
POTENTIALITIES AND CONSTRAINTS ON THE FUNDAMENTAL RIGHTS: A COMPARATIVE APPROACH

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ABSTRACT: Fundamental rights are the constitutional rights that can never be denied under any circumstances as pointed out in the most of the constitutions in the world. In fact, these rights can never be restricted by any laws and policies as guaranteed in the constitutions. These rights are more liberal in the developed countries as compared to developing as well as the middle east countries. For example, Bangladesh, Malaysia, Saudia Arabia, Bahrain etc; they have some laws that restricted their fundamental liberties to some extent. The prevention of Crimes Act, 2013; the Special powers Act, 1974; the Sedition Act; 1948 etc; are notable. However, this study intends to assess the potentialities and constraints on the fundamental liberties under the different constitutional laws focusing on Malaysia, Bangladesh consisting of at least 25 respondents based on the primary and secondary sources at UKM.

KEYWORDS: *Fundamental Rights; Potentialities & Constraints, Comparative Approach.*

1. BACKGROUND

The Fundamental Rights are considered as one of the integral part in the most of the Constitutions in the world. It is defined as the basic human freedoms which every individual has a right to enjoy for a proper and harmonious development of personality. In fact, fundamental rights are considered as human rights.¹ These rights find their origin in many places such as England Bill of Rights, United States Bill of Rights and France Declaration of Bill of Rights of Man.² In order to find out the history of fundamental rights around the world, we must look into the history of human right as it is related and connected with the fundamental rights. In fact, fundamental rights are the part and parcel of the human rights. Certain human rights is fairly new and its roots, however, lies in earlier tradition and documents of many cultures. These rights are acquired by their family, indigenous nation, religion, class, community, or state. These rights are also found in the different codes and culture such as the Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran, and the Analects of Confucius, the Inca and Aztec codes of conduct etc.³ The contemporary international human rights law as well the United Nations organization have important historical antecedents. Efforts in the 19th century to prohibit the slave trade and to limit the horrors of war are prime examples. In 1919 the International Labour Organization (ILO) was established for protecting the worker's rights including their health and

¹ Ahamuduzzaman, *International Human Rights Law* (Dhaka: Osder Publications, 2006), p.12.

² Mohammad Johurul Islam, "Human Rights in Bangladesh: The unheard voices", *Human Rights and non- State Actors*. ed. by Dr. Mizanur Rahman (Dhaka: Executive Director Empowerment through Law of the Common People (LCOP), 2005], p. 63.

³ Noor Mohammad, *Law and Human Rights in Bangladesh: An Empirical Study*, Germany, available at <https://www.lap-publishing.com/extern/listprojects> on 09.08.2014.

safety and the protection of certain minority groups was raised by the League of Nations at the end of the First World War.⁴

Creation of the United Nations

Some ideas of human rights as well as fundamental rights such as the right to life, fair trial etc.; were emerged stronger after World War II. The extermination by Nazi Germany of over six million Jews homosexuals, and persons with disabilities horrified the world. Trials were held in Nuremberg and Tokyo after World War II and officials from the defeated countries were punished for committing war crimes, "crimes against peace," and "crimes against humanity." After that the UNO was established by the leadership of the President Franklin Delano Roosevelt's 1941 and when he spoke of a world founded on four essential freedoms such as the freedom of speech and religion and freedom from want and fear.⁵ The United Nations pledged to promote respect for the human rights including fundamental rights for all. To advance this goal, the UN established a Commission on Human Rights focusing on the fundamental rights and freedoms proclaimed in the Charter.

The Role of the Universal Declaration of Human Rights

It was passed on December 10, 1948 by the 56 members of the United Nations recognizing the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. It works for achieving the common standard of achievement for all people and all nations.⁶

The Role of International Bill of Human Rights

In order to enforce the UDHR, the UN Commission on Human Rights proceeded to draft two *treaties*: the International Covenant on Civil and Political Rights (ICCPR) and its optional *Protocol* and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the *International Bill of Human Rights*. The ICCPR focuses on such issues as the right to life, freedom of speech, religion, and voting. The ICESCR focuses on such issues as food, education, health, and shelter. Both *covenants* trumpet the extension of rights to all persons and prohibit discrimination.⁷

⁴ The Charter of the League of Nations, available at: <http://www.unhcr.org/refworld/docid/3dd8b9854.html>, on 14 August 2014.

⁵ Background of the UNO, available at <http://dosfan.lib.uic.edu/ERC/bgnotes/igos/un9210.html>, accessed on 14 August 2014.

⁶ The Role of the Universal Declaration of Human Rights, available at <http://www.un.org/en/documents/udhr/>, accessed on August 14, 2014.

⁷ The Role of the International Bill of Rights, available at the <http://en.wikipedia.org>, accessed on August 14, 2014.

In addition to the above conventions, the United Nations has adopted more than 20 principal treaties further elaborating human rights. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect especially vulnerable populations, such as refugees (Convention Relating to the Status of Refugees, 1951), women (Convention on the Elimination of All Forms of Discrimination against Women, 1979), and children (Convention on the Rights of the Child, 1989). As of 1997 the United States has ratified only these conventions:

- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Prevention and Punishment of the Crime of Genocide
- The Convention on the Political Rights of Women
- The Slavery Convention of 1926
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In Europe, the Americas, and Africa, regional documents for the protection and promotion of human rights extend the International Bill of Human Rights. For example, African states have created their own Charter of Human and People's Rights (1981), and Muslim states have created the Cairo Declaration on Human Rights in Islam (1990). The dramatic changes in Eastern Europe, Africa, and Latin America since 1989 have powerfully demonstrated a surge in demand for respect of human rights. Popular movements in China, Korea, and other Asian nations reveal a similar commitment to these principles.⁸

Difference between Human Rights and Fundamental Rights:

There are some distinctions⁹ between human rights and fundamental rights such as

- Human rights involves in mankind. On the other hand, fundamental rights involves in the people of the State.
- Human rights are not protected by the constitution itself. On the other hand, fundamental rights are protected by the constitution.
- Human rights are inalienable, indivisible, inviolable etc. But the fundamental rights are not treated like that way.
- There are 25 numbers of human rights as per the documents like the documents inserted to the Universal Declaration of Human Rights, 1948. Among the rights, there are 19 numbers of civil and political rights and the rest of the 6 rights are the economic, social and cultural rights. In the case of fundamental rights, it quite depends upon the pleasure of the State for inserting the matter of fundamental rights. In this regard, there are 18 fundamental rights in the constitution of Bangladesh.
- From the point of source of human rights, human rights are created after the born of the human being. Because, it comes at the time of born of one's child. Someone thinks that the human rights are granted by the Universal declaration of Human Rights, 1948. But the constitution of any country creates fundamental rights.

⁸ The United Nations has adopted more than 20 principal treaties directly or indirectly related to the human rights as well as the fundamental rights, available at the online, accessed on August 14, 2014.

⁹ Shahjahan Mondol & Reba Mondol, Manobadhikar Ain Sangbidhan, Islam NGO (Human Rights Law Constitution Islam NGO) (Chittagong: Md Shahjahan Rashid, Islamia Hat, 1999), p. 4.

- Constitution is a prerequisite for granting fundamental rights. On the other hand, constitution is not prerequisite for granting human rights.
- Human rights are applicable to the man kind irrespective of sex, religion, language etc. On the other hand, fundamental rights are only applicable to the respective citizen of one country.
- Human rights are the subject matter of the international law. The international law enhances the protection and promotion of the human rights. But the fundamental rights are the subject matter of the constitutional law.
- As the human rights are the subject matter of the international law, so the rights should be protected and reserved by the International organization such as UNO and any other specialized agencies. On the other hand, the fundamental rights are implemented by the judiciary of the land.

Distinctions between the Fundamental Rights and Legal Rights

There are some differences¹⁰ between fundamental rights and legal rights such as:

- On the basis of the source of the legal rights- the sources of legal rights are the statutory laws, bi-law, regulation etc. On the other hand, the sources of fundamental rights are the constitution.
- Legal rights are confined to person to person. Any person can establish rights against any person through legal rights. But the legal rights are confined to the people of the land and the State. The people can raise demands to the State.
- The legal rights are enforceable to the court. On the other hand, the fundamental rights are enforceable by the special courts such as special tribunals/High Court etc.
- The legal rights can be void/declared null and void by the parliament of 2/3 majority. But the fundamental rights cannot be eliminated from the constitution but it can be suspended merely.

Distinctions between Human Rights and Legal Rights

- Human rights are vast, vague and require deep understanding of knowledge. But the legal rights are not as vast as the human rights.
- Human rights are supported by the International documents. On the other hand, legal rights are not supported by the National Legal Mechanisms.
- Human rights are not eliminated/amended/ changeable by the laws of the land. On the other hand, legal rights are amended/changeable/ eliminated by the laws of the parliament.
- Human rights are the part of the International Law. Legal rights are the part of the National Law.
- Human rights include legal rights. Legal rights are also treated as source of human rights law.

Distinctions between the Fundamental Rights and Fundamental Principles of State Policy:

- Fundamental rights are applicable to the people of the land. The fundamental rights are also applicable to the foreign people of the land. The fundamental principles of state policy are not applicable to the people and the State. It is not applicable to the alien.
- Fundamental rights are in fact, mandatory. It is enforceable to the court and the State is bound to give remedies in the case of violating these rights. On the other hand, the principle of state policy is declaratory. The State advances step by step after the declaration of it.

¹⁰ Reba & Shahjahan Mondon, op. cit, p. 28.

- If any conflicts between the fundamental rights and fundamental principles of state policy come to the Court of the land, the legal rights shall prevail.
- The importance of legal rights is much more important than that of principles of state policy.
- Fundamental rights can impose some restrictions upon the State. The fundamental state policy outlines the guidelines for their purposes.

2. DISCUSSION & RESULTS

The basic human freedoms are of the most fundamental importance to all the States and to all their citizens. For instance in Indian context, every State is interested in ensuring that Articles 14, 15 and 16 are respected and its citizens are not discriminated against and that its religious and linguistic minorities are protected under Articles 29 and 30.¹¹ This section deals with the different provisions dealing with the human rights as well as the fundamental rights as an example applicable to most of the constitutions around the world focusing on the Bangladesh, India context as follows:

The Role of President

In order to pass the law, the role of President is crucial based on the constitutional obligations around the world. Without his consent, there will be no law. For example, under Article 60, the President has to take an oath that he will "preserve, protect and defend the Constitution". Any proposed amendment which struck at the core of the Constitution would require the President, if he was true to his oath to refuse his assent as he is not permitted to destroy all or any of the basic features of the Constitution.

Article 13(1) of the Indian constitution enacts that all laws in force immediately before the commencement of the Constitution are void to the extent of their inconsistency with the Fundamental Rights. Article 395 repealed the Indian Independence Act, 1947 and the Government of India Act, 1935 but not the constitutional laws of the Indian States or some other constitutional laws of British India.¹²

Inalienable natural rights

In fact, the Fundamental Rights is our natural rights and generally these are not inalienable. These considered as embodied in Part III are inalienable and must necessarily follow that they cannot be taken away by Parliament by law, whether the law is entitled "Constitution Amendment" or is labelled as ordinary law.

Freedoms reserved by the people for themselves

¹¹ The Constitution of India, articles 14, 15 and 16.

¹² Most of the Constitutions around the world have given the same powers of the President or the King as to the preservation of the constitutions including the basic features of the constitutions.

Constitution is given by the people, in the exercise of their sovereignty, some important issues are also decided by these cases law such as 1954 SCR 541 at 555; (1960) 3 SCR 250 at 281-2. The Fundamental Rights are merely the expression of the basic freedoms reserved by the people for themselves as supported by the (1967) 2 SCR 762 at 792; 1950 SCR 88 at 198.

If the freedoms are reserved by the people for themselves, all the functionaries and agencies under the Constitution have to respect those freedoms and, *ex hypothesis*, no functionary or agency can destroy those freedoms.

The Role of Parliament

The Parliament is also limited by the Constitution and it can only have such constituent power as it is conferred by the Constitution which is given by the people. No doubt, Parliament had the power to amend but that does not mean that Parliament could so amend Article 368 as to change its own constituent power beyond recognition. A creature of the Constitution cannot enlarge its own power over the Constitution while purporting to act under it any more than the creature of an ordinary law can enlarge its own power while purporting to act under that law. Parliament cannot abridge or destroy basic human rights and fundamental freedoms which were reserved by the people for themselves when they gave to themselves the Constitution.¹³

Relationship with the Human Rights and Fundamental rights and the Constitutional Law

As an example in the context of Bangladesh¹⁴, the relationship human rights and the fundamental rights with the constitutional provisions have been discussed as follows:

Human rights and the fundamental rights are entire related to each other. It is also mentioned here that all the fundamental rights are the human rights. The fundamental rights are inserted to the Articles 26 to 47 of the constitution of Bangladesh. Let us justify or explain the various articles in the following manner:

Laws inconsistent with fundamental rights to be void

All the laws prevailing in the country should be consistent with the spirit of the fundamental rights. If any laws passed by the parliament of Bangladesh in consisting with the fundamental rights, that law shall be void. It is supported by the International Declaration of Human Rights, 1948.

Equality before Law

All citizens are equal before law and are entitled to equal protection of law. It means that all categories of the persons such as king, queen, minister, president, etc., are equal in the eye of law.

Discrimination on grounds of religion, etc.

¹³ Parliament is limited by the Constitution and only the highest Court of the land can interpret their activities as supported by the most of the eminent constitutional experts in the world as well.

¹⁴ The Constitution of Bangladesh, part 3, Art. 26 to 47 on the Fundamental Rights dealing with the Universal Declaration of Human Rights 1948, available at <http://www1.umn.edu/humanrts/research/bangladesh-constitution.pdf>, accessed on August 14, 2014.

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. If any discrimination is found and it is supported by any law, those measures shall be void.

Equality of Opportunity in Public Employment

There shall be equality of opportunity for all citizens in respect of employment or office in the service of the republic. Everybody should have access to the opportunity in the service of the republic.

Prohibition of Foreign Titles, etc.

No citizen shall without the prior approval of the President, accept any title, honour, award or decoration from any foreign State. No person is not imposed upon him to his own personality.

Right to protection of Law

To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Prohibition of Forced Labour

All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Protection in respect of trial and punishment

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, or be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.

Freedom of Movement

Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh to reside and settle in any place therein and to leave and reenter Bangladesh.

Freedom of Assembly

Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health.

Freedom of Association

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.

Freedom of Religion

Every citizen has the right to profess, practice or propagate any religion and every religious community or denomination has the right to establish, maintain and manage its religious institutions.

Freedom of thought and conscience, and of speech

Every citizen should have the right of every citizen to freedom of speech and expression and freedom of press subject to any reasonable restriction imposed by law in the interests of the security of the State. It is supported by the international mechanisms like Universal Declaration of Human Rights etc.

Case Laws and Fundamental Rights

Around this world, many case laws¹⁵ as an example here dealing with the fundamental rights under the different legal systems are being settled and its progress is very promising. Some examples of the case laws are discussed as follows:

SL	Case Reference	Case Details and Results	Constitutional Obligations
1	Marbury vs. Madison	US SC held that the judiciary has the power to review actions of the legislature. The concept of Judicial Review started from here.	Art. 13
2	L Chandra Kumar vs. Union of India SC AIR 1950	The power of judicial review of legislative action as vested in the SC by art 32 and in the HC by art. 226 is a basic feature of the constitution and cannot be curtailed even by constitutional amendment.	Art. 13
3	AK Gopalan vs. State of Madras	Only Section 14 of Preventive Detention Act 1950 was held unconstitutional. Whole act except this section is valid. In Romesh Thaper vs. State of Madras, SC held that only if the unconstitutional portions cannot be removed then the whole act will be ultra vires and thus unconstitutional.	Art. 13 Doctrine of Severability.

¹⁵ Case laws from India, available at <http://hanumant.com/Case-List-Sem-1.pdf>, accessed on August 14, 2014.

4	Bhikaji vs. State of MP SC AIR 1954	Govt. of Central Province monopolized motor transport by an act. SC held that the pre constitutional law that violates fundamental rights is not void abinitio. It is merely hidden. When Art. 19 was amended to allow state to monopolize any business, the said act became constitutional again.	Art. 13 Doctrine of Eclipse.
5	Deep Chand vs. State of UP SC AIR 1959	Doctrine of Eclipse does not apply to Post-Constitutional law because such a law is void abinitio.	Art. 13 Doctrine of Eclipse
6	Dulare Lodh vs. 3rd Additional District Judge SC AIR 1984	Held that Doctrine of Eclipse to post-constitutional law is applicable to citizens as well.	Art. 13 Doctrine of Eclipse
7	Basheshar Nath vs. Income Tax Commissioner SC AIR 1959	The appellant had reached a settlement with IT dept. to pay 3 lac per month for taxes that he owed under IT act. However, later that act was determined to be unconstitutional. So he challenged the settlement. IT dept. argued that he had waived his right by reaching a settlement. SC held that, unlike USA, Indian constitution does not follow Doctrine of Waiver. Fundamental rights are an obligation imposed upon the state by the constitution. It is the court's duty to enforce them.	
8	Menaka Gandhi vs. Union of India SC AIR 1978	<p>Passport was confiscated without providing any reason.</p> <p>Prior to this case, Art. 21 guaranteed protection against arbitrary action only of executive and not from legislative action. After this case:</p> <p>A person can be deprived of life and personal liberty only if</p> <ul style="list-style-type: none"> • There is a law. • The law must provide a procedure. • The procedure is just, fair, and 	

		<p>reasonable.</p> <ul style="list-style-type: none"> The procedure must satisfy Art 14. <p>Important Points:</p> <ul style="list-style-type: none"> Fundamental rights represent the values cherished by people since Vedic ages and are calculated to provide dignity to human beings and to create conditions that enable a human being to develop his personality to fullest extent. (J Bhagvati) Provisions of Part III should be given widest possible interpretation. Rights in Part III are not mutually exclusive but form a single scheme. Laws under Art 21 must satisfy the test of reasonability under Art 14 and also stand the test of Art 19. SC has accepted that "law" should be reasonable law and not just an enacted law. To be fair and just, it should follow the principles of natural justice. Thus, even if "due process of law" is not explicitly mentioned, the effect is same. <p>Although Art 21 uses negative words, it has a positive dimension as well. Thus, it does not just mean right to mere existence but a right to live with human dignity. Compensation for violation of Art 21.</p> <p>44th amendment, Emergency, and Art 21. Art 21 cannot be suspended on presidential order under art 359.</p>	
9	MH Hoskot vs. State of Mah. SC AIR 1978	Right to free legal aid.	Art 21

10	Olga Tellis vs. BMC (Pavement Dweller's case) SC AIR 1986	Right to livelihood.	Art. 21
11	Paramand Katara vs. U of ISC AIR 1989	Right to health and medical assistance.	Art. 21
12	Subhas Kumar vs. State of Bih SC AIR 1991	Right to pollution free air and water.	Art. 21
13	Mohini Jain vs. State of Kar. (Capitation fee case) SC AIR 1992	Right to education	Art. 21
14	Chameli Singh vs. State of UP SC AIR 1996	Right to shelter	Art. 21
15	PUCL vs. Union of India (Telephone Tapping case) SC AIR 1997	Right to privacy	Art. 21
16	Murli Deora vs. Union of India SC AIR 2002	Ban on smoking in public places.	Art. 21
17	re Noise Pollution SC AIR 2005	Right to freedom from noise.	Art. 21
18	Prabhu Dutt vs. U of I SC AIR 1982	People have right to know news and functioning of the govt.	Art. 19 (1)
19	Association for Democratic	People have right to know about the assets, liabilities, wealth, education of the	Art. 19 (1)

	Reforms vs. U of I SC AIR 2002	candidate before voting	
20	DAV College, Jullundher vs. State of Punjab SC AIR 1971	Guru Nanak University directed the state to make provision for study and research on life and teachings of Guru Nanak. This was challenge on the ground that it violates Art 28. SC held that it did not violate because the study was only academic and did not amount to religious instruction or promotion of any religion	
	St. Xavier's College vs. State of Gujarat SC AIR 1974	Gives right to all citizens having a distinct language, script, or cu	.
	Randhir Singh vs. Union of India SC AIR 1982	Equal Pay for equal work. SC held that equality in wages is indeed a constitutional goal and is capable of being enforced through constitutional remedies given under Art 32	Art. 14, 39(d)
	Yusuf Abul Aziz vs. State of Bombay SC AIR 1954	Section 497 of IPC that punishes only a man for adultery even if women is guilty of abetting the crime, is valid because it does not discriminate only on the basis of sex, which is prohibited by Art 15. Art 15(3) allows special provisions for women.	Art. 15(3)
	Sarla Mudgal vs. Union of India SC AIR 1995	Husband changed religion only for second marriage. SC held that under HMA, 1955, marriage is void if a person has a spouse alive at the time of marriage. Thus, changing one's religion will not change application of law. Muslim law will apply only if the first marriage was performed under Muslim law	Art 44 SC urges implementation of UCC.

18	Romesh Thaper was the publisher of Cross Roads, a left leaning paper, critical of Govt. State of Madras banned its entry and circulation in Madras on the grounds of public safety.	SC held freedom of circulation is covered under freedom of speech and that public safety is out of scope of Art 19 (2). After this, in Constitution 1st Amendment, Art 19 (2) was amended to include public order, security of state, and incitement of offence as grounds for restricting the freedom of speech and expression.	Art. 19 (2)
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Sources: Case laws on the fundamental rights, available at <http://hanumant.com/Case-List-Sem-1.pdf> on 30/07/2014

This study shows some similarities and dissimilarities of the fundamental rights as an example in the different jurisdictions in the world as follows:

	SIMILARITIES	DISIMILARITIES
1.	<p><u>INDIA</u></p> <p>Right to Equality</p> <ul style="list-style-type: none"> Article 14 :- Equality before law and equal protection of law Article 15:- Prohibition of discrimination on grounds only of religion, race, caste, sex or place of birth. <p>Right to Freedom</p> <ul style="list-style-type: none"> Speech, assemble, association Protection against arrest and conviction. Liberty <p>Freedom of Religion</p>	<p>Right to Equality</p> <ul style="list-style-type: none"> Article 16 :- Equality of opportunity in matters of public employment Article 17 :- End of untouchability Article 18 :- Abolition of titles, Military and academic distinctions are, however, exempted <p>Right against Exploitation</p> <ul style="list-style-type: none"> Article 23 :- Traffic in human beings prohibited Article 24 :- No child below the age of 14 can be employed <p>Right to freedom</p> <ul style="list-style-type: none"> Residence and settlement

		<ul style="list-style-type: none">• Profession, Occupation, Trade and Business Freedom of Religion. <ul style="list-style-type: none">• Article 28 :- Freedom as to attendance at religious ceremonies in certain educational institutions Cultural and Educational Rights. <ul style="list-style-type: none">• Right of minorities to establish and administer educational institutions Right to Constitutional Remedies <ul style="list-style-type: none">• Writs
2.	<p><u>SINGAPORE</u></p> <ul style="list-style-type: none">• Right to life and personal liberties;• Equality - not to be discriminated against because of religion, race, descent or place of birth;• Freedom of speech, assembly and associations;• Freedom of movement;• Freedom of religion; and Education rights	NIL
3.	<p><u>BANGLADESH</u></p>	<ul style="list-style-type: none">• Freedom of thought and conscience.• Freedom of profession and

	<ul style="list-style-type: none"> • Equality - discrimination in prospect of religion, equality in respect, • Right to protection of law, personal liberty, right to life. • Safeguards against criminal law (repeated trials). • Protection against forced labour. • Freedom of association, assembly, and movement. • Freedom of speech. • Freedom of religion. • Rights to property. 	<p>occupation.</p> <ul style="list-style-type: none"> • Freedom of religion. • Protection of home and correspondences. • Enforcement of fundamental rights. • Modification of Rights in respect of disciplinary law. <p>Power to provide indemnity.</p>
4.	<p><u>SOUTH AFRICA</u></p> <ul style="list-style-type: none"> • Equality before the law and freedom from discrimination (i.e. race, gender, sex, pregnancy, marital status, ethnic or social origin, sexual orientation, age, religion, conscience, belief, culture, language and birth. • Human dignity, arbitrary detention, inhuman and degrading punishment • Freedom of thought and freedom of religion. • Freedom from slavery and forced labour. • Freedom of speech, assembly, movement • Right to education • Right of cultural, religious community to enjoy their culture and practice their religion • Right to access information • Right to access court. • Protection against arrest and detention 	<ul style="list-style-type: none"> • Equality—colour, disability. • Right to live – prohibit capital punishment but does not prohibit abortion • Right of privacy – search and seizure • Right to Protest • Right to choose trade, occupation, or profession. • Labour rights – unionise, and right to strike. • Right to a healthy environment and right to have the environment protected. • Right to housing - including the right to due process with regard to court-ordered eviction and demolition. • Rights to food, water, health care and social assistance. • Children's right—right to name and nationality, family and parental care, basic standard of living, maltreatment and abuse, child labour, paramount best interest of the child, right to a lawyer, prohibition on military use.

5.	<p><u>NIGERIA</u></p> <ul style="list-style-type: none"> • Right to life, • right to dignity of human person, • right to personal liberty, • right to private and family life, • right to freedom of thought, conscience and religion, • right to peaceful assembly and association • right to freedom of movement, • right to freedom from discrimination • right to acquire and own immovable property anywhere in Nigeria, • compulsory acquisition of property, • Special jurisdiction of High Court and legal aid. 	<ul style="list-style-type: none"> • Right to fair hearing, • right to freedom of expression and the press,
6.	<p><u>CANADA</u></p> <ul style="list-style-type: none"> • Mobility Rights • Legal Rights—right to life, freedom from unreasonable search and freedom, arbitrary detention and imprisonment, right to legal counsel and guarantee of corpus, right in criminal and penal matters, and protection against cruel and unusual punishment. • Equality rights. 	<ul style="list-style-type: none"> • Democratic Rights—right to vote, duration of legislature (i.e. 5 years) • Right to interpreter in court proceedings • Language Rights—function of English and French language • Minority language education rights (i.e. to be educated in their own language)

7.	<p><u>TURKEY</u></p> <ul style="list-style-type: none"> • Right to live • Prohibition from forced labour • Liberty and Security • Privacy of Individual Life • Freedom of movement, communication, religion, thought and opinion, expression. • Right to property 	<ul style="list-style-type: none"> • Freedom of Science and Arts.
8.	<p><u>JAMAICA</u></p> <ul style="list-style-type: none"> • Right to Liberty and Security • Right to freedom of thought, conscience, • The right to freedom of expression • Right to peaceful assembly and association. • Freedom of Movement • Equality before the law. • Private rights • Right to property • Freedom of Religion 	<ul style="list-style-type: none"> • Right to Liberty and Security (Exception-- except in the execution of the sentence of a court in respect of a criminal offense of which the person has been convicted) • Right to belief and observance of political doctrines • Right to seek, receive, distribute or disseminate information, opinions and ideas through any media • Right to equitable and human treatment by any public authority in the exercise of any function. • Protection against colour discrimination • Child rights & child educational rights. • right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage • Right to vote
9.	<p><u>NEPAL</u></p>	<ul style="list-style-type: none"> • Process and Publication Right • Right to Information • Cultural Right.

	<ul style="list-style-type: none">• Right to Equality• Right to Freedom, Expression, Capital Punishment, Association and Profession• Right regarding criminal justice• Right against preventive decision• Right to Property.• Educational Right• Right to Religion• Right against Human Exploitation	<ul style="list-style-type: none">• Right to Privacy• Right to Constitutional Remedy.
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Sources: online on the fundamental rights.

Some case laws¹⁶ from India and Bangladesh pertaining to the environmental laws also include the following issues directly or indirectly related to human rights as well as the fundamental rights under the constitutional law perspectives:

- To ensure public health in all aspects through all the obstruction such as emitting air pollution, public and private nuisance
- To ensure human rights through all obstacles
- To ensure social justice for the vulnerable groups from the hands of elite classes
- To enforce the human rights under constitutional obligation
- Keeping up the provision of the Constitution relating to human rights as well as fundamental rights
- To ensure quality environment
- Enforcement of environmental issues should be implemented through Public Interest Litigation
- To have respect international laws including UN charter and other treaties, conventions and protocols in ensuring constitutional rights for establishing human rights
- Constitutional obligation of the executives
- Malafide exercise of the powers and functions by the concerned authority
- Maintaining equal rights and ensuring the rule of law

The Role of the Prevention of Crime (Amendment and Extension) Act, 2013

¹⁶ Some case laws such as the M.C. Mehta. Union of India, 75 A.I.R. S.C.p. 1037 (1988).; Chhetriya pardushan Multi Sangharsh samiti v. state of U.P., 77 A.I.R. p. 2060(1990), Subash Kumar V. State of Bihar, 78 A.I.R. S.C.p. 420 (1991)/ Dr. Mohiuddin Farooque vs. Bangladesh and others: WP No. 6020/1997 (Hill Cutting Case)/ Dr. Mohiuddin Farooque vs. Bangladesh and others: WP No. 6105/1997 (Gas Explosion at Magurchara)/Bangladesh Environment Lawyers Association Vs Bangladesh and others; WP No. 4098/1999 (Buriganga River) relating to environmental laws from India and Bangladesh supported the above important issues.

Detention orders

19a. (1) The Board may, after considering the report of the Inquiry Officer submitted under section 10 and the outcome of any review under section 11, direct that any registered Prevention of Crime (Amendment and Extension) person be detained under a detention order for a period not exceeding two years, and may renew any such detention order for a further period not exceeding two years at a time, if it is satisfied that such detention is necessary in the interest of public order, public security or prevention of crime. (2) The direction of the Board under subsection (1) shall be subject to review by the High Court.

It means that any person may be detained by this Act for a period of two years at a time without any trial and they are subject to review by the High Court rather than any other competent courts. It may be a violation of the fundamental rights under the constitution.

The Role of Special Powers Act, 1974, in Bangladesh

Section 25 (A): If any person contravenes an order made under this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

The Role of Sedition Act, 1948 in Malaysia

Offences

4. (1) any person who—

(a) Does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;

(b) utters any seditious words;

(c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

(d) imports any seditious publication, shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

3. LITERATURE REVIEW

In order to justify and draw a conceptual framework of this study, it is essential to discuss the existing literature in this regard. This study finds that there is not much literature on this topic. However, there are relevant literatures as discussed below:

There are State mechanisms regulating fundamental rights that may be discussed from the perspectives of the pre amble, fundamental principles of the State policy that is mentioned by most of the authors around the world. It also includes the relevant sections of the bill of rights for government policy-making and the behaviour and conduct of citizen's rights.

Gary S. Goodpaster (1973) discussed about the constitution and the fundamental rights along with the case laws related to fundamental rights.

The EU Charter of Human Rights is based on the common grounds and values and is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

Steven Greer (2006) discussed in his book relating to the European Convention on the Human rights and found some problems with it and found that it is fully explored in this system.

Paul Brest (1981) discussed about the fundamental rights controversy. Judicial legitimacy including the essential contradictions of normative constitutional rights etc.

Michael C. Dorf (1996) discussed nearly every governmental action has the incidental effect of burdening some fundamental constitutional right. In this Article, Professor Dorf argues that constitutional text, history, and structure, as well as normative considerations, require that courts treat these burdens seriously. How, though, can government recognize these incidental burdens without rendering itself powerless to achieve its legitimate ends? Professor Dorf analyses the Supreme Court's approach to incidental burdens on free speech, free exercise of religion, and privacy rights. In these areas, he discerns a tendency to apply close scrutiny to incidental burdens that are "substantial." He then argues that the nature of the impinged right should also influence the Court's approach to an incidental burden. Finally, Professor Dorf re-examines common understandings of the distinction between direct and incidental burdens. He contends that his proposed framework ought to be applied not only to incidental burdens, but also to direct burdens on conduct facilitating the exercise of a fundamental right. Burdens on equality norms, however, need not be substantial to elicit close scrutiny.

Lorenzo Zucca (2007) deals with one of the most important issues of philosophy of law and constitutional thought: how to understand clashes of fundamental rights, such as the conflict between free speech and privacy. The author seeks a theory of rights that can guide us to a richer, more responsive approach to rights discourse. The idea of constitutional rights is one of the most powerful tools to advance justice in the Western tradition.

David Bilchitz discussed the poverty and the fundamental rights that are co-related to the rights of the International Bill of Rights. It can be discussed the role of poverty as a barrier towards the human rights as well as the fundamental rights.

Robert Alexy (2006) discussed the definition of fundamental rights and the relationship between the discourse theory and the fundamental rights.

Chantal Mak (2008) discussed the fundamental rights and the European Contract Law as published in the online.

The U.S. Supreme Court has made clear that a state can impose residency requirements as a condition of eligibility for fundamental rights only under certain circumstances. A fundamental right is any right that is guaranteed by the U.S. Constitution. A state must have a compelling State Interest to justify the restriction of basic rights by the imposition of residency requirements. The courts ultimately determine whether the state has a significant interest by examining and balancing the interests of the state against the rights of the person. Where a residency requirement does not serve compelling state interests, it will be held unconstitutional as a denial of equal protection of the laws guaranteed by the Constitution. The courts have addressed residency requirements involving Welfare and public housing benefits, basic medical care, and voting that are based on fundamental rights. In *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), the Supreme Court reviewed two state laws that imposed durational residency requirements on persons applying for welfare. Both states required a person to be a resident for one year before becoming eligible for benefits. The states claimed that this discriminatory treatment of new arrivals within their borders maintained the fiscal integrity of state public assistance programs, provided an objective method of determining residency, and encouraged new residents to seek employment. The Court rejected these arguments, concluding that the constitutional guarantee of personal liberty gave each citizen the right to travel throughout the United States without unreasonable restrictions. This implied fundamental right of travel was restricted by the residency requirements, which were based on unsubstantiated claims of administrative convenience. Therefore the Court struck down the durational residency requirements as a violation of equal protection of the laws. The Court noted that a case-by-case examination was necessary to determine whether other types of durational requirements promoted compelling state interests or violated the constitutional right of interstate travel.

5. RECOMMENDATIONS & CONCLUSION

The fundamental rights were included in the constitutions around the world as they were considered essential for the development of the human personality for preserving human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the State. Most of these rights are enforceable against the State by way of their language, while some others are directed both against the State and private actors. The most important feature however is that the fundamental rights gave the higher judiciary a clear set of criteria to regulate relations between citizens and the government. The judiciary should be properly empowered to ensure the fundamental rights and they can apply their inherent powers as well as the judicial review in this regard as compared to the EU countries. Moreover, the human rights commission should be also empowered to provide legal remedies for the welfare of the people. The existing legislations relating to the fundamental rights may be revised in the age of digital age and to some extent to the EU patterns to provide fundamental rights for us. The right to freedom and personal liberty has a number of limiting clauses, and thus has been criticized for failing to check the sanctioning of powers often deemed "excessive". The phrases "security of State", "public order" and "morality" are of wide implication. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly stated in the constitution, and this ambiguity leads to

unnecessary litigation. Moreover, the judicial remedies may be one of the vital segments for ensuring fundamental rights for welfare of the citizens locally and globally.

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Currently, **Dr. Noor Mohammad** has been teaching as an Associate Professor in the Faculty of Law, the Universiti Kebangsaan Malaysia (UKM) since 12-03-2012 to date. I taught in the Faculty of Law at the University of Malaya since 01-06-2009-31-05-2010. I also taught in the Faculty of Law at the Multimedia University (Melaka Campus) on 02-09-2010 to 01-09-2012. In Bangladesh, I taught 4 private universities since 2005 to 2008 in the different capacities including as an Associate professor and Head of the Department of Law. In Bahrain, I taught as an Associate professor in the Faculty of Law, the Royal University for Women since 16-09-2012 to 29-11-2012. During this time, I taught many subjects at the masters and the undergraduate levels including environmental laws and the comparative constitutional law, international environmental law, climate change and policy, human rights, Third World and International law, International economic law, Islamic jurisprudence etc. Currently, I am working as a founding Chairman of a registered NGO namely, Humanity Research Foundation Jhenidah (HRFJ), Bangladesh via Jheni 914/14; Serial No: 0122749 on 06-03-2014 under the Voluntary Social Welfare Ordinance (Control & Registration), 1961. I worked as an Advocate Jhenidah Bar since 1998. I am highly engaged in research and engaged in many professional journals. In the meantime, I published 60 journals, 100 conference proceedings, 13 books and monographs, 110 abstracts etc. I am also closely working with the IUCN, Amnesty International, Transparency International Malaysia, The IUCN Academy of Environmental Law, the EELF, enli etc.; in addition to ISE. I am leading some important projects at UKM.

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