

Does Part II of the Constitution of Bangladesh Contain only Economic and Social Rights?

Dr Muhammad Ekramul Haque*

Introduction

Part II of the Constitution of Bangladesh is titled 'Fundamental Principles of State Policy'. This part is an amalgam of different types of principles that include economic, social and cultural (ESC) human rights. The Constitution of Bangladesh, through its preamble, expressly declares its aim to establish a society 'in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens'.¹ It is submitted that part II of the Constitution also includes other principles apart from economic and social rights. The part on the fundamental principles of state policy (FPSP) contains the detailed steps necessary for establishing economic and social justice which are contemplated in the preamble of the Constitution. However, the FPSP incorporated in this part have been declared to be judicially unenforceable under Article 8(2) of the Constitution. I will argue in this paper that the judicially unenforceable nature of the FPSP will create some practical problems. Because, the FPSPs have included different types of principles apart from economic and social rights. There are some principles inserted in this part which are to be made judicially enforceable by any means.

The rationale of incorporation of Fundamental Principles of State Policy (FPSP) in the Constitution:

It was stated in the Constituent Assembly of Bangladesh, during the time of debate on the draft Constitution, that the FPSP incorporated in Part II of the Constitution were 'the goal of the state'² 'for which the people have been struggling here for long time'.³ Taj Uddin Ahmed, one of the key architects of the liberation movement of Bangladesh, stated in the Constituent Assembly:

* Associate Professor, Department of Law, University of Dhaka

¹ *The Constitution of Bangladesh* Preamble.

² Bangladesh, *Constituent Assembly Debates (GonoParishader Bitarka, Sarkari Biboroni)*, Constituent Assembly, 1972, vol 2, 261 (Mr. Asaduzzaman Khan N.E. - 90: Mymensingh- 15).

³ *Ibid* 114 (Hafez Habibur Rahman, N.E.-142: Comilla-12).

At present we have prepared an agenda of fundamental principles of state policy. We do not claim that we have made everything ready in the constitution directly and properly. But what we have done is that: we have prepared a general principle according to which the Head of the State will run.⁴

Mr. Abdul Rouf Chowdhury, a member of the Constituent Assembly, pointed out that a 'constitution is not the accumulation only of laws, but at the same time it also includes certain principles.'⁵ These principles indicate the goal of the state to achieve.⁶

Scope of fundamental principles of state policy (FPSP)

The Constitution of Ireland of 1937 limited its judicially unenforceable principles to the duties of the state regarding ESC rights. The constitution of Bangladesh encapsulates some other principles along with ESC rights within the category of judicially unenforceable principles.

The FPSP contained in Part II of the Constitution of Bangladesh may be divided into two groups: basic and derivative. Article 8(1) says:

The principles of nationalism, socialism, democracy and secularism, together with the principles derived from them as set out in this Part, shall constitute the fundamental principles of state policy.

Thus, the first four FPSP are implicitly identified as the "basic" FPSP and all other FPSP set out in Part II are deemed to be derived from those basic four FPSP. The derivative principles set out in Articles 9 to 25 may be further categorized into the following five categories: administrative directions, general principles of human rights, ESC rights, duties of citizens and government employees, foreign policy.

Administrative directions

There are some FPSP which are general types of declarations or general policy formulations and involve different types of administrative actions to be taken. Article 9 gives an explanation of nationalism:

The unity and solidarity of the Bangalee nation, which deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism .

Article 10 states: '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.' Article 11 speaks of people's participation in administration:

⁴ Ibid (Taj Uddin Ahmed).

⁵ Ibid 323.

⁶ Ibid.

The Republic shall be a democracy...in which effective participation by the people through their elected representative in administration at all levels shall be ensured.

Article 12 is about secularism and freedom of religion, which says:

The principle of secularism shall be realized by the elimination of—

- a) Communalism in all its forms;
- b) The granting by the State of political status in favour of any religion;
- c) The abuse of religion for political purposes;
- d) Any discrimination against, or persecution of, persons practising a particular religion.

Article 13 enumerates the general principles of ownership in the following words:

The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms-

- (a) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalized public sector embracing the key sectors of the economy;
- (b) co-operative ownership, that is ownership by co-operatives on behalf of their members within such limits as may be prescribed by law; and
- (c) private ownership, that is ownership by individuals within such limits as may be prescribed by law.

Article 16 specifies directions for rural development, which is ultimately related with the economic rights of the people. Article 16 states:

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.

Article 17 formulates the policy regarding education:

The 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;
- (b) relating to education to the needs of society and producing properly trained and motivated citizens to serve those needs;
- (c) removing illiteracy within such time as may be determined by law.

Article 18(2) says that '[t]he State shall adopt effective measures to prevent prostitution and gambling'. Article 18A is about protection of environment and bio-diversity, which says: 'The State shall endeavour to protect and improve the environment and to safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.' Article 19(3) states that '[t]he State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life.'

Article 20(2) directs the state to foster creative endeavour. It says:

The State shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour and of the human personality.

Article 22 directs the separation of the judiciary from other governmental power: 'The State shall ensure the separation of the judiciary from the executive organs of the State.'

Articles 23 and 24 concern conservation of national culture and protection of national monuments respectively. They state as follows:

23. The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture.

24. The State shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places of special artistic or historic importance or interest.

Regarding protection of tribal culture, article 23A says: 'The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.'

Human rights: general principles

Article 11 states: 'The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed'. Thus, this Article is a general provision that directs the establishment of a state where all human rights are guaranteed. Article 19(1) lays down the principle of equality of opportunity: 'The State shall endeavour to ensure equality of opportunity to all citizens'. Human rights are elucidated in greater detail in other articles of Part II (ESC rights) and in Part III (CP rights).

Economic, social and cultural rights:

Part II of the Constitution contains the provisions regarding ESC rights. Such rights are enunciated in the form of their corresponding duties of the state. Article 14 is a general direction to the state to emancipate the people from exploitation. It says:

It shall be a fundamental responsibility of the state to emancipate the toiling masses-the peasants and workers-and backward sections of the people from all forms of exploitation.

Article 15 is the crux of this part: it contains the provision of some basic ESC human rights including basic necessities like food, clothing, shelter, and medical care. It states:

It shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens-

- (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;
- (b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;
- (c) the right to reasonable rest, recreation and leisure; and
- (d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

Article 18 is related to the right to health of the people generally. Article 18(1) says:

The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular 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.

Article 19(2) is another provision that is ultimately related to the economic rights of the people as it talks of the equitable distribution of wealth. It says:

The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.

Finally, Article 20(1) recognized the right to work:

Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle "from each according to his abilities, to each according to his work".

Duties of citizens and government employees:

Apart from the rights of the citizens and duties of the state, Part II also contains certain basic duties of the citizens to observe the law and the Constitution. Clause 1 of Article 21 imposes a duty on the citizens to

observe the Constitution and laws. Clause 2 fixes the duty of public servants to serve the people. Article 21 reads as follows:

- (1) It is the duty of every citizen to observe the constitution and the laws, to maintain discipline, to perform public duties and to protect public property.
- (2) Every person in the service of the Republic has a duty to strive at all times to serve the people.

Foreign policy:

Article 25 of the Constitution contains directives regarding the foreign policy of the state. It says:

The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall-

- (a) strive for the renunciation of the use of force in international relations and for general and complete disarmament;
- (b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and
- (c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.

Conclusion

Part II on FPSP contains ESC human rights. It also embodies other administrative directions and general directions regarding the duties of the state and its citizens.⁷ Therefore, the issue of protection of FPSP is not solely an issue of ESC rights, but also of those other principles. For example, it is not possible to deny judicial enforceability of article 21 which contains the duty of the citizens to protect the Constitution. Thus, if a citizen participates in violation of the constitution instead protecting it, the judiciary surely will declare such an act of the citizen as a violation of article 21, an FPSP.

Not all FPSP have been expressed in the same manner. The FPSP have been spelt out as general directions, general goals, instructions about taking effective measures, general declarations and primary duties and responsibilities to attain through planned economic growth. Therefore, different activities are possibly required of the State in regard to its responsibilities under the different specific FPSP.

⁷ Huq commented that 'most of the social and economic measures directed towards the establishment of socialism have found expression in Part II of the Constitution dealing with the Fundamental Principles of State Policy.' (Abul Fazl Huq, 'Constitution-Making in Bangladesh' (1973) 46 (1) *Pacific Affairs* 59, 73).