

Human Rights in the Constitution of Bangladesh

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

—Article 11
Bangladesh Constitution

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As Bangladesh celebrates the golden jubilee of its adoption of the Constitution, I shall investigate the Constitutional framework of human rights in Bangladesh in this short piece with a brief historical anecdote. The notion of ‘human rights’ is plainly understood as: every human being by virtue of the very fact of being born as a ‘human’ is entitled to enjoy certain rights individually, as a part of a community, irrespective of gender, caste, colour, religion or creed. The common interest of humankind to promote certain conditions for human beings led to the international recognition of human rights, catalysed by some significant historical events, such as The Magna Carta (1215), the American Declaration of Independence (1776), the French Declaration of Man and of the Citizens (1789), and the American Bill of Rights (1791).

Specifically, after the horrific experience of the WWII, the world community realised the need for protection of human rights both nationally and internationally and thereby adopted the Universal Declaration of Human Rights (UDHR) in 1948. Later in 1966 came the twin documents, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights

of several international instruments on human rights has put states under an obligation to reflect these sets of rights in Constitutions in the form of enforceable Bill of Rights. Depending on the political ideology and economic strength, the states have chosen to put these two sets of rights in their Constitution, either as part of judicially enforceable fundamental rights, or as part of fundamental principles of state policy (FPSP) which are not judicially enforceable, per se.

When Bangladesh adopted her Constitution on November 4, 1972 it also reflected recognition of these two sets of rights: as FPSP in Part II, Articles 8-25, and as judicially enforceable fundamental rights in Part III, Articles 26-47, of the Constitution.

One fundamental document which provided the foundational principles in textual terms for the Constituent Assembly in drafting the Constitution for the nation was The Proclamation of Independence of Bangladesh, pronounced on 10th April, 1971, which formally reaffirmed the Declaration of Independence made by the father of the nation, Bangabandhu Sheikh Mujibur Rahman on 26th March, 1971. This Proclamation forming an essential part of our Constitution is unique, in the sense that, such act itself is a manifestation of the collective right of the people to self-determination beyond the colonial paradigm. This

as prescribed by the Charter of the UN, even before Bangladesh formally became a member of the highest intergovernmental organization. Accordingly, the instrument further goes on to declare that, “WE further resolve that we undertake to observe and give effect to all duties and obligations that develop upon us as a member of the family of nations to abide by the Charter of the United Nations.”

These pledges made in the Proclamation of Independence is also reflected in the preamble of the Constitution. To assert its guarantee of human rights for the citizenry and to ensure to create a society which would cater to the guarantee of those rights, the preamble states,

“Further pledging that it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation, a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens;”

Reaffirming the pledge made in the Proclamation towards international duties and obligations, the preamble further promises, “...our full contribution towards international peace and cooperation in keeping with the progressive aspirations of mankind;” This pledge towards international obligation is further reflected in Article 25 which promises “respect for international law and principles enunciated in the United Nations Charter.”

Article II of our Constitution deserves particular mention, as the guiding principles of the state, which promises that democracy and human rights would underline the FPSP. Article II states,

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

In this discussion it is important to highlight the use of the phrase “human dignity,” in the Proclamation of Independence, the preamble and in Article II of the Constitution. The concept of “human dignity” is not static but dynamic in the sense that the essential elements and parameters of “human dignity” changes over the passage of time and evolves with the demands and necessities of a particular time in question. Therefore, the idea of “human dignity” is so wide and so inseparable from human rights, that it can encompass different dimensions of human rights in a given time and context.

The Constitution of Bangladesh, like many other countries uses the technical term “fundamental rights” to define a set of “human rights” as guaranteed in our Constitution. For Bangladesh, these comprise a set of civil and political rights guaranteed in Part III of the Constitution. Articles 26-47A are those set of human rights in Bangladesh which are protected by the Constitution by ensuring judicial enforceability; they are placed in the supreme law of the land as having sanctity over all other laws of the country. The rights enumerated in Part III ensures that they cannot be taken away by the ordinary process of law making and that these rights are placed beyond the reach of executive and

legislative authorities to act in violation of them (Art 26).

18 fundamental rights have been enshrined in our Constitution – all of them falling into the category of civil and political rights. Among these 18 fundamental rights, a set of rights are guaranteed to all persons living in the territory of Bangladesh irrespective of citizenship, which includes: rights guaranteed under Articles 32 (protection of right to life and personal liberty); 33 (safeguards as to arrest and detention); 34 (prohibition of forced labour); 35 (protection in respect of trial and punishment); 41 (freedom of religion); and 44 (enforcement of fundamental rights). Another set of rights are guaranteed exclusively for the citizens of Bangladesh, which includes: Article 27 (equality before law); 28 (discrimination on ground of religion, etc); 29 (equality of opportunity in public employment); 30 (prohibition of foreign titles); 31 (right to protection of law); 36 (freedom of movement); 37 (freedom of assembly); 38 (freedom of association); 39 (freedom of thought and conscience, and of speech); 40 (freedom of profession or occupation); 42 (rights to property) and 43 (protection of home and correspondence). Enforcement of these rights are guaranteed under Article 44 of the Constitution through Writ Jurisdiction of the High Court Division of the Supreme Court of Bangladesh under Article 102.

However, all of these rights are not absolute; some of them are subject to certain restrictions. The absolute rights guaranteed in Articles ensures that Parliament cannot impose any restrictions over the enjoyment of these rights except as provided in the Constitution. These includes the rights under Articles 27, 28, 29, 30, 33, 34 and 35.

Certain rights namely the rights guaranteed under Articles 36, 37, 38, 41 and 43 can be subject to reasonable restrictions imposed by the Parliament as prescribed in the Constitution itself. The grounds for imposing such restrictions on these set of rights are listed as: the public interest (Art 36); in the interest of public order or public health (Art 37); in the interest of public order or morality (Art 38 and 41); in the interest of the security of the State, friendly relation with foreign State, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence (Art 39); and in the interest of security of the State, public order, public morality or public health (Art 43).

Another set of fundamental rights have been essentially left with the Parliament’s satisfaction to impose any restrictions if it deems fit and proper under particular circumstances. Such restrictions upon the satisfaction of the legislature can be imposed upon the rights guaranteed in Articles 31, 32, 40, and 42. If any such restrictions are imposed then it is up to the highest Court of the country to determine the Constitutional validity of such restrictions under given circumstances. Article 141B empowers the State during the state of emergency to suspend application of fundamental rights guaranteed under Articles 36, 37, 38, 39, 40 and 42. Article 141C further empowers the President to issue an order upon the advice of the Prime Minister to suspend enforceability of these suspended rights during the tenure of emergency or shorter period as maybe specified in that order.

Article 45 prescribes that nothing in Part III shall apply to members of disciplined forces for ensuring the

proper discharge of their duties. Article 46 empowers the Parliament to provide indemnity to individuals under stated grounds irrespective of any provision of Part III. Article 47(1) states savings for certain laws, which cannot be challenged in the Court by virtue of Article 44, such as compulsory acquisition, nationalisation or requisition of any property or the control or management, etc, thereof whether temporarily or permanently passed by the Parliament in order to effectively implement FPSPs. Article 47A further restricts application of certain articles such as Article 31 (1) and 31 (3), 35 and 44 for persons specified in Article 47 (3) such as member of any armed or defense or auxiliary forces or a POW or a person who is under detention or prosecution or punishment for committing genocide, crimes against humanity, war crimes or other crimes under international law.

As a part of its commitment made in Article 25 along with the constitutionally guaranteed human rights, since becoming member of the UN, Bangladesh has acceded, adopted and ratified various international human rights instruments. In its periodic State Party reports to ICCPR and ICESCR committees, the GOB has specifically mentioned that the Constitutional provisions give effect to the treaty provisions that Bangladesh has ratified.

Over the last five decades, the highest judiciary in Bangladesh has played as an instrumental protagonist in safeguarding human rights in Bangladesh. Our judiciary played an extremely pro-active role in upholding the Constitutional mandate of ensuring fundamental rights either by public interest litigation (PIL) or through suo moto exercise of its powers. Violation of civil and political rights like illegal detention, custodial torture, equal protection of law and discriminatory measures are well addressed through Writ Jurisdictions. Our judiciary has also been highly pro-active to ensure FPSP on different issues especially in the cases related to protection of the environment.

Along with the Constitutional framework there are institutional mechanisms such as National Human Rights Commission of Bangladesh, Bangladesh Law Commission, Anti Corruption Commission, and Information Commission, which also operate to ensure that the human rights of the citizens are protected. Despite highly being criticized for her human rights records by different groups both at national and international level, the recent incidence of Bangladesh being elected as a member of the UN Human Rights Council in October, 2022 – through a competitive election managing to secure highest votes – is surely positive mater for the country and her commitments towards human rights. This should be an encouragement for Bangladesh to manifest her commitments towards ensuring human rights and human dignity as promised in the Proclamation of Independence and the Constitution. After all, the country which has a better story of human rights records to tell the world, will triumph in the end.

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Painting by Zainul Abedin

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In post WWII era, when the world became divided into two major ideological blocks led by the US in one side and the former USSR in the other spectrum, the ideological classification of these human rights became divided into two categories, namely the civil and political rights, enshrined in ICCPR, and the economic, social and cultural rights, enshrined in ICESCR. There has been significant debate over this division, as many scholars consider the link between civil and political rights and the economic, social and cultural rights as too inseparable and interwoven. Regardless, universal endorsement of these two sets of human rights as a dominant governance concern is a major accomplishment of the twentieth century. The adoption

collective right as asserted by the people of Bangladesh is the democratic right of the people. Accordingly, the emergence of Bangladesh in the political map of the world is a testament to the manifold virtues of the democratic exercise of human rights as a response to the aftermath of general elections of 1970 in Pakistan and the unjustified denial of the verdict of people by the Pakistani military regime.

Though the Proclamation did not directly use the phrase “human rights,” it clearly committed to warrant three core rudiments which guarantees the “human rights” of citizenry, i.e., equality, human dignity and social justice. It is interesting to note that the framers of the Proclamation intended to keep the nation in tune with the international ‘duties and obligations’

Property rights and their legal protection: The constitutional perspective

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What we are is our “culture” and we expect to protect our rights through law. In other words, we expect to enjoy the protection of law, be treated in accordance with law and only in accordance with law, which is an inalienable right of every citizen (wherever he or she may be) and of every other person for the time being in Bangladesh, and no action detrimental to the life, liberty and property of any person can be taken, except in accordance with the law. It is customary in modern states to have a written constitution, to enshrine the

“fundamental rights” of the people in their constitution that it guarantees, and Bangladesh along with other countries of the sub-continent are no exception.

In Bangladesh, the constitution is the supreme law of the land that sets limits on the powers of the government and ensures a democratic system in which people enjoy certain rights (as embodied in Part III of the Constitution). The citizens of Bangladesh are endowed with certain fundamental rights, which are considered to be sacrosanct and transcendental in nature. Thus, as the name suggests, fundamental rights are

not only one of the most important sources for the protection and maintenance of human dignity and integrity, but they also enormously contribute towards the development of society as a whole.

Fundamental rights are incorporation of the basic human rights, but are regulated by our Constitution and identified as special rights for the people. With these rights being cohesive in a society, citizens are able to comprehend the importance of all members of society, and collaborate, concert and adjust themselves accordingly in maintaining cordial relationships with one another.

The constitution also provides for enforcement of these rights; therefore, they not only have a legal value but also an educational value, assisted by the citizens to protect, respect, accept and fulfil the rule of law. Thus, they not only ensure and guarantee the basic civil and political rights and freedoms, but they also serve the important functions of safeguarding the community by removing the notion of discrimination of all kinds to ensure equality among all. Moreover, these rights are part of the basic structure of the Constitution they cannot be contravened, reduced or infringed by any constitutional law or its provisions or amendments. If and

when this appears, that particular law will be declared as unconstitutional and void for being against the norms of the Constitution (Article 26 of the Constitution of Peoples’ Republic of Bangladesh/Anwar Hossain Chowdhury vs Bangladesh, 41 DLR (AD) 165 [1989]).

Fundamental rights are such rights that are basic in nature for any individual, without which the modern constitutional democracy would be meaningless as they are ingrained with an understanding that these rights cannot be infringed/taken away by any ordinary provisions of law.