

STATUS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONSTITUTION OF BANGLADESH: A CRITICAL ANALYSIS

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Abstract

The steady growth of international human rights law has grossly failed to offer a requisite level of commitment for the protection of socio-economic rights. A thorough analysis of the legal character of the international bill of rights gives the impression that civil and political rights incessantly enjoyed preferential treatment over socio-economic rights. The idea of progressive realization of the socio-economic rights allowed the states a strong ground to deny their proper implementation under the pretext of resource constraint. Due to this restraint of a state, economic, social and cultural rights cannot be made judicially enforceable. At this backdrop, this article seeks to advance and analyze some jurisprudential developments concerning the implementation of socio-economic rights in recent times. In order to attain the prime object of this article, this study has determined the legal position of Economic, Social, and Cultural Rights under the Constitution of Bangladesh and also reasons for making fundamental principles non-enforceable. Besides, the paper investigates the extent of progressive realization of socio-economic rights from the empirical perspective. This paper, therefore, tries to investigate the means and ways by which courts and other bodies can create a proper forum wherein the socio-economic rights can be juxtaposed with equal importance in the discourse of international human rights.

1. Introduction

Rights inherent to all human beings are first encompassed in a novel instrument, namely, the Universal Declaration of Human Rights. This sacred document enacted in the year 1948 by the United Nations General Assembly in response to the atrocity of World War II. However, the inherent rights of *homo sapiens* also existed before adopting any written document in the form of ‘cultural practice, norms of traditions and usages’. People’s rights, duties, and responsibilities are also addressed in different religious books like the Bible, the Quran, and the Hindu Vedas. Besides, the supremacy of human rights can also be traced in a variety of historical manuscript, writing’s of prominent scholar and in different school of thought, e.g. *Cyrus Cylinder* (539 BC), *Code of Hammurabi*, *Antigone* (Greek mythology), *Magna Carta* (1215), *The Charter of Medina* (622AD), *Bill of Rights* 1689 and so on. The first attempt to conceptualize these rights in a single document was taken after establishing the United Nations through creating a *Commission on Human Rights* in 1946 led by Eleanor Roosevelt. Then the commission drafted the Universal Declaration of Human Rights and

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adopted by UN General Assembly in 1948. Significantly mentioning that during its adoption General Assembly made no attempt to differentiate these rights. The instrument gives equal status to all rights. But, this indivisible character of human rights broken down into two categories with two distinct status in the year 1966 through the adoption of two different convenient, namely, *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. These instruments make civil and political group of rights judicially enforceable whereas economic, social and cultural rights are not judicially enforceable but those needs progressive implementation. So, socio-economic rights are not protected in the same way as the protection given in civil and political rights. This trend also adopted in different constitutions around the world. Bangladesh is one of them. The Constitution of Bangladesh incorporated economic, social and cultural rights in the name of ‘fundamental principles of state policy’ with the status as enshrined in the aforesaid conventions – fundamental principles of state policy are not judicially enforceable.

Therefore generally question rises in mind that in what ground and reasons these rights have been inserted in the Constitution of Bangladesh. The constitution itself gives its answer. These rights have an important role at the time of interpretation of the constitution and other laws. Previously it was thought that a court cannot declare a law invalid on the ground that it contravenes fundamental principles. But now this view has been changed because these principles have come under the judicial autopsy. It is now recognized that socio-economic rights can be judicially enforceable by applying different principles constructed by the auspicious of judicial activism. The prime object of this article is to find out the constitutional justification for preserving provision on economic, social and cultural rights. In order to attain the prime object of this article, this paper determines the legal position of economic, social, and cultural rights under the *Constitution of Bangladesh* and reasons for making fundamental principles non-enforceable.

2. Conceptual Understanding of Economic, Social and Cultural Rights

Socio-economic rights¹ shall mean those rights which are connected with the economic, social, and cultural matter of a human being. It has been argued that social rights ‘ranging from the right to a modicum of economic welfare and

¹ The inherent rights of human being first incorporated in 1948 in an instrument namely Universal Declaration of Human Rights – hereinafter referred to UDHR. Universality, indivisibility, and interdependence are the basic character of human rights, which significantly manifested in the Charter 1948. The charter in its preamble declared that “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.” UDHR, in its preamble, is also recognized as “a common standard of achievement for all people and all nations.” However, no attempt was taken to break the indivisible character of human rights during its adoption. The indivisible character of human rights was broken down in 1966 by entrenching two distinct covenants, namely Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights – also termed as socio-economic rights.

security to the right to share to the full the social heritage and to live life as a civilized being according to the standards prevailing in society’.

Thus this particular group of rights incorporated three distinct categories of rights, namely, social rights, economic rights, and cultural rights. Social rights ensure ‘full participation in social life’. This can be addressed through assuring a right to an adequate standard of living, enjoying basic necessities of life, adequate food and nutrition rights, clothing, housing and the necessary conditions of care. Besides above social rights also include the right to education, the right to found and maintain a family, the right to recreation, health care and privacy and freedom from discrimination. The economic rights shall mean to include ‘the right to work, the right to rest, right to an adequate standard of living, to housing and the right to a pension if you are old or disabled’. It is argued that economic rights serve ‘as a basis for entitlements which can ensure an adequate standard of living’. Economic rights also aid to provide ‘freedom to a person to choose his/ her work that gives sufficient income and provides that the workers can protect their interests through free trade unions’. Cultural rights which are mentioned in article 27 of the UDHR and article 15 of the ICESCR contain the rights like the right to take part in cultural life, the right to enjoy the benefits of scientific progress and its applications, the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the beneficiary is the author, and the freedom which is indispensable for scientific research and creative activity.

Thus in general, economic, social, and cultural rights include the human right to work, the right to an adequate standard of living, including food, clothing, and housing, the right to physical and mental health, the right to social security, the right to a healthy environment, and the right to education.

Economic, social and cultural rights are incorporated in a single instrument - the *Covenant on Economic, Social and Cultural Rights* 1966. Article 2 (1) of the this document imposes a duty upon the State party to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, to achieve progressively the full realization of the rights recognized in the Covenant by all appropriate means. At the same time, article 2 of the Convention stipulates State obligation in the nature of ‘progressive realization’ with respect to protecting socio-economic rights. The obligation undertaken by States parties to the Covenant has two important features: First, the language of article 2(1) is programmatic and progressive. States parties do not undertake to “respect” and “ensure” the rights contained in the Covenant from the moment of its entry into force (as do States parties to the CPR Covenant). Rather, States undertake to “take steps”

towards the progressive realization of the rights.² Second, the terms of article 2(1) expressly contemplate the possibility of resource limitations that might preclude the full realization of all the covenant rights for all state parties. The “steps” that States parties are obliged to take to progressively realize the rights are expressly confined to steps within the State’s resource capacities. However, the scholars explained the word ‘achieving progressively’ as ‘to progress through some positive step forward and not like that there is no progress at all or standstill’.³

3. Position of Economic, Social and Cultural Rights under the Constitution of Bangladesh

Incorporated economic, social and cultural rights are termed as ‘Fundamental Principles of State Policy’ in part II. These principles are discussed in the Constitution of Bangladesh from articles 8 to 25. The rational position of economic, social, and cultural rights is a somewhat mere decoration for beautifying the constitution. These provide that though these rights shall be fundamental to the governance of the state but shall not be judicially enforceable.⁴

The first postulate as to the status of socio-economic rights in the Bangladesh Constitution is that these are ‘principles’, not ‘laws’. Therefore principles are not binding if they are not enforceable by law.⁵ However, article 7 of the *Constitution of Bangladesh* states that Constitution is the supreme law of the land and if any other law, whether pre-constitutional or post-constitutional law, is inconsistent with this Constitution that other law, to the extent of such inconsistency, be void. Thus it creates a dilemma towards analyzing the constitutional position of fundamental principles of state policy ‘since these are the parts of the supreme law though they are not laws in themselves.’⁶ And this dilemma raises a question, ‘Are these principles laws?’⁷ In response to this question Justice Mustafa Kamal rightly responded fundamental principles of

² SM Zakir Hossain, *The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance*, December, 2012, Published by: National Human Rights Commission, Bangladesh Gulpheshan Plaza (Level-11) 8, Shahid Sangbadik Salina Parvin Sarak Boro Magbazar, Dhaka-1217.

³ Ibid.

⁴ *Constitution of Bangladesh*, article 8 (2).

⁵ Muhammad Ekramul Haque, *Legal and Constitutional Status of the Fundamental Principles of State Policy as Embodied in the Constitution of Bangladesh*, June, 2005, The Dhaka University Studies, Part-F Vol. XVI (1): 45—80.

⁶ Ibid.

⁷ Ibid.

state policy are not laws but principles.⁸ To equate 'principles' with 'laws' is to go against the Law of the Constitution itself.⁹

In response to a question as to what would be the fate of a law that violates any fundamental principles of state policy, Justice Naimuddin Ahmed answers in the negative.¹⁰ He further states:

It does not mean that since the Court cannot compel their enforcement, the executive and the legislature are at liberty to flout or act in contravention of the provisions laid down in Part-II of the Constitution.¹¹

Though Justice Naimuddin Ahmed attempted to make socio-economic rights justiciable, Appellate Division was responded negatively by overruling his contention. In the Appellate Division Shahabuddin CJ clarify the non-justiciable nature of socio-economic rights:¹²

The reason for not making these principles judicially enforceable is obvious. They are in the nature of People's program for socio-economic development of the country in a peaceful manner, not overnight, but gradually. Implementation of these programs requires resources, technical know-how and many other things including mass-education. Whether all these prerequisites for a peaceful socio-economic revolution exist is for the State to decide.¹³

The next postulate as to the Constitutional position of socio-economic rights is that; though there is a jurisdictional bar as to the enforcement of socio-economic rights, the constitution empowered these principles to act as a guide to interpret the Constitution as well as of the other laws of Bangladesh. Muhammad EkramulHaque in his article¹⁴ makes this contention clear by refereeing a famous case *Kudrat-E-Elahi v Bangladesh* where the Appellate Division did not enforce fundamental principles of state policy, rather interpreted the constitutional provisions in conformity with the principles stated in socio-economic rights part.

Thus the above postulates significantly make it clear that fundamental principles of state policy are non-justiciable. However, the following part of the article will elaborate on the major challenges against the justiciability of socio-economic rights. In comparing with the Constitutional position of socio-economic rights among other states, the Constitution of India and South Africa is notably mentioned. Indian Constitution forms socio-economic rights as "Directive Principles of State Policy" in part IV. The nature of "Directive Principles of

⁸ *Kudrat E-Elahi v Bangladesh*, 44 DLR (AD) 319, p 346, para 84.

⁹ Note 7.

¹⁰ *Kudrat E-Elahi v Bangladesh*, 44 DLR (AD) 319.

¹¹ *Kudrat E-Elahi v Bangladesh*, 44 DLR (AD) 319, p 346, para 84

¹² Ibid.

¹³ 44 DLR (AD) 319.

¹⁴ Note 7.

State Policy” incorporated in the Indian Constitution is the same as provided in the Constitution of Bangladesh. Article 37 of the Indian Constitution provided that these principles are non-justiciable in nature. So the status of socio-economic rights in the Constitution of Bangladesh and India is nearly the same. However, unlike the Constitution of Bangladesh and India, South African Constitution enshrined socio-economic rights as justiciable in nature.

4. Reasons for Making Fundamental Principles Non- Enforceable

Socio-economic rights encounter non-justifiable status compare with civil and political rights. Argued that due to the financial restraint of a state, economic, social and cultural rights cannot be made judicially enforceable. The state which is more economically stable the state is more viable to declare fundamental principle as judicially enforceable. It has been further contended that socio-economic rights need available resources and political intervention. Besides, the judiciary is reluctant to take cognizance of these rights through the mere excuse of ‘institutional incompetence’ arguments highlights on ‘procedural limitations’ and ‘problematic aspects of a court’s potential remedies’.¹⁵ To furnish a clear sketch of these arguments, this segment of the article tries to find out the major causes of the non-enforceable status of socio-economic rights.

The non-enforceable character of socio-economic rights can be explained from two distinct dimensions; one is ‘legitimacy dimension’ and another is ‘institutional competence dimension’¹⁶. ‘Legitimacy dimension’ concerns about the legitimate status of social rights whereas ‘institutional competence dimension’ concerns about the competency of the judiciary to adjudicate social-rights. The justiciable status of socio-economic rights has been questioned by the legitimacy dimension that can be explained from two visions; one is ‘conservative vision’ of social rights and ‘progressive vision’ of social rights.¹⁷ ‘Conservative vision’ of social rights disregards state intervention towards constitutional rights. According to this vision constitutionalism of social rights is illegitimate as these categories of rights create a positive obligation upon the state which requires state intervention.¹⁸ On the other hand, ‘progressive vision’ of socio-rights concerns about the ‘legitimacy of empowering judiciary’¹⁹ to constitutionalize social-rights and declares that it would be the fundamental responsibility of a state to ensure equal access to socio-economic rights from a progressive perspective. But this vision of social rights is subject to another

¹⁵ Eric C Christiansen, *Adjudicating Non-Justiciable Rights: Socio Economic Rights and the South African Constitutional Court*, 2007, 38 Columbia Human Rights, L Rev 321.

¹⁶ Note 25.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid, pp 22 – 23.

dimension called 'institutional competence' dimension and this dimension again poses a question on the institutional incompetence of judiciary to adjudicate social rights.²⁰ 'Institution competence' dimension makes a bar to legitimate socio-economic rights on the grounds of deficiency in skill, education, training, procedure or imprecision in its content and so on.²¹

Non-justifiability arguments of socio-economic rights also attract some other realistic limitations like; cost arguments, political discretion, vagueness, and procedural lacking. The cost argument²² principle on socio-economic rights is emphasized that the implementation of socio-economic rights is so expensive and time-consuming. State parties are reluctant to take immediate measures in case of violation of socio-economic rights as these categories of rights impose a positive obligation upon the state which requires adequate resources. As for an example, implementation of right to fair trial, one of civil and political rights²³, requires nominal economic burden but with regard to the implementation of right to education²⁴ "financial burden is huge" as it requires "adequate infrastructure, adequate personnel, place and above all time consuming." Political discretion²⁵ view highlights another bar to implement socio-economic rights. Socio-economic rights are one of those categories of rights for which the judicial body is not empowered to make a decision. Direct protection cannot be given on socio-economic rights through any judicial or quasi-judicial body but left to the discretion of political branches of the state. Political branches of the state frequently refuse to implement socio-economic rights on the excuse of so-called "available resources" ground. The uncertainty of socio-economic rights is another limitation against the enforcement of socio-economic rights. It is argued that civil and political rights provide a clear understanding of the requirements for implementing them in case of violation, on the other hand, the precise definition cannot be provided for socio-economic rights. Complexity procedure to resolve socio-economic rights related cases involves 'a large number of actors, imprecision to define the content, over-costing evidentiary issues, lack skill or knowledge, infrastructure incapability',²⁶ makes procedural hindrance²⁷ against the justifiability of socio-economic rights. Judges are often refused to accept the justifiability clause of socio-economic rights on the grounds of the

²⁰ Ibid.

²¹ Ibid, pp 43 – 78.

²² Ilias Trispiotis, *Socio-economic Rights: Legally Enforceable or Just Aspirational*, Spring, 2010, UCL Faculty of Laws, Opticon1826, Issue 8.

²³ *Constitution of Bangladesh*, article 35.

²⁴ *Constitution of Bangladesh*, article 15.

²⁵ Aharon Barak, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability*, International Commission of Jurists, Human Rights and Rule of Law Series: N0.2.

²⁶ Note 17.

²⁷ Note 20.

procedural impediment. The scenario of Bangladesh is the same. Legal authorities in Bangladesh always divorce to accept the justifiability of socio-economic rights on the grounds of “Jurisprudential Bar” and “Realistic Bar”. His Lordship in *Kudrat-E-Elahi v Bangladesh* held that:

The reason for not making these principles judicially enforceable is obvious. They are in the nature of people’s programme for socio-economic development of the country in peaceful manner not overnight, but gradually. Implementation of this programmes require resources, technical know-how and many other things, including mass-education. Whether all these prerequisites for a peaceful socio-economic revolution exist is for the state to decide.²⁸

The Supreme Court of Bangladesh in various cases refuses to accept the justiciability of socio-economic rights on the grounds of the ‘non-enforceability’ clause in the Constitution. For instance, in *Sheikh Abdus Sabur v Returning officer*²⁹ case the court held that though socio-economic rights must be applied by the State in making laws, are not justiciable in court, again in *Bangladesh v Winifred Rube*³⁰, two significant questions are arise: firstly, ‘whether land requisition for a private school for ‘public purpose’ and ‘whether a private school which charges high tuition fees would be regarded as acting in furtherance of state policy relating to article 17 of the constitution’. The Appellate Division refused to accept the arguments by replying that ‘constitutional mandate provides in the chapter of state principle are not judicially enforceable’. Further in *Ahsanullah v Bangladesh*³¹, Justice Abdul Jalil, divorced the justiciability arguments of socio-economic rights by contending that the principles are ‘not mandatory provisions’ but ‘directory in nature’.

5. Constitutional Justification for Preserving Provision on Economic, Social and Cultural Rights

5.1. ESC Rights are the Signpost for the Construction of Fundamental Rights

The ‘Interpretative approach’ of the court connotes with the principle of ‘judicial activism’ is one of the approaches to give the shape of the justiciable character of socio-economic rights. International and national courts of different jurisdiction furnish their own principles to justify these particular categories of rights, for instance, ‘core content or minimum core duties’, ‘the prohibition of retrogressive measures’, ‘reasonableness’, ‘adequateness’, ‘proportionality’,

²⁸ Ibid.

²⁹ 44 DLR (AD) 30.

³⁰ 34 DLR (AD) 164.

³¹ 49 DLR (AD) 3.

‘non-discrimination and equal protection of the law’ and so on.³² Specifically, these principles are constructed to protect the socio-economic rights from their violation.

The rationale of the inclusion of fundamental principles on the supreme law of the country has been enunciated in the Constitution as “these principles ... shall be a guide to the interpretation of the constitution and of the other laws of Bangladesh”.³³ This approach of constitutional commitment can be interpreted in the following manner:

- (1) If any provision of the constitution or any statute is susceptible to more than one meaning, the court should adopt that meaning which is in conformity with the principles set out in part II of the constitution.
- (2) When a provision of the constitution seems to be repugnant to the principles of state policy, an effort should be made to construct the provision in conformity with the principles.³⁴

However, strict caution should be taken during applying this approach – ‘the Courts have warned that in the name of interpretation the courts cannot create a new law. So where the language of a provision of the constitution is absolutely clear and unambiguous, the court has to accept it as it is, leaving it for the people for a political verdict’.³⁵

Bangladesh Supreme Court also takes ‘an interpretative approach’ towards the justiciability of ‘non-justiciable rights’. The first attempt was taken in *Kudrat-E-Elahi v Bangladesh*³⁶ case. Though Justice Naimuddin Ahmed on the above case made an unsuccessful attempt to justify socio-economic rights,³⁷ the contention was rejected in the Appellate Division holds that implementation of the social and economic rights depends upon the development of the country which requires resources, technical know-how and many other things, including mass-education.³⁸

³² *Courts And The Legal Enforcement Of Economic, Social And Cultural Rights: Comparative Experiences Of Justiciability*, International Commission Of Jurists, Human Rights And Rule Of Law Series: N0. 2.

³³ *Constitution of Bangladesh*, article 8 (2).

³⁴ M Jashim Ali Chowdhury, *An Introduction to the Constitutional Law of Bangladesh*, Northern University Bangladesh (NUB), Dhaka, 2014.

³⁵ Mahmudul Islam, *Constitutional Laws of Bangladesh* (2nd Edition, Mullick Brothers, Dhaka, 2006).

³⁶ (1992) 44 DLR (AD) 319.

³⁷ High Court Division held that where any legislative or executive action clearly negates or violates the directive principles, the court can be said to have the power to strike down such actions. In this respect, Naimuddin Ahmed J. stated: “...it does not mean that since the Court cannot compel the enforcement, the executive or legislature are at liberty to flout or act in contravention of provisions laid down in Part-II of the Constitution....and [thus] at the same time it means that the court has the power to intervene when the Government flouts and whittles down the provisions of this part.”

³⁸ Note 45.

However, the Supreme Court by applying the principle of “judicial activism” tries to protect socio-economic rights indirectly. One of the indirect modes of the Supreme Court was taken to give protection of socio-economic rights by interpreting “right to life” which is protected by the court. In *Dr Moohiuddin Faruque v Bangladesh*,³⁹ Justice Khademul Islam Chowdhury has expounded:

Articles 31 and 32 of our Constitution protect right to life as fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.

Further, in *M Saleem Ullah v Bangladesh*,⁴⁰ a question arose whether the government’s decision to participate in the ‘UN-led invasion’ was against the Fundamental Principles of State Policy. In response, the Court held that: ‘the decision of the government was in consonance with Fundamental Principles of State Policy’.

The case of *Rabia Bhuiyan v Bangladesh*⁴¹ is worth mentioning where Appellate Division of the Supreme Court of Bangladesh observes that failure to ensure safe drinking water violates the right to life read with articles 15 and 18 of the Constitution of Bangladesh.⁴²

In the above case Justice Tafazzul Islam contended that hygienic environment is an integral facet of right to a healthy life and it would be impossible to live with human dignity without humane and healthy environment protection.⁴³

5.2. Fundamental Rights and Principles of State Policy are Interdependent

Socio-economic rights create positive obligation whereas civil and political rights create negative obligations. This “positive and negative obligation” argument makes socio-economic rights inferior in comparison with civil and political rights. The reason behind this inferiority argument of socio-economic rights is that socio-economic rights are not judicially enforceable due to its positive obligation nature, on that other hand, the negative obligation of civil and political rights makes them judicially enforceable. This argument poses another question of whether provisions relating to fundamental rights will prevail in case of conflict with the principles of state policy. Indian Supreme Court initially held that fundamental rights shall have primacy over the principle of state policy.⁴⁴ Further, the court held that one should not ignore the principles

³⁹ 49 DLR 1997 (AD) 1.

⁴⁰ 47 DLR (AD) 218.

⁴¹ 59 DLR 176, note 39.

⁴² 49 DLR 1997 (AD) 1.

⁴³ 49 DLR 1997 (AD) 1, 51.

⁴⁴ *Madras v Champkam Dorairajan*, AIR 1951 SC 226 cited in Mahmudul Islam, (2nd Edition, *Constitutional Laws of Bangladesh*, Mullick Brothers, Dhaka, 2006).

of state policy, but should adopt the principle of harmonious construction and attempt to give effect to both as much as possible.⁴⁵ Fundamental rights and principles of state policy are supplementary and complementary to each other and fundamental rights must be constructed in the light of the principles of state policy.⁴⁶ This 'inferiority conflict' may be resolved by applying another principle the 'interdependency principle' of human rights. 'Interdependency principle' refers that the interests embodied in civil, political and socio-economic rights are indivisible and interconnected.⁴⁷ This indivisible nature of human rights remind us that both categories of human rights should be interpreted with the view as "two wheels of a chariot"⁴⁸, neither category is more important than the other. 'Interdependency principle' of human rights can be explained from two perspectives. One perspective is the "integration of rights"⁴⁹ and another one is "equal status of all rights".⁵⁰ First perspective of 'interdependency principles' refers that 'one right forms a part of another right and may, therefore, be incorporated into that latter right'⁵¹ and another perspective of 'interdependency principle' explained that 'rights are equally important and complementary and the question is not whether one right is part of another but, rather, whether one right applies to another'.⁵² The above two facets of 'interdependency principle' has been applied and recognized, directly or indirectly, through different national courts or tribunals around the world. Indian Supreme Court by the application of this principle gives the constitutional status of socio-economic rights. Justice Bagwati in *Francis Coralie v Union of Delhi*⁵³ said:

⁴⁵ *CB Boarding & Lodging v Mysore*, AIR 1970 SC 2042, 2050.

⁴⁶ *CB Boarding & Lodging v Mysore*, AIR 1970 SC 2042, 2050.

⁴⁷ Ilias Trispiotis, *Socio-economic rights: legally enforceable or just aspirational?*

⁴⁸ Ibid. Also see *Minerva Mill Ltd. vs. India*, 1980 AIR (SC) 1789, 1806 (Chandrachud, CJ) (discussing the relationship between the justiciable Fundamental Rights in Part III of the Indian Constitution and the Directive Principles of State Policy in Part IV). If only to emphasize the highly rhetorical nature of the notion of interdependence, it is worth noting that in this case the Supreme Court of India invoked the evocative chariot metaphor in order to strike down a nationalization law (enacted pursuant to a newly constitutionalized Directive Principle) as a violation of a Fundamental Right. See *id.*

⁴⁹ Craig Scot & Patrick Macklem, *Constitutional Ropes of Sand or justiciable Guarantees? Social Rights in a New South African Constitution*, University of Toronto) (Interdependence is relevant in two ways, in each instance in terms of what could be called a "doctrine of advocacy." First, interdependence is a doctrine that advocates pulling rights together. That is, it tells us to engage, wherever useful and possible, in an integrated consideration of rights.)

⁵⁰ Ibid, Second, interdependence advocates the importance of a right or a given set of rights, imbuing that claim of worth with a further implicit claim that its importance is in part a function of its relation to other rights. Used in this way, interdependence refers to a right's status within an overall system of valuation and protection. It is a way of stating that a right should be given due attention, or protection, through appropriate mechanisms and procedures.

⁵¹ Ibid.

⁵² Ibid.

⁵³ AIR 1981 SC 746.

Right to life includes the right to live with human dignity and all that goes along with it, namely the basic necessities of life such as adequate nutrition, clothing and shelter, facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human being.

Further, in *Orissa Starvation Death Proceedings*⁵⁴ court held that ‘right to food is clearly a guaranteed enforceable constitutional right’ as it is one facet of right to life. Besides the above Indian Supreme Court held that ‘right to life’ also encompasses “right to receive timely medical aid”⁵⁵, “decency and dignity are non-negotiable facets of human rights and right to live in a healthy environment as part of right to life”.⁵⁶ Similar approach is also followed in different decision by the Supreme Court of Bangladesh. One example is the *Radio-active Milk Powder*⁵⁷ case where Bangladesh Environmental Lawyers Association (BELA) petitioned that the importation of radioactive milk powder containing radiation level above the acceptable limit is threatening to life. Justice Kazi Ebadul Hoque in response to the petition held that:

Though the aforesaid provision (Article 18) cannot be enforced by the court it can be seen for interpreting the meaning of Right to life under Articles 31 and 32 of the Constitution. A man has natural right to the enjoyment of healthy life and a longevity up to normal expectation of life of an ordinary human being...When a person is grievously hurt or injured by another his life and longevity is threatened. Similarly, when a man consumes food, drink, etc, injurious to health he suffers ailment and his life and normal expectation of longevity are threatened. Natural right of a man to live free from all the man-made hazards of life has been guaranteed under the aforesaid Articles 31 and 32 subject to law of the land....No one has any right to endanger the life of the people which includes their health and normal longevity of an ordinary healthy person by marketing in the country any food item injurious to health of the people.⁵⁸

The Appellate Division also adopts the same approach by expounding that in a unjustified thread to health and longevity of the people can also be secured by raising the level of nutrition in food and drinks.⁵⁹

Therefore, it is understood that constitutional provisions as well as different decisions, both in Indian and Bangladesh Supreme Court, make a balanced relation between fundamental principles and fundamental rights, and it will not be a wise decision to call any category of rights inferior in comparison with other categories of rights.

⁵⁴ Case No. 37/3/97-LD, 17 January 2003.

⁵⁵ *Paschim Bang Khet Mazdoor Samiti*, (1996) 4 SCC 37.

⁵⁶ *Ratlam Municipality v Vardicnahd*, AIR 1980 SC 1622.

⁵⁷ 48 DLR (1996) 438.

⁵⁸ *Dr Mohiuddin Farooque v Bangladesh*, 48 DLR (1996) 438, para 20.

⁵⁹ *Professor Nurul Islam v Government of Bangladesh*, 52 DLR 413.

5.3. Fundamental Principles of State Policy are Concomitant to Fundamental Rights

The rights which are ancillary to or essentially existence within the fundamental rights shall also be fundamental and hence be protected.⁶⁰ The Colombian Constitutional Court significantly quoted that economic, social and cultural rights were justiciable when connected with a fundamental right enshrined by the Constitution.⁶¹ The civil and political rights create negative obligation require non-interference of the state in their enjoyment, whereas, socio-economic rights create positive obligation requires adequate resource and active intervention of the state. But this argument is not true completely as there are many civil and political rights which require resources and active intervention of the state. For example, implementation of the right to a fair trial requires independence of the judiciary, adequate infrastructure, and adequate judicial personnel.⁶² Further, it is argued that civil and political rights are to be ‘protected’, socio-economic rights are to be ‘promoted’.⁶³ Again it is contended that immediate obligation is ingrained for civil and political rights, whereas progressive realization is required for the implementation of socio-economic rights.⁶⁴ However, economic, social and cultural rights also require the state to refrain from interfering with individual freedoms, for instance, trade union freedoms or the right to seek work of one’s choosing. At the end of the discussion, we come to the conclusion that both categories of rights are interlinked and indivisible. This approach can be applied to justify socio-economic rights – the method also termed as ‘resorting principles’. Following are some examples to protect socio-economic rights through the application of “resorting theory (indirect approach of the protection of socio-economic right through civil and political rights)”:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.⁶⁵

5.3.1. The right to housing and civil and political rights protection

The *Universal Declaration of Human Rights* in its article 25 (a) recognized the right to housing as one of the major parts of the right to an adequate standard of

⁶⁰ M Jashim Ali Chowdhury, *An Introduction to the Constitutional Law of Bangladesh* (2nd Edition, Sun Shine Books, Dhaka, 2014).

⁶¹ Note 41 (See Colombian Constitutional Court, cases T-484/1992, August 11, 1992; T-328/1993, August 12, 1993; T-494/93, October 28, 1993; T-597/93, December 15, 1993; T-217/95, 23 June 1995; among many more.)

⁶² Abdullah Al Faruque, *International Human Rights Law: Protection Mechanisms and Contemporary Issues* (2nd Edition, New Warsi Book Corporation, Dhaka, 2015).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ *Universal Declaration of Human Rights* 1948, article 25 (a).

living.⁶⁶ International Covenant on Economic, Social and Cultural Rights, 1966 also recognized this right⁶⁷ by creating a positive obligation⁶⁸ towards its state parties. In national jurisdiction, South Africa on its “Bill of Rights”⁶⁹ part states that “Everyone has the right to have access to adequate housing” subject to “available resources”.⁷⁰ The Constitution of India inserted this right in the directive principle part which is not judicially enforceable.⁷¹ The *Constitution of Bangladesh* declares that the right to housing is a basic necessity of the people of Bangladesh.⁷²

Though ‘right to housing’ is one of the major parts of human rights, it cannot be protected through the court. Neither international jurisprudence nor national jurisprudence makes this right judicially enforceable, rather, it requires progressive realization subject to “available resources” of the state. Now, the question arises what will be the proper way to protect this kind of socio-economic rights. It is the judiciary that takes an indirect approach to protect ‘right to housing’ by drawing analogies with certain civil and political rights. South African Constitutional Court in *Grootboom*⁷³ case held that the constitution did require the state to go beyond available resources to realize socio-economic rights immediately. The court made a declaratory remedy to provide relief for people who have no access to land, no roof over their heads and who are living in intolerable conditions.⁷⁴ Indian Supreme Court in *Olga Tellis*⁷⁵ case declared that the right to life includes a right to livelihood. Chandrachud CJ expressed:

The sweep of the right to life conferred by Article 21 of the Constitution of India is wide and far reaching ... An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.⁷⁶

Supreme Court of Bangladesh takes a similar attempt to interpret the right to livelihood within the ambit of right to life guaranteed in article 31 of the Constitution of Bangladesh in *Slum Dweller's case*.⁷⁷

⁶⁶ Bill Edgar, Henk Meert, *Access to housing: homelessness and vulnerability in Europe*, 2002, The Policy Press, p 17, ISBN 978-1-86134-482-3.

⁶⁷ *International Covenant on Economic, Social and Cultural Rights* 1966, article 11.

⁶⁸ *Ibid.*

⁶⁹ *Constitution of South Africa*, chapter 2.

⁷⁰ *Constitution of South Africa*, article 26.

⁷¹ *Constitution of India*, part IV.

⁷² *Constitution of Bangladesh*, article 15.

⁷³ ZACC 19, 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC).

⁷⁴ *Ibid.*

⁷⁵ *Olga Tellis v Bombay Municipal Corporation*

⁷⁶ *Olga Tellis v Bombay Municipal Corporation*, 1986 AIR 180.

⁷⁷ 4 MLR (HC) 358 cited in M Jashim Ali Chowdhury, *An Introduction to the Constitutional Law of Bangladesh* (2nd Edition 2014, Sun Shine Books, Dhaka, 2014), p186.

5.3.2. *The right to health and civil and political right protection*

The right to health can be judicially protected through ‘the right to life, the right to be free from torture or cruel, inhuman and degrading treatment, and the right to the respect of private and family life’.⁷⁸ Indian Supreme Court in *Paschim Banga Khet Majoor Samity v State of West Bengal, 1996*⁷⁹ decided that the right to life encompasses access to primary health care, at least in cases of emergency.⁸⁰ According to the High Court Division of the Supreme Court of Bangladesh:

The expression of ‘life’ occurring in Article 32 of the Constitution of Bangladesh does not mean merely an elementary life or sub-human life but connotes in this expression the life of the greatest creation of the Lord who has at least a right to decent and healthy way of life in a hygienic condition.⁸¹

To protect the environment⁸² from its imbalance Dr. Mohiuddin Farooque, Secretary-General, Bangladesh Environment Lawyers Association (BELA) filed a writ petition (in 1997) against the Flood Action Programme (FAP) taken by the government in the area of Tangail. It was alleged that the program “would adversely affect and injure more than a million people in the district of Tangail by way of displacement, damage the soil, destruction of the natural habitat of fishes, flora, and fauna and creating drainage problem, threatening human health and worsening sanitation and drinking water supplies”. In response to that petition Justice Khademul Islam Chowdhury, J observed:

Articles 31 and 32 of our Constitution protect right to life as fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.⁸³

In the case of *Dr Mohiuddin Farooque v Bangladesh* it has been held that a man has natural right to the enjoyment of healthy life and longevity up to normal expectation of life of an ordinary human being and to live free from all manmade hazards of life have been guaranteed under Article 31 and 32 subject to law of the land.⁸⁴

5.3.3. *The right to work and civil and political rights protection*

The right to work is enshrined in the UDHR and recognized in international human rights law through its inclusion in the ICESCR, where the right to work

⁷⁸ Note 39.

⁷⁹ Ibid.

⁸⁰ AIR 4 SCC 37(1996).

⁸¹ Ibid.

⁸² Article 18, *Constitution of Bangladesh* (The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens).

⁸³ 49 DLR 1997 (AD).

⁸⁴ *Dr Mohiuddin Farooque v Bangladesh*, 48 DLR (1996) 438.

emphasizes economic, social and cultural development. Article 23(1) of the UDHR states that everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. This protection is also given in the constitution of Bangladesh and India. Article 15 (b) of the *Constitution of Bangladesh* states that the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work. Besides that article 20 also provides as distinct provisions with the heading of 'work as a right and duty' where sub-article 2 state that '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 of the human personality'. Though these principles are put on non-enforceable part of the constitution, the right to work can be protected through principles enshrined in fundamental rights portion (articles 34 and 38). The fundamental rights guaranteed in Chapter III, especially relevant to workers' rights, includes article 34, which prohibits all forms of forced labor and makes it a punishable offence, and article 38, which guarantees the right to freedom of association and to form trade unions.

There is no dispute that the right to life would include the right to receive wages. Deprivation of the wage does affect the very right of life and livelihood itself. The Supreme Court of India in *Olga Tellis v Bombay Municipal Corporation*⁸⁵ has observed that if there is an obligation upon the state to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.

5.3.4. The right to a healthy environment and civil and political rights protection

The Constitution of Bangladesh does not expressly mention any right to a healthy and clean environment as a fundamental right. But article 18A articulates the principle of the 'protection and improvement of the environment' as a fundamental principle of the state policy. But this provision (article 18A) cannot be enforced by the court as it is placed on the non-enforceable part of the Constitution. However, the judicial approach needs to be examining in order to protect this right. Justice Kazi Ebadul Hoque held that though the aforesaid provision (article 18) cannot be enforced by the court it can be seen for interpreting the meaning of Right to life under articles 31 and 32 of the Constitution. He further stated:

When a man consumes food, drink, etc, injurious to health he suffers an ailment and his life and normal expectation of longevity are threatened. The natural right of a man to live free from all the man-made hazards of life has been guaranteed under the aforesaid Articles 31 and 32 subject to law of the land.⁸⁶

⁸⁵ Ibid, also see AIR 1986 SC 180.

⁸⁶ 48 DLR (1996).

In this connection Justice Khademul Islam Chowdhury has expounded:

Articles 31 and 32 of our Constitution protect right to life as fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.⁸⁷

Further in *Abdul Hamid and Bangladesh Environmental Lawyers Association v Bangladesh*⁸⁸, and *Syeda Rizwana Hasan and MA Manna Khan v Bangladesh*⁸⁹, petitions filed to protect the environment from its imbalance resulted from environmental hazardous. And the court verdict affirmatively by giving direction to the concerned authority to take effective measure to check the pollution caused due to the emission of hazardous smoke from motor vehicles.⁹⁰

6. Progressive Implementation of Economic, Social and Cultural Rights in Practice: Bangladesh Context

Economic, social and cultural rights expressed positive obligation towards state through national and international legal instruments. Positive obligation obliged that concerned state will implement or ensure these rights progressively rather enforce immediately. Though there is no standard yardstick to measure the 'progressive implementation' process, few axioms have been evolved through regional and intercontinental attempt: '*deliberately retrogressive measure*', '*the decency threshold*', '*minimum core entitlements*' and so on. Besides the above, 'indicators and benchmark' strategies can play a significant role to appraise compliance with ESC rights obligation. In compliance with that barometer, this part of the article scrutinizes the exertion taken by the government of Bangladesh to implement economic, social and cultural rights.

7. Facilitating the Basic Necessities

It is the prime most responsibility of every welfare state to ensure basic needs of its citizens.⁹¹ The principle of basic need approach is enshrined in article 15 of the Constitution of Bangladesh. The provision identifies five categories of basic requirements of human life including food, clothing, shelter, education and medical care.⁹² National legislation and policies have been adopted by the government of Bangladesh to implement basic necessities of citizens. The following chart demonstrates the national enactments and policies formulated for the advancement of the quality of basic necessities of the citizen of Bangladesh:

⁸⁷ 48 DLR (1996).

⁸⁸ Writ Petition No. 6097 of 2006.

⁸⁹ Writ Petition No.300 of 1995.

⁹⁰ Writ Petition No.300 of 1995.

⁹¹ Abdullah Al Faruque, *From basic need to basic right: Right to Food in Context*, 2014, National Human Rights Commission, p 4.

⁹² *Constitution of Bangladesh*, article 15.

Table 1: National Legislation and Policies to Implement Basic Necessities⁹³

Basic Needs	National Legislation	Policies and Others
Food	<i>The Safe Food Act, 2013</i> <i>The Pure Food (Amendment) Act, 2005</i> <i>The Consumer's Rights Protection Act, 2009</i> <i>Oil Act, 2013</i>	National Food Policy (NFP) 2006
Education	<i>The Compulsory Primary Education Act, 1990</i>	<i>National Education Policy 2010;</i> <i>National Action Plan II (NPA II), 2003-2015</i>
Water and Sanitation	<i>The Water Act, 2013</i>	<i>The National Water Policy, 1998;</i> <i>National Sanitation Strategy, 2005;</i> <i>Safe Water Supply and Sanitation (1998); Water Management Plan (2004); Reduction Strategy Paper (2009).</i>
Health		<i>National Health Policy, 2000; Health and Population Sector Programs (HPSP) (1998-2003) and its successor the Health, Nutrition and Population Sector Programs (HNPS) (2003-2010).</i>
Housing and Shelter		<i>The National Housing Policy, 1993</i>

7.1. Progress in Education Sector

The right to education is considered as 'one of the most powerful vehicles for securing social justice'. In Bangladesh, the protection of these rights is ensured through article 17 of the Constitution where it is enshrined:

State shall adopt effective measures for the purpose of (a) establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law and (b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs; removing illiteracy within such time as may be determined by law.⁹⁴

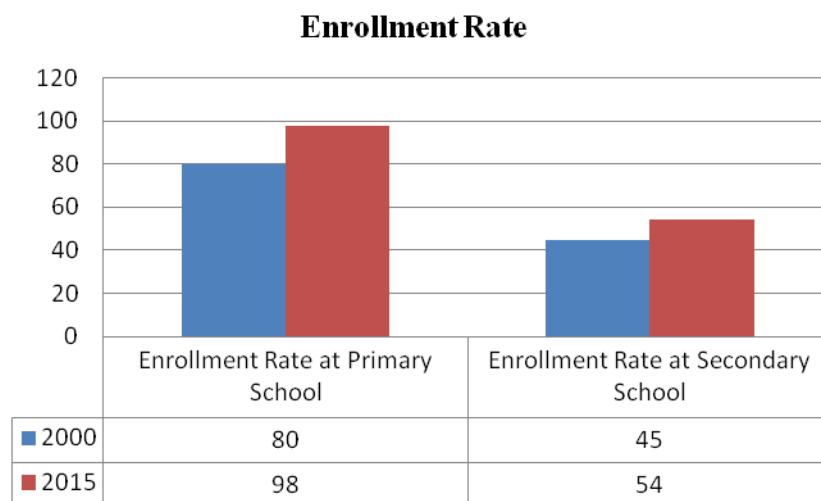
After its independence, Bangladesh has adopted a variety of legal instruments and policies to implement the right education, including the Compulsory

⁹³ *The Harijans of Bangladesh Living with the Injustice of Untouchability*, 2016, Empowerment through Law of the Common People (ELCOP), p 155.

⁹⁴ *Constitution of Bangladesh*, article 17.

Education Act 1990, the *Madrasa Education Ordinance* 1978, and the *National Education Policy* 2010.⁹⁵ Besides above, several commissions were formulated to strengthen the protection and implementation of the right to education. It is worth mentioning that the most effective and acclaimed education commission headed by *Dr Kudrate-E-Khuda* was formed just after the independence of Bangladesh, and it was followed by five commissions⁹⁶ till 2010. In 1978, the Madrasa Education Ordinance adopted to regulate, supervise, control, and implement Madrasa Education in Bangladesh. In addition to that, the government enacted policies such as the food for education program, the stipend program for primary education, interim education policy 1997 which integrated vocational, technical, agricultural, and medical education into the secondary and higher secondary education program, and lastly, perhaps most importantly, the *National Education Policy* 2010. Here it is worth referring with credit that Bangladesh has made an impressive success to ensure access to the right to education. A survey report was published by the World Bank (IBRD) where represents the successive changes in the right to education in Bangladesh as follows:

Fig. 1: Enrollment Rate at Primary School and Secondary School between 2000 and 2015⁹⁷



The above figure clearly depicts that the country's net enrollment rate at the primary school level increased from 80 percent in 2000 to 98 percent in 2015,

⁹⁵ Available at:

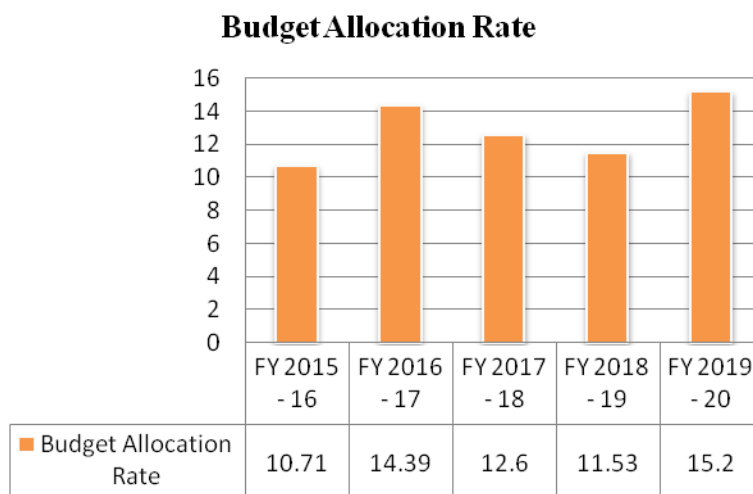
http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/348ec5eb_22f8_4754_bb62_6a0d15ba1513/Right%20to%20Education.pdf; accessed on 11 February 2019.

⁹⁶ Mofiz Uddin Education Commission 1988, Shamsul Haque Education Commission 1997, Dr MA Bari Commission 2002, Mohammad Moniruzzaman Mia Commission 2003 and the National Education Committee 2010.

⁹⁷ Available at: <https://www.worldbank.org/en/results/2016/10/07/ensuring-education-for-all-bangladeshis>; accessed on 02 November 2019.

and secondary school net enrollment is around 54 percent in 2015, up from 45 percent in 2000.

Fig. 2: Budget Allocation for Education Sector (Last Five Years)⁹⁸



The displayed figure demonstrates the percentage of budget allocation for the education sector in Bangladesh over the period of the last five fiscal years. A sum of Tk 79,486 (15.2% of total budget) crore has been proposed for the Education and Technology sector for the 2019-20 fiscal year – Tk13,213 crore more than the budget passed last year, which was Tk 66,273 (11.53% of the total budget).

7.2. Advancement in Public Health

Article 18 of the Constitution of Bangladesh talks about the advancement of public health through the commitment of ‘raising of the level of nutrition and the improvement of public health’. It further stipulates that the State shall 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.⁹⁹ Effective steps are taken to the improvement of public health through different rules and regulations. The health service program was initiated by the name of primary health care service (PHC) with the pledging of attaining health for all by the

⁹⁸ Available at: <https://en.prothomalo.com/bangladesh/news/197870/Education-gets-the-highest-allocation-but>; accessed on 03 November 2019.

⁹⁹ *Constitution of Bangladesh*, article 18.

year 2000¹⁰⁰ to implement this program the first National Health Policy was framed in the year 2010. Moreover, the government also adopted numerous policies for the progressive improvement of public health, namely the *National Population Policy* 2012, the *National Drug Policy* 2016, the *National Food and Nutrition Policy* 2015, the *National Strategy for Maternal Health Policy*, etc. In addition to that, the government has allocated Tk 9,041 crore for the health sector in the national budget for FY2018-19, and it is encountered at 5% of the total budget.¹⁰¹

7.3. Ensuring the Right to Work

The Constitution of Bangladesh incorporated the right to work as one of the paramount fundamental principles in different provisions. Article 15 of the Constitution of Bangladesh articulated that the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work¹⁰²; the constitution further perceives work as a right and requires that everyone shall be paid for work on the basis of the principle from each according to his abilities, to each according to his work.¹⁰³ Besides the national legislation, Bangladesh has committed to ensuring the right to work through ratifying various international covenants, like *International Covenant on Social, Economic and Cultural Rights* in 1998, the *ILO Declaration on Fundamental Principles and Rights at Work* 1998. Besides, Bangladesh also ratified ILO *Convention on Freedom of Association and Protection of the Right to Organise* 1948, ILO *Convention on the Abolition of Forced Labour* 1957 and ILO *Convention on the Worst Forms of Child Labour* 1999. Further, with respect to the national statutory framework, it has enacted the Labor Act in the year 2010 with the aim of safeguarding the rights of workers. In addition to that, a specific Ministry, the Ministry of Labor and Employment, was established under the auspicious of the government of Bangladesh with the vision of ‘alleviating poverty through creating employment opportunities for the poor, unemployed and unskilled labour force of the country’;¹⁰⁴ and as such, it has adopted the *National Labour Policy* in 2010. The objectives of the labour policy include: to create employment opportunities for all citizens who are able to work, to develop a skilled labour force for socio-economic development, to create job markets in different countries and manage them in a sustainable way, to establish a decent workplace both in the formal and informal job sector in line with international labour standards, to develop the social security of the labour etc.¹⁰⁵ Furthermore, it is mentioned with credit that in order to control the unemployment rate, the government gradually invest more in employment

¹⁰⁰ *The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance* 2012, Bangladesh National Human Rights Commission.

¹⁰¹ Available at: <https://bdnews24.com/health/2019/06/13/bigger-budget-slice-for-bangladesh-health-sector>; accessed on 02 November 2019.

¹⁰² *Constitution of Bangladesh*, article 15,

¹⁰³ *Constitution of Bangladesh*, article 20.

¹⁰⁴ Available at: <https://mole.gov.bd/site/page/0b30b9b5-92e3-4cc2-b1b3-764d0dc8ebab/Vission>; accessed on 02 November 2019.

¹⁰⁵ Note 105.

sectors. It is estimated that in the FY 2017 -18 government allocated Tk 30.71 corer for industrial purposes.¹⁰⁶

7.4. Rural Development and Agricultural Revolution

With the motto of establishing a socialist welfare state, the Constitution of Bangladesh bestowed with the commitment of ensuring rural development and agricultural revolution in article 16;¹⁰⁷ it further provides:

The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas.¹⁰⁸

With respect to the structural transformation of the Bangladesh economy, a significant changed can be observed over the last decades:

Fig. 3: Structural Transformation of the Bangladesh Economy (2000 -2014)¹⁰⁹



Source: MoF (2014)

¹⁰⁶ Report published on the Ministry of Labor and Employment;

Available at:

https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/publications/97ea1665_eb31_4bed_82a0_90b1b5f3fbf1/9.5Years%20Success.pdf; accessed on 11 February 2019.

¹⁰⁷ *Constitution of Bangladesh*, article 10 [A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man].

¹⁰⁸ *Constitution of Bangladesh*, article 16.

¹⁰⁹ Kazi Ali Toufique, *Bangladesh Experience in Rural Development: The Success and Failure of the Various Models Used*, Bangladesh Development Studies, 2017, Vol. XXXX, A, Nos. 1 & 2.

It has been detected that the agriculture sector contributed to about a third of GDP¹¹⁰ goes down sharply to 17% in 2014, whereas the industrial sector followed the upward trend from 17% to 30% during the same period. Thus, it's good news for our industrial sector, but in agriculture, the trend is not satisfactory. Following that the below table will give an overview of the poverty trend in Bangladesh from 2000-2010:

Table 3: Poverty Trend in Bangladesh 2000-2010¹¹¹

Poverty Group	2000			2005			2010		
	Rural	Urban	National	Rural	Urban	National	Rural	Urban	National
Extreme Poor (%)	37.9	20.0	34.3	28.6	14.6	25.1	21.1	7.7	17.6
Moderate Poor (%)	14.4	15.2	14.6	15.2	13.8	14.9	14.1	13.6	13.9
Low Poor (%)	47.7	64.8	51.1	56.2	71.6	60.0	64.8	78.7	68.5

Source: HIES survey reports

The poverty extent has been witnessed to be declined roughly double (from 34.3% to 17.6%). It is alarming, however, that most of the poor still live in the poor area; and, additionally, rural poverty has always been higher than urban poverty.

However, the good news is that the government in 2019 has undertaken different programs to make a significant change in the rural and agricultural sector; in connection with that momentous steps are taken with aim of establishing a digital Bangladesh. Bangladesh Rural Development Board (BRDB) was formulated to serve the purpose; besides, several training institutions were built in agrarian areas to make rural people efficient in their perspective sectors. Likewise, the government has made commitments to improve the conditions of roads, electricity, healthcare, nutrition and gender equality in rural areas.¹¹² With

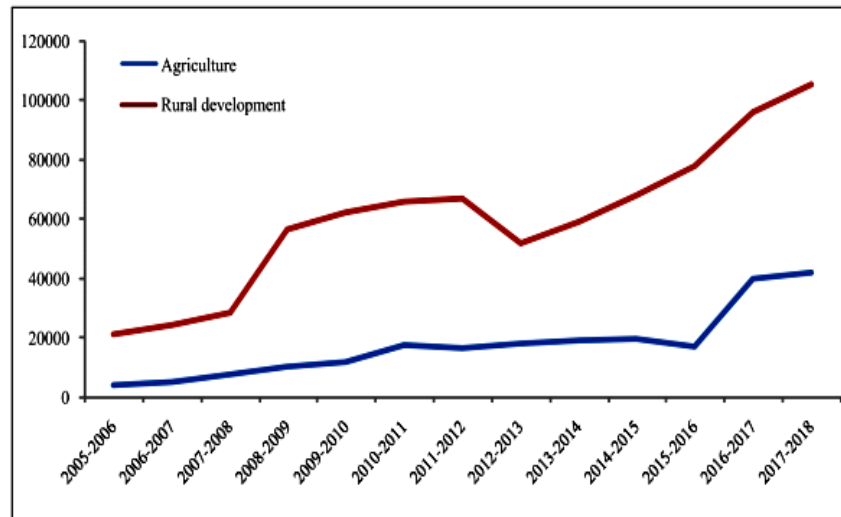
¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Available at: https://rdcd.portal.gov.bd/sites/default/files/files/rdcd.portal.gov.bd/policies/1b246ad9_1a74_4041_8573_6e671d858310/NRD.pdf; accessed on 15 October 2019.

respect to the allocation of budget, a considerable contribution has been made by the government of Bangladesh to the agricultural sector:

Fig. 3: Budget allocation for agriculture and rural development



Source: Various union budget documents

The above figure demonstrated the budget allocation for agriculture and rural development sectors from FY 2006-07 to 2017-18. From an overall perspective, it can be readily apparent that there was a significant increase in the budget for rural development compared to agriculture. However, the agricultural sector also encountered a steady increasing trend.

8. Conclusion

The status of economic, social, and cultural rights under the Constitution of Bangladesh is very realistic. The framers of the constitution of Bangladesh embodied these principles for establishing social justice, and also for providing its people with adequate economic, social, and cultural rights. Yet, these principles are made unenforceable before any judicial forum. It is contended that the non-justifiability character of socio-economic rights has been attached due to some circumstantial factors, like the implementation of socio-economic rights are cost-burdened, the content of socio-economic rights is vague, the enjoyment of socio-economic rights requires state intervention, and so on. However, despite some 'pragmatic and jurisdictional' barrier associated with the justification of socio-economic rights, the idea that they are entirely progressive in nature and not judicially enforceable is wholly preposterous and misguided, as such justification of socio-economic rights is possible. In addition to that, the

question of justiciability is not the only means of protecting and implementing socio-economic rights, but the question of full realization of socio-economic right through adopting effective strides by executive and legislative branches of the state can also play a predominant role to enforce the socio-economic right. In connection with that, this paper argued that though the judicial protection of socio-economic is not recognized directly in any national and international legal instruments, some jurisprudential aspects have been developed to protect these rights from its violation. Worth mentioning that a plethora of axioms have been constructed from the international, regional and domestic spheres show how ESC rights offer a range of possibilities for justiciability, namely 'core content or minimum core duties', 'the prohibition of retrogressive measures', 'reasonableness', 'adequateness', 'proportionality', 'non-discrimination and equal protection of the law'. These principles can be addressed broadly from three different dimensions as argued in this paper, including the concept of 'signpost for the construction of fundamental rights', the principle of 'interdependency of fundamental rights and principles of state policy', and the idea of 'concomitant to fundamental rights'. Upon this background, this article advocates necessary amendments in different laws including the constitution of Bangladesh and to strengthen the role of judicial activism in order to protect socio-economic rights from its violation. Besides the above 'promotional' judicial roles taken by the Supreme Court of Bangladesh to implement socio-economic right, some progressive measures are taken. Indeed, for the full realization of socio-economic rights available resources are needed, and as such proper utilization of resources is important with respect to 'full realization of socio-economic rights'. To recapitulate, this paper concluded that the government of Bangladesh adopted various effective measures to implement these branches' of rights, e.g. raising the allocation of budget for the development of socio-economic rights, enacting diverse policies, initiating development programs, introducing training and vocational education, providing financial assistance, and so on. However, it is highly recommended that the government should take some ameliorative steps to elevate the situation of socio-economic rights, e.g. to endorse the '*National Rehabilitation Policy*' for securing the right to shelter, to ensure the implementation of consumer protection rights, to undertake effective measures against food adulteration and dealing in black market, to adopt and maintain efficacious disaster management policy. Further, the employment opportunities should be enhanced, and steps should be taken to abolish gender disparity in work. The paper also suggests that the government should take effective steps to implement policies for the proper utilization of national resources.

