits of court infrastructure and the adoption of inclusive hiring practices to ensure the judiciary mirrors the diversity of the citizenry it serves.

7.4 Conclusion: Towards harmonization of Bangladesh's constitutional framework with international human rights instrument

Towards harmonization of Bangladesh's constitutional framework with international human rights instruments. This study underscores that while Bangladesh's Constitution establishes a foundational framework for the protection of fundamental rights, achieving genuine parity requires addressing the multidimensional structural, political, and operational obstacles that currently hinder judicial independence and equitable access to justice. Bridging this gap necessitates a holistic commitment to integrating international human rights standards into domestic practice to move beyond formalist legalism and address the material realities of vulnerable populations, particularly those facing gender-based exclusion. Ultimately, the judiciary's willingness to invoke these global norms, even in the absence of explicit domestic legislation, remains essential to nullifying discriminatory personal laws that currently persist under the guise of communal tradition. By prioritizing these international obligations over traditional personal laws, the judiciary can effectively dismantle structural inequalities and ensure that constitutional protections are not rendered illusory by historical or religious exceptions. Specifically, addressing the tension between constitutional guarantees of equality and discriminatory personal laws is critical to dismantling structural barriers that disadvantage women in matters of inheritance and property ownership. Such reforms must also confront the patriarchal norms that inhibit women from asserting their legal claims, as sociocultural and economic barriers continue to obstruct the exercise of justice in both rural and urban contexts. Moreover, integrating alternative dispute resolution mechanisms and community-based justice options can serve as a vital

bridge for marginalized groups who find formal, costly, and complex judicial channels inaccessible. Furthermore, enduring success in this endeavor depends on a fundamental restructuring of state institutions, including the implementation of rigorous reforms to security agencies and the repeal of restrictive media laws to foster a truly protective environment for civil liberties.

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