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Research Article

Human Rights and Fundamental Rights in Bangladesh Constitution: A Study Based on Case Law

Tazimul Maruf¹ and Md. Jahurul Islam¹

Department of Law, Khwaja Yunus Ali University, Sirajganj, Bangladesh

*Corresponding author: Email: jahurul.islam00@gmail.com

Abstract

Right means a moral or legal entitlement to have or do something. Rights are legal, social, or ethical principles of freedom or entitlement; and are often considered fundamental to any civilization, for they are regarded as established pillars of society and culture. Every person is entitled to enjoy some rights simply for being a human. Such rights are called ‘Human Rights’. Human rights are the rights we have simply because we exist as human beings. Again, the Fundamental Rights are a group of rights that have been recognized by a high degree of protection from encroachment. These rights are specifically identified in the Constitution. Some other rights and privileges are contained in the Constitution as Fundamental Principles of State Policy. Whether Fundamental Rights are enforceable, the Fundamental Principles of State Policy are not under such constitutional protection. Fundamental Rights are mainly civil and political matters whereas Fundamental Principles are economic, social, and cultural.

Keywords: Right, Human right, Fundamental right, and Constitution.

1. Introduction

The term ‘right’ literally means a moral or legal entitlement to have or do something. Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory. Rights are often considered fundamental to any civilization, for they are regarded as established pillars of society and culture. The constitution is the fundamental law of a state. It’s a body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed. When these principles are written down into a single document or set of legal documents, these principles may be said to be fundamental principles. Every person is entitled to enjoy some rights simply for being a human. Such rights are called ‘Human Rights’. Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty. Fundamental rights are a group of rights that have been recognized by a high degree of protection from encroachment. These

rights are specifically identified in the Constitution. Human rights are inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent, and indivisible. But fundamental rights are, in fact, those human rights that get specialized treatment by being written down in the Constitution or some other basic document. Some human rights have been enumerated in Part III of the Bangladesh Constitution. By this, the state has made it bound for herself to respect, protect, and ensure uninterrupted enjoyment of such rights. The Fundamental Rights of the Bangladesh Constitution themselves have no fixed content, most of them are empty vessels into which is generation must pour its content in the light of experience.

2. Objective Of Research

This research will explore the fundamental rights of Bangladesh in a new dimension and will give some ideas for better enjoyment of those rights. The main objectives of this research are-

- (a) Understanding the concept of rights, human rights, and Fundamental Rights and their differences, nature, and history.
- (b) Understanding the concept of Fundamental Principles of State Policy, their nature, scope, utility, and application.
- (c) To find out constitutional human rights enumerated in the Bangladesh Constitution as Fundamental Rights and Fundamental Principles.
- (d) To analyze some judicial decisions towards enforcement of Fundamental Rights and application of Fundamental Principles.
- (e) To give some suggestions regarding the proper utilization of the Fundamental Rights and Principles by mass people.

3. Methodology

This research is completely based on the document analysis method. In this study, the Constitution, case laws, and some other textbooks are analyzed. The study focuses on the observation technique of data collection. The researcher took mainly the observation technique for analyzing the data. Apart from the constitution and other statutory laws, case laws are observed and analyzed. And the result of the analysis is presented in text form which is descriptive in nature.

Sources of Data

Both primary and secondary sources have been used to conduct this work. Primary sources are like Constitution, Acts, Ordinances, Rules, case decisions, etc. Secondary sources are textbooks, reports, journals, articles discussing jurists, case analyses, daily newspapers, online documents, and some other publications. The study has also relied on decided cases of the Apex Court of Bangladesh and the Indian subcontinent.

Utility and Justification of Research

A large number of researches have been conducted in the field of human rights, Fundamental Principles and Rights, and their implementation. Recommendations and suggestions have also been made in enormous studies. Yet the necessity of discussing fundamental rights has not gone away. People need to be informed, aware, and ready to claim their rights when infringed. The analytical research will be helpful because this research work especially focuses on the present situation of violation of fundamental rights in Bangladesh. By the research work the students and any other eager and conscious person shall be able to know about the legal and social factors of fundamental rights in Bangladesh. This study is, in fact, based and focused on easy understanding of the case laws.

Concept of Right

A right is something a person has that people think should not be taken away. It is a rule about what a person is allowed to do or have. A right is different from a privilege, which is something that must be earned. Rights may be put into law, so they have legal protection. But a right can exist where most people think it is good (just). In simple words, rights are the common claims of people which every civilized society recognizes as essential claims for their development, and which are therefore enforced by the state.

Human Rights

Human Rights are those rights which are inherent in all human beings. These are essential for the human beings. These are like pre-conditions for their full development as well as for the use of their qualities, intelligence, and conscience to satisfy all human and social needs and interests of all the people of the World. Human Rights mean powers, conditions of existence, and possession on which an individual has claims or title by being human. These are essential conditions for their full development as well as for the use of their qualities, intelligence, and conscience to satisfy all human and social needs and interests of all the people of the World. Human Rights are rights independent of particular conditions of social recognition. These are inherent in the very nature of each human being as a conscious and self-respecting individual. These are the very basis of human life, dignity, and worth. These are the natural and essential conditions of a happy and prosperous life for all the people of the world. Whereas rights available under law differ from state to state, human rights are available to all the persons of all the states without any exception.

Fundamental Rights

The term fundamental right is a technical one, for when certain human rights are written down in a constitution and are protected by constitutional guarantees they are called fundamental rights. Such rights are a group of rights that have been recognized by a high degree of protection from encroachment. They are called fundamental rights in the sense that they are placed in the supreme or fundamental law of the land which has a supreme sanctity over all other laws of the land. These rights are specifically identified in a constitution, or have been found under Due Process of law. Many third-world countries which achieved independence after the Second World War adopted fundamental rights in their written constitutions. These rights are like the Bill of Rights.² The object of the enumeration of fundamental rights in a constitution is not to make them unalterable in any way but the main object is that they cannot be taken away by the ordinary process of law-making. They are placed beyond the reach of the executive and the legislative to act in violation of them. In *Jibendra Kishor V. The Province of East Pakistan* the Supreme Court of Pakistan held "The very conception of a fundamental right is that it being a right guaranteed by the Constitution cannot be taken away by the law, and it is not only technically inartistic but a fraud on the citizens for the makers of a constitution to say that a right is fundamental but that it may be taken away by the law. "The same view was reaffirmed by the Pakistan Supreme Court in *State V. Dosso*. The Indian Supreme Court in *Golak Nath V. State of Punjab* held "The declaration of the fundamental rights of the citizens are inalienable rights of the people. The Constitution enables an individual to oppose successfully the whole community and the state to claim his right."

Fundamental Principles of State Policy

The Fundamental Principles of State Policy are fundamental in the sense that they oblige all actors within the state- executive, legislature, and judiciary- as well as the citizens. The Legislature is directed to apply these in

making laws. The Judiciary is directed to resort to Fundamental Principles of State Policy while interpreting the Constitution as well as other laws. Being fundamental to the governance of the country, the Executive is bound to follow the spirit of these principles. They shall form the basis of the code of conduct for all the citizens working in social, political, cultural, and economic or any other arena. But what weakens these principles is the prohibition against judicial enforcement of these Principles.

Scope of Judicial Enforcement of Fundamental Principles

Judicial hands are open in protecting fundamental rights that are ensured under Part III of the Constitution of the People's Republic of Bangladesh. Article 44 of the Constitution ensures that, for the implementation of those fundamental rights people may go before the High Court Division of the Supreme Court of Bangladesh with a Writ petition under Article 102 of the Constitution. However, this rule does not apply to the principles laid down in Part II of the Constitution. Judicial hands are tied in respect of implementing those Fundamental Principles of State Policy. People are not allowed to go before any court for the implementation of the Fundamental Principles of State Policies mentioned in Part II of the Constitution. Article 8(2) of the Constitution ensures that principles in Part II of the Constitution are fundamental to the government and they are not judicially enforceable. However, the government should bear in mind that, those principles are the political commitments of the government to the people at large and should not be kept unimplemented for a long period. Moreover, if the hands of the judiciary remain tied concerning implementing those principles; the government might show unwillingness to implement those principles and the people at large will face a miscarriage of justice.

Utility Of Fundamental Principles of State Policy

Fundamental Principles of State Policy confer no legal rights and create no legal remedies, they appear to be like an instrument of instructions, or general recommendations addressed to all authorities in the Union reminding them of the basic principles of the new social and economic order which the Constitution aims at building.³ The utility of these Principles may be summed up in the following points;

- i) An instrument of instruction to all authorities within the state.
- ii) Useful beacon lights to courts.
- iii) Important tool in exercising the power of judicial review.
- iv) Utility in interpreting the Constitution.
- v) Utility in interpreting other laws.
- vi) Utility as the ideology.
- vii) Utility as setting the goal.

Fundamental Principles Enumerated In Bangladesh Constitution

The Preamble of the Constitution contains four basic Principles i.e., Secularism, Nationalism, Socialism, and Democracy. These may be termed as major or core fundamental principles as these are again mentioned in Articles 9, 10, 11, and 12 consecutively. These four are the basics of other fundamental principles enumerated in Part II of the Constitution. The list of Fundamental Principles is contained in Articles 9 to 25. All the Fundamental Principles as set out in the Constitution may be classified⁴ into the following four groups:

Principles Relating to Economic Ideal

1. **Principles of ownership (Article 13):** The State shall ensure three types of ownership for economic development. The Article also says that people shall own or control the instruments and means of production and distribution.

2. **Guarantee of necessities (Article 15):** Ensuring constant increase of productive forces through planned economic growth shall be a fundamental responsibility of the State to attain, and also a steady improvement in the material and cultural standard of living of the people. By this, the State shall secure the necessities of life including food, clothing, shelter, education, and medical care.
3. **Rural development and agricultural revolution (Article 16):** Taking measures for radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, and the development of cottage and other industries are the responsibility of the state to carry out. The state shall try to achieve the improvement of education, communications, and public health, in rural areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas.
4. **Ensuring equality of opportunity (Article 19):** Equality of opportunity for all citizens is state responsibility. The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities to attain a uniform level of economic development throughout the Republic. Equality of opportunity and participation of women in all spheres of national life are also to be ensured.
5. **Work as a right and duty (Article 20):** Work is a right, a duty, and a matter of honor with reasonable payment. The principle of payment shall be “from each according to his abilities, to each according to his work”. The State shall endeavor to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labor in every form, intellectual and physical, shall become a fuller expression of creative endeavor and the human personality.
6. **Protection and improvement of environment and biodiversity (Article 18A):** Protection and improvement of the environment and preservation and safeguarding of the natural resources, bio-diversity, wetlands, forests, and wildlife for the present and future citizens, etc. are a state responsibility.

Principles Relating to Social Ideal

1. **Emancipation of peasants and workers (Article 14):** Emancipation of the toiling masses, the peasants and workers, and backward sections of the people from all forms of exploitation shall be a fundamental responsibility of the State to carry out.
2. **Principle as to free and compulsory education (Article 17):** Taking measures for establishing a uniform, mass-oriented, and universal system of education and extending free and compulsory education to all children to a certain stage is state responsibility. Education to the needs of society producing properly trained and motivated citizens to serve social needs and removing illiteracy from the country are concerns of the state.
3. **Principle regarding public health and morality (Article 18):** The state shall take measures for raising the level of nutrition and the improvement of public health as its primary duty. The state shall also adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health. Adoption of effective measures to prevent prostitution and gambling is also to be achieved by the State.
4. **Equality (Article 19):** The State shall endeavor to ensure equality of opportunity to all citizens.
 5. **The culture of tribes, minor races, ethnic sects, and communities (Article 23A):** The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects, and communities.

Principles Relating to Legal and Administrative Reforms

1. **Principle as to women’s participation (Article 19):** The State Shall endeavor to ensure equality of opportunity and participation of women in all spheres of national life.
2. **Principle of Separation of Judiciary (Article 22):** The separation of the judiciary from the executive organs of the State shall be the state’s responsibility to ensure.

3. **Principle concerning national culture (Article 23):** The State shall adopt measures to conserve the cultural traditions and heritage of the people, and to foster and improve the national language, literature, and arts so that all sections of the people are allowed to contribute towards and to participate in the enrichment of the national culture.
4. **Principle as to National monuments, etc. (Article 24):** The State shall adopt measures for the protection against disfigurement, damage, or removal of all monuments, objects, or places of special artistic or historic importance or interest.

Principles Relating to International Relations

Promotion of international peace, security, and solidarity (Article 25): International relations of the State shall be based on the following principles as enunciated in Article 25:

- i. Respect for national sovereignty and equality.
- ii. Non-interference in the internal affairs of other countries.
- iii. Peaceful settlement of international disputes.
- iv. Respect for international law and the principles enunciated in the United Nations Charter.
- v. Renunciation of the use of force in international relations and general and complete disarmament.
- vi. Respect and support for the right of every person freely to determine and build up its own social, economic, and political system by ways and means of its own free choice
- vii. Support for the oppressed peoples throughout the world waging a just struggle against imperialism, colonialism, or racialism.

So, these are the Fundamental Principles of State Policy mentioned in the Constitution.

Fundamental Rights Enumerated In Bangladesh Constitution

Like most constitutions framed after the Second World War, our Constitution too contains a Chapter on Fundamental Rights.⁵ Part II of the Constitution has accommodated individual as well as collective rights if the citizens of Bangladesh. A total of 18 rights have been enlisted and guaranteed. All of these rights are civil and political rights. Again, these are categorized based on applicability to persons. Some rights are applicable for all persons irrespective of citizen or non-citizen as enumerated in Articles 32, 33, 34, 35, 41, and 44 of the Constitution whereas the others are granted only to citizens as enumerated in Articles 27, 28, 29, 30, 31, 36, 37, 38, 39, 40, 42 and 43.

Bangladesh's constitution has also the mechanism of imposing some restrictions over the absolute enjoyment of fundamental rights. Based on such restriction, all fundamental rights of our constitution may be classified into the following three groups:

Absolute Rights: Absolute rights are those that the parliament cannot restrict without constitutional provisions. These are the following:

1. **Equality before law (Article 27):** It describes that all citizens are equal before the law and are entitled to equal protection of the law. It has two aspects: 'Equality before the law' and 'Equal Protection of law'.
2. **Discrimination on grounds of religion etc. (Article 28):** It provisions for non-discrimination among citizens based on religion, race, caste, sex, place of birth, etc. Men and women shall be treated equally in state and public matters. And all citizens shall be entitled to equal access to any place of public entertainment or resort, or admission to any educational institution. But all these protections cannot prevent the state from making any law or provision in favor of women or children or for the advancement of any backward section of citizens.

3. **Equality of opportunity in public employment (Article 29):** This article accommodates equal rights concerning employment or office in the service of the republic. In the case of employment, there shall be equality of opportunity for all citizens. No citizen shall be ineligible for, or discriminated against on grounds of religion, race, caste, sex, or place of birth. This article also contains provisions in favor of a backward section of citizens, appointments in religious or denominational institutions, and reserving employment of one sex unsuited to members of the opposite sex.
4. **Prohibition of foreign titles etc. (Article 30):** Citizens shall not accept any title, honor, award, or decoration from any foreign state without the prior approval of the President.
5. **Safeguards as to arrest and detention (Article 33):** This Article articulates that the arrestee shall be informed of the grounds for such arrest and also be provided with the right to consult and be defended by a legal practitioner of own choice. The detainee shall be produced before the nearest magistrate within a period of twenty-four hours.
6. **Prohibition of forced labor (Article 34):** Under this Article, forced labor is not only prohibited but also a punishable offense. Therefore, forced labor as lawful punishment and also for public purposes is permitted.
7. **Protection in respect of trial and punishment (Article 35):** This Article deals with the prohibition of 'ex post facto law', which means a person cannot be charged with an offense that was not any offense at the time of the commission of such act or a person cannot be punished with a greater penalty than that might have been inflicted under the law in force at the time of the commission of the offense. Prosecution and punishment of any offense more than once is also prohibited under this Article. Speedy and public trial by an independent and impartial Court, prohibition of compelling to be a witness against oneself, and prohibition of torture, cruel, inhumane, and degrading punishment and treatment are ensured by this Article.
8. **Enforcement of fundamental rights (Article 44):** The right to move the High Court Division to enforce Fundamental Rights itself another Fundamental Rights. The honorable High Court Division is empowered to exercise its jurisdiction of enforcing such rights under Article 102.

Rights on which reasonable restriction can be imposed: In some cases, the Parliament can impose reasonable restrictions according to respective articles. What is reasonable restriction is to be examined by the apex court. If any restriction seems unreasonable before the Supreme Court, then it may declare such restriction as illegal. Such rights are the following:

1. **Freedom of movement (Article 36):** The right to 'Freedom of Movement' for its citizens is guaranteed by the constitution of the People's Republic of Bangladesh under Article 36. The state can impose reasonable restrictions on such right but what is reasonable restriction is not well-described by any other law.
2. **Freedom of assembly (Article 37):** The right to assembly and to participate in public meetings and processions peacefully and without arms are Fundamental Rights under Article 37. But there may be reasonable restrictions imposed by law in the interests of public order or public health. The government can restrict the right of peaceful assembly using Section 144 of the 1898 Criminal Procedure Code, which offers a broad discretion to prohibit certain acts, including public gatherings. It is reported that organizers must secure prior permission from the local police authority to hold an assembly in Dhaka. In 2013, the Dhaka Metropolitan Police (DMP) issued a circular stating that organizers of any assembly, meeting, or public gathering in open public places, must apply to the Police Commissioner seven days before it is held. The Office of the Police Commissioner usually informs the applicant within five days whether permission is given or denied. If permission is denied, that decision is usually final, although a case can be filed at the High Court Division of the Supreme Court of Bangladesh to contest a denial of permission.
3. **Freedom of association (Article 38):** Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order. But it cannot be formed to destroy the religious, social, and communal harmony among the citizens and to create

discrimination, organize terrorist acts or militant activities, and also for purposes of doing anything inconsistent with the constitution.

4. **Freedom of thought and conscience and speech (Article 39):** Freedom of thought and conscience, freedom of speech and expression, and also freedom of the press are guaranteed under this Article. Among these rights, the freedom of thought and conscience is subject to no restriction and it is uncontrolled by any state measure. But freedom of speech, expression, and press is not unlimited. The state can impose reasonable restrictions over this type of right once it is published, not before that. Under this Article, rights are only available to citizens of Bangladesh.
5. **Freedom of religion (Article 40):** Every citizen has the right to profess, practice, or propagate any religion and to maintain and manage its religious institutions. No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship if that instruction, ceremony, or worship relates to a religion other than his own. This Article also provides such freedom on the condition of maintaining law, public order, and morality.
6. **Protection of home and correspondence (Article 43):** Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health – (a) to be secured in his home against entry, search and seizure; and b) to the privacy of his correspondence and other means of communication. “Under Article 43 of the Constitution of Bangladesh, we perceive that the right to privacy is ensured as a fundamental right in our constitution but under two ‘protected zones’. In other words, the citizens of Bangladesh have two ‘privacy protected zones’- firstly, Home Privacy and secondly, Privacy of Correspondence and Communication.”

As discussed earlier, such restrictions are to be imposed not arbitrarily but rather based on the concept of public interest, morality, social order, social security, public health, and any other concept of interest of society as a whole. If an individual’s liberty becomes unconditional of social and collective interests then such interests of the society remain unprotected. Thus, the maintenance of social order and peace by imposing some reasonable restrictions is of much importance.

Fundamental rights which have been practically left to the legislature: Some of the Fundamental rights are to be enjoyed subject to law legislated by the Parliament. People will avail such rights ‘by law’, ‘except by law’, and ‘subject to any restriction imposed by law’; here law means law made by the parliament. These are the following:

1. **Right to protection of law (Article 31):** Principles of equality and nondiscrimination have two dimensions: ‘Equality before law’ (under Articles 27, 28, 29, 30) and ‘Equal protection of law’ (under Article 31). This right to equal protection of the law means getting protection and treatment by law. No action, except by law, can be taken which is detrimental to the life, liberty, body, reputation, or property of any person.
2. **Protection of the right to life and personal liberty (Article 32):** Among all these Fundamental Rights, the first and foremost is the right to life and personal liberty. The life of each person matters. It can only be taken away with the clear provision of law not otherwise. The right to the necessary condition of life, the right to receive medical aid, the right to education, and consumers’ rights have been incorporated into the right to life through judicial interpretation by the Supreme Court.
3. **Right to the lawful profession, occupation, or business (Article 40):** Every citizen shall have the right to enter upon any lawful profession or occupation according to the employer’s lawful requirement and his qualification, and to conduct any lawful trade or business. The state may impose reasonable restrictions by making law.
4. **Protection of right to property (Article 42):** Every citizen has the right to acquire, hold, and transfer or otherwise dispose of property and if the state wants to make any acquisition, requisition, or nationalization then it must be by law made by the Parliament. Principle, manner, and compensation of acquisition,

nationalization, or requisition shall be fixed by law and no question as to such law can be asked before any court on the ground of inadequacy of compensation.

In these cases, the Parliament can impose restrictions that cannot be scrutinized in respect of reasonableness by the court. But the Supreme Court can see only the following two⁶ things:

- (i) If the law imposing restriction is a valid one;
- (ii) If the right has been infringed or abridged by the law.

Constitutional Remarks:

The parliament being the supreme legislative authority can pass any law within the ambit of constitutional limitations. But it cannot pass any law to create a new offense that is not in existence at the time of the commission of the act charged as an offense nor can it increase penal liability with retrospective effect. This concept is contained in Article 35 of our constitution. But Article 35(1) of the constitution envisages the prohibition on conviction or sentence under an "ex post facto law". It does not prohibit trial of the offense alleged to have been committed or the procedure to be followed in the investigation, or inquiry in respect of an offense alleged to have been committed. In the case of *Rao Shiv Bahadur Singh vs State of Vindhya Pradesh*, the Supreme Court of India observed as follows:

“What is prohibited under article 20(1) is only conviction or sentence under an ex post facto law and not trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offense or by a court different from that what had competence at the time cannot 'ipso facto' be held constitutional.”

Findings

Based on the discussion of previous chapters, the findings of the research are the following:

1. Laws inconsistent with the Constitution shall be void under Article 7. And laws inconsistent with the Fundamental Rights shall also be void under Article 26. This creates a situation where the Court cannot directly declare any law inconsistent with the Fundamental Principles to be void for the two following reasons-
 - a. No such express Article or provision is contained in the Constitution which says ‘laws inconsistent with Principles can make such law void’.
 - b. Again, if someone wants to resort to Article 7 for invalidating any law inconsistent with the principles that’s not also possible because the Court cannot enforce Article 7 in the same manner it can enforce Article 26 of the Constitution.

2. The Fundamental Principles of State Policy acts as a guide for the interpretation of the Constitution. Not only the Constitution, it can be used as a guide to interpret any law. So, the court is empowered to interpret the Constitution and any other law of the land by the ideas and rules derived from these Principles. In this regard, I feel the comment of Professor Muhammad Ekramul Haque is noteworthy:

“It means to interpret the Constitution and other laws in conformity with these Principles. But, in the name of interpretation, a completely new meaning cannot be awarded to any clear provision of the Constitution or of any other law. This task of interpretation must be done with utmost care so that ultimately it does not amount to enforce these Principles in the name of interpretation. Similarly, if the principles are used by the courts merely to interpret as mandated by the Constitution they cannot be restricted in the name of judicial enforcement. Thus, every effort made by the judiciary should not be termed as enforcement of that very thing.”

3. It’s well-settled that fundamental principles are not enforceable (*Kudrat-e-Elahi Panir vs. Bangladesh*). But this cannot bind the hand of the Judiciary from performing judicial activism. In *Masdar Hossain*⁷

case the Court by its judgment ‘indirectly enforced’ Article 22 of the Constitution which is a Fundamental Principle. The Court never gave effect to Article 22 rather its objective was achieved through liberal interpretation of the Constitution.

4. There are some differences of opinion among the jurists and judges in respect of the voidability of any law inconsistent with the Fundamental Principles of State Policy. Some judges think that laws inconsistent with such Principles are not void whereas some other modern thinkers suggest following the rule of voidability of law when such law cuts down some facilities of people that they already have. (*Kudrat-e-Elahi Panir vs. Bangladesh* and *Ain o Salish Kendra vs Government of Bangladesh*)
5. After considering the aforesaid cases it can be observed that the Apex Court has taken the following two approaches regarding Fundamental Principles and Fundamental Rights:
 - a. Strict Legalistic Approach: By this approach, the Court expressed the view that such Principles do have not much legal value. Where conflicts arise between the Principles and the Rights, Rights shall have preference over Principles.
 - b. Harmonious Approach: In some respects, the Court is found to follow a harmonious construction approach by construing the Rights and Principles in a way that makes them an “integrated scheme”. Avoiding any contradiction between the Rights and Principles and then also giving effect to both of them is the main theme of such type of approach.

Suggestions

Some suggestions are presented below to strengthen the position of Fundamental Principles and Fundamental Rights in Bangladesh:

1. The ‘reasonable restriction’ clauses in the Constitution should be more specific. What is a ‘reasonable restriction’ must be determined, specified, and clarified by the law of parliament. This vulnerable job should not be left to the discretion of the Executive branch of the state. In the absence of any further directions, there remain chances of violation of such rights.
2. Human Rights activists claim some laws to be ‘black law’. Laws like the Special Powers Act, of 1974 make violations of human and even Fundamental Rights violations easier for law enforcement agencies, and corrupted leaders of political parties tend to use their power to violate mass and marginalized people. So, such repressive law must be amended by the scheme of Fundamental Rights and Principles of State Policy.
3. Incidents of violations should be taken seriously and strict stand is to be taken against violators of such rights. Violators how high they may be must be held accountable for committing any violation of rights.
4. Outdated laws are to be amended and new pragmatic laws are to be equipped with measures of speedy and effective trial mechanism for reducing violations of rights of people.
5. Our courts have to take a firm stand against the violators of rights and they should interpret and adjudicate in a way that best protects the interest of common people.
6. People should be made aware of their rights. Consciousness among mass people should be grown gradually. When people are vigilant about their rights, powerful persons cannot violate their rights easily.
7. The generalized idea of human rights should be taught at every tier of our education system. The curriculum of schools, colleges, and universities should include the basic knowledge of the rights of people.
8. The executive and legislative branches of the government are seen as involved in the violations of rights and non-implementations of directive principles. So, a sense of accountability should be grown among people involved in these sectors.

9. Freedom of speech and freedom of expression are pillars of democracy. And the role of media in any free and fair democratic society is well-recognized. So, the voice of the media must be raised to the utmost level. Criticism by the media should be tolerated by the government.

Conclusion

Rights and duties are two concurrent things. One person's right may be another's duty and liability. Again, such rights and duties are also to be maintained with specific principles. The state is to respect its citizen's rights as a holy duty and responsibility. Such rights and duties are internationally recognized and protected nationally. The state has an international obligation toward human rights to respect it. International commitment to human rights is ensured through the Universal Declaration of Human Rights. On the other hand, national commitment to complying with human rights is documented and recognized through two different ideas: Fundamental Principles of State Policy and Fundamental Rights. Whereas the first idea of rights is about economic, social, and cultural matters of the state and its citizens, the second one deals with civil and political rights. Constitutional protection of Fundamental rights makes those rights enforceable before the court of law. But economic, social, and cultural rights are left in the hands of lawmakers available according to our resources. Such things are of any avail to make laws, and policies and also to interpret them.

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