

# The Legal Philosophies of Bangabandhu Sheikh Mujibur Rahman: As Articulated in the Constitution of Bangladesh

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## Abstract

Bangabandhu Sheikh MujiburRahman, the father of the Nation is the draftsman of the independent Bangladesh. He is recognized as the greatest Bangalee of the past thousand years. The story of Bangladesh is the story of a man named Sheikh MujiburRahman who loved the people of Bengal and sacrificed his life for a country, he had named Bangladesh. Ideology of Bangabandhu is a continuous source of inspiration for Bengalis. He motivated and inspired people by his spellbinding and enthusiastic speeches. Throughout his political journey he had introduced some of his very own principles which later introduced in the Constitution of Bangladesh. The paper takes a scheme to demonstrate the correlation between legal philosophies of Bangabandhu and the Constitution of Bangladesh. In this expedition, this paper emphasises the speeches and the writings of Bangabandhu to comprehend his legal philosophies.

**Key Words:** Bangabandhu Sheikh MujiburRahman, Constitution, Bangladesh, Legal philosophy, Leadership.

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## I. Introduction:

Bangabandhu Sheikh MujiburRahman is one of the most heroic leaders of the world. He is considered as a political magnate since he developed new ideologies, manners, creativities, norms, and services to improve the lifestyle of the Bengalis.<sup>1</sup> He inspired Bengalis by his fascinating leadership, competency, and enormous political wisdom and sacrifice for people of the country. His activities towards collective awareness and supreme devotion for people make him unparalleled in the history of Bangladesh.<sup>2</sup> He was the fearless fighter of the Language Movement of 1952; the pioneer of the democratic movement of 1962; the architect of the Six-point Movement of 1966; the life force of the Mass Movement of 1969; the enviable victor of the election of 1970 and, above all, the greatest hero of the Liberation War of 1971. He is undisputedly the founder of independent Bangladesh and, therefore, the Father of the Nation.<sup>3</sup>

The historic speech of Bangabandhu with a powerful voice at the Racecourse ground in Dhaka on March 7, 1971, was the declaration of independence of Bangladesh,<sup>4</sup> where he articulated his thoughts in front of mass people of Bangladesh. After the Independence of Bangladesh, Bangabandhu Sheikh MujiburRahman inaugurated a completely new struggle to construct a newly independent country. The first order of business for Sheikh MujiburRahman was providing a blueprint for governing the new state, a Constitution. In the founding year of Bangladesh, one of the remarkable accomplishments of his government was formulating the Constitution, the Holy Grail which would determine the country's future course of actions. Bangladesh's first constitution was delivered within only 11 months.<sup>5</sup> "A state without a Constitution is like a boat without

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<sup>1</sup>Ali, M.Mahboob, 'Bangabandhu Sheikh MujiburRahman: A Magnetic and Excellent Statesman of Bangladesh', *International Journal of Trade and Commerce IARTC*, vol. 9, No. 2, 2020, pp. 295-309, available at: [https://www.researchgate.net/publication/349116739\\_Bangabandhu\\_Sheikh\\_Mujibur\\_Rahman\\_A\\_Magnetic\\_and\\_Excellent\\_Statesman\\_in\\_Bangladesh](https://www.researchgate.net/publication/349116739_Bangabandhu_Sheikh_Mujibur_Rahman_A_Magnetic_and_Excellent_Statesman_in_Bangladesh), (retrieved on 20<sup>th</sup> October, 2021)

<sup>2</sup>*Ibid.*

<sup>3</sup>Mantoo, S., 'Sheikh MujiburRehman: Founder of Bangladesh', *African Journal of Political Science and International Relations*, 9(5), 2015, 152-158, available at: <https://academicjournals.org/journal/AJPSIR/article-full-text-pdf/D0DBCF452758>, (retrieved on 20<sup>th</sup> October, 2021)

<sup>4</sup>Reza, M.H., 'Political Activities of Sheikh MujiburRahman as a Charismatic Leader', *London Journal of Research in Humanities and Social Sciences*, 19(4), 2019, pp.31-37, available at: [https://www.researchgate.net/publication/336119600\\_Political\\_Activities\\_of\\_Sheikh\\_Mujibur\\_Rahman\\_as\\_a\\_Charismatic\\_Leader](https://www.researchgate.net/publication/336119600_Political_Activities_of_Sheikh_Mujibur_Rahman_as_a_Charismatic_Leader), (retrieved on 1<sup>st</sup> November, 2021)

<sup>5</sup>Centre for Research and Information, 'Mujib: A Nation Rises', 2020, available at: <https://cri.org.bd/publication/Mujib/A-Nation-Rises.pdf>, (retrieved on 1<sup>st</sup> November, 2021)

oarsman,” said Bangabandhu. “In the Constitution” he continued, “both rights and duties of the people will be written down”.<sup>6</sup> His legal philosophical ideas are reflected in the original Constitution of Bangladesh. Bangabandhu is influential in every phase of the Constitution making process. The Constitution incorporated a progressive vision and a solid reflection of the legal principles and political experiences of Bangabandhu.<sup>7</sup> The principles of nationalism, socialism, democracy and secularism were enjoined as fundamental principles of state policy in the constitution.<sup>8</sup> Bangabandhu did not add these four principles whimsically in the Constitution. Rather, he gathered those ideas based on his long experiences from the British exploitation of the English regime in his childhood and teenage, and later Pakistani repression, movements for freedom and long-term jail life in his young age. Besides these principles our Constitution guaranteed the political rights, freedoms and provision of basic necessities as a fundamental responsibility of the state. It entitled an independent judiciary as guardian of the constitutional rights.<sup>9</sup> Bangabandhu pledged to launch freedom of speech and expression in independent Bangladesh as he had a bottomless respect towards it and it has been included in the Constitution. Bangabandhu had to pass a very significant amount of his life behind bars as a political prisoner and without any trial. So, he was very much conscious about the inconsistencies in the existing judicial system and access to justice. Therefore, he urged to include right to fair trial and access to justice in the Constitution of Bangladesh. Thus, freedom of association, freedom of expression, access to justice and its exercise in accordance with the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, free, independent media all of these elements are reflected on the political life of Bangabandhu.<sup>10</sup>

This study is helpful for students, academicians, history makers, social scientists and so on who are eager to know deeply the legal approach of the founder of Bangladesh and current legal process here. The prime object of this paper is to clarify the concept regarding the legal philosophy of Sheikh Mujibur Rahman which reflects in the Constitution of the People’s Republic of Bangladesh.

## **II. Methodology:**

This study relied mainly on the writings of Bangabandhu and his speeches along with scholarly articles. Therefore, this study had to choose qualitative approaches including content analysis, and extensive literature review. This modest research paper will deal with the legal philosophy of Bangabandhu Sheikh Mujibur Rahman. Accordingly, we have not taken resort to any overarching method rather we have sought to draw from a number of methods or approaches more commonly appropriate. The first method that this study has adopted is the close textual analysis, the primary aim of which is to understand the thinker as he understood himself. This has been done by a thorough reading and close inspection of various texts that several authors have penned about Bangabandhu. In fact, this study has sought to use dialogues of Bangabandhu as much as possible.

## **III. Literature Review:**

To articulate a piece of writing on Bangabandhu Sheikh Mujibur Rahman is a job easier said than done. There are more than thousands writings on Bangabandhu and most of them are without any references. Thus, this study relied mainly on the writings of Bangabandhu himself and his speeches along with some scholarly articles. The legal philosophies of Bangabandhu are best demonstrated in his three autobiographies. One is *The Unfinished Memoirs* which was written by him during his time of detention in central jail in 1966-69 and published in 2012. He has written about his childhood memories and his introduction in the political career in the book. Though *The Unfinished Memoirs* does not include events after the late 1950s, his plight for independence of Bangladesh is clearly visible in this book. The second book which the researchers have to study comprehensively for exploring his philosophies is *Karagarer Rojnamacha* (prison diaries) which was published in 2017. He has passed a considerable period of his life under detention. During this time, he has penned his acquaintance of the then judicial system as well as the suppression of the then autocratic government. He expressed his plight for access to justice and freedom of judiciary in many instances in this book. He also expressed his concerns for freedom of expression for supporting democracy. Another book which

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<sup>6</sup> Rahman, A., ‘Bangabandhu on the Constitution’ *the Daily Star*, 01/11/2016, available at: <https://www.thedailystar.net/law-our-rights/bangabandhu-the-constitution-1307341>, (retrieved on 20<sup>th</sup> October, 2021)

<sup>7</sup> *Supra note 5.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Supra note 5.*

<sup>10</sup> Siddika, A., & Khan, A. S., ‘Sheikh Mujibur Rahman and the Understanding of Democracy: A Brief Analysis’, *Scholars Journal of Arts, Humanities and Social Science*, 9(1), 2021, 31-37, available at: [https://saspublishers.com/media/articles/SJAHSS\\_91\\_31-37\\_c.pdf](https://saspublishers.com/media/articles/SJAHSS_91_31-37_c.pdf), (retrieved on 1<sup>st</sup> November, 2021)

carries his valuable philosophies is *Amar Dekha Noya Chin*. He has witnessed the socialist theory of China and introduced it in the Constitution of Bangladesh in his versions. Besides these three books the researchers have gone through the speeches he delivered in the political field in different circumstances. Especially the historical 7<sup>th</sup> March Speech has led the pillars of four fundamental principles of the Constitution of Bangladesh. Moreover, the researchers have tried to cover the scholarly books and articles focusing the legal philosophies of Bangabandhu Sheikh Mujibur Rahman. The article quotes comprehensively from his speeches and writings so that the readers can feel his plights for social justice in his own voice.

#### **IV. The Legal Philosophies of Bangabandhu:**

Bangabandhu Sheikh Mujibur Rahman, the father of the Nation, has spent most part of his life in the field of politics. He struggles against colonial rule nearly seven years and later against undemocratic regimes of Pakistan for 24 years to establish economic, political and cultural rights of the Bengalis.<sup>11</sup> He had to spend a significant amount of time behind the bars due to his uncompromising character with any type of injustice and inequality. Throughout his life, he dreamt of a society free of exploitation and oppression where right to access to justice is available to every section of the society. In the journey to fulfill this dream, Bangabandhu had recognized some very specific ideals and philosophies which were later introduced in the Constitution of Bangladesh. Bangabandhu enumerated nationalism, democracy, secularism and socialism as the fundamental principles of state policy in the Constitution of Bangladesh in much unadorned terms. These four principles constitute the guiding spirit of the Constitution. Moreover, The Preamble of the Constitution also acknowledges the spirit of Bangabandhu very extensively and exclusively. Bangabandhu also emphasized on protecting political, cultural and social justice for all. Therefore, he emphasized on independence of judiciary and right to access to justice as well as freedom of association for all the citizens of the country. In this segment of the article, we shall undertake an attempt to demonstrate the relationship of the legal philosophies of the Bangabandhu with the relevant articles of the Constitution of Bangladesh.

**4.1 Nationalism:** Nationalism supports the interests of group of people with the aim of gaining and maintaining these people's autonomy and sovereignty over their homeland. Nationalism holds that each nation has the right to decide its political future free from outside interference.<sup>12</sup> Bangabandhu is the archetype of Bangalee nationalism and it was a crucial aspect in the formation of Bangladesh. Bangalee nationalism was articulated and symbolized by Bangabandhu. One of the most famous utterances of Bangabandhu was, "Even when walking the gallows, I shall say I am a Bangalee, Bangla is my language, and Bangla is my land." Through this proclamation he designated his affection for Bengali nationalism. On 1955, he took the floor in the Pakistan Constituent Assembly and uttered,

".....The word 'Bengal' has a history, has a tradition of its own. You can change it only after the people have been consulted. If you want to change it then we will have to go back to Bengal and ask them whether they accept it."<sup>13</sup>

Nationalism stands identical to unity in his historic speech of 7<sup>th</sup> March when he warned oppressors saying, "Now that we have learnt to die, no power on earth can keep us in subjugation."<sup>14</sup>

Bangabandhu has reunited with the people of Bangladesh after the liberation war on 10<sup>th</sup> December, 1972. In tearful and thundering voice he again articulated his devotion for Bangalee nationalism in the following words: ".....My Bengal will remain free..... The sons of Bengal, the mothers of Bengal, the peasants of Bengal, the labourers of Bengal, the intellectuals of Bengal have struggled."<sup>15</sup>

Bangabandhu constructed Bangalee Nationalism mainly focusing on language and culture. As a perfect embodiment of Bangalee nationalism, Bangabandhu picked up the Rabindrasangeet "Amar Sonar Bangla Ami toma ebhalobashi" (my golden Bengal I love you) as our national anthem. The slogan 'Joy Bangla' (victory to Bengal) generated by Bangabandhu, worn by the freedom fighters during the Liberation War as an inspiring jingle.

**Nationalism in the Constitution of Bangladesh:** After the Independence of Bangladesh, Bangabandhu endeavored to launch the very first Constitution of the country. On 12 October 1972, the draft constitution was

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<sup>11</sup> Palak, A. Zunaid, 'Love, Peace and Freedom: The Philosophy of Bangabandhu', The Daily Star, 31/08/2021, available at: <https://www.thedailystar.net/views/opinion/news/love-peace-and-freedom-the-philosophy-bangabandhu-2164586> (retrieved on 14th October, 2021)

<sup>12</sup> Dr. Husain A. Syed, 'Bangabandhu and Bangali Nationalism', Dhaka Courier, 26/03/2021, available at: <http://www.dhakacourier.com.bd/news/Reportage/Bangabandhu-and-Bangali-Nationalism/3312> (retrieved on 14th October, 2021)

<sup>13</sup> Iqbal, Shahryar, 'Sheikh Mujib in Parliament (1955-58)', Dhaka, Agamee Prakashani, 1997, pp.8-9.

<sup>14</sup> 7<sup>th</sup> March, 1971 speech of Bangabandhu, available at: <https://www.albd.org/articles/news/31534/Historical-7th-March-Speech-of-Bangabandhu> (retrieved on 15<sup>th</sup> October, 2021)

<sup>15</sup> 10<sup>th</sup> January, 1972 speech of Bangabandhu, available at: <https://www.albd.org/articles/news/35671/We-don%E2%80%99t-know-defeat-Bangabandhu-s-speech-on-10th-January> (retrieved on 15<sup>th</sup> October, 2021)

placed in the Constituent Assembly. On this occasion, while explaining the four fundamental principles of the state, Bangabandhu shared his ideas specific to nationalism in the following words:

“There is something that goes with say language, civilization and culture; and this is a feeling. No nation can be great without this feeling, and nationalism cannot grow without this feeling...Nationalism depends on a feeling. I am a Bangalee, because I have this feeling.”

Thus, Nationalism has become a part of our Constitution. Nationalism is one of the four principles that form the Fundamental Principles of State Policy.<sup>16</sup> The preamble of Bangladesh Constitution reads as “We, the people of Bangladesh, having proclaimed our independence on the 26<sup>th</sup> day of March, 1971 and through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh.” Article 6 identified the peoples of Bangladesh as Bangalee. Article 9 of the Bangladesh Constitution cleared the basis of the nationalism as the unity and solidarity of the Bangalee Nation.<sup>17</sup> Therefore, a newly independent country has started its journey exclusively supported by the strength of nationalism under the supervision of Bangabandhu Sheikh MujiburRahman.

Thus, the Bangalee Nationalism which is enshrined in the Constitution of Bangladesh was basically strained by the Bangabandhu Sheikh MujiburRahman, one of the most fascinating leaders of the world. Bangabandhu was the epithet of Bangalee nationalism.

**4.2 Socialism:** From the early life Bangabandhu struggles for the right of the deprived people. He always fought for a society free of exploitation and repression. He sacrificed his studentship of Dhaka University to secure the wages of the fourth-class staff of the University. His memories in the book *KaragarerRojnamacha* (prison diaries) revealed about the distribution of allocated food for him among other prisoners.

In his Historic 7<sup>th</sup> March speech Bangabandhu said, “To ensure that no suffering is inflicted on the poor people, to ensure that my people do not suffer, from tomorrow the following things will be put out of range of the ‘hartal’. Rickshaws and hackney carriages will work; railway trains and launches will run.”<sup>18</sup> Bangabandhu clearly outlined the nature of his socialism theory after the independence of Bangladesh in these words: “My ultimate goal is to establish an exploitation-free country, meaning socialistic economy.” He was very comprehensible about the procedure of socialism and alleged “We believe in the democratic process. Also, the contexts of different countries are different from each other. So, Bangladesh has to adopt its process based on its own context.”<sup>19</sup>

**Socialism in the Constitution of Bangladesh:** By socialism Bangabandhu meant a system that would free people from exploitation and oppression and remove inequality.<sup>20</sup> Regarding socialism, Bangabandhu on November 4, 1972, stated the Constituent Assembly, “The main idea of my socialism is an exploitation-free society.” Bangladesh Constitution has adopted socialism as a fundamental principle of state policy. The 3<sup>rd</sup> paragraph of our preamble<sup>21</sup> suggests that the aim was to create a synthesis between democracy and socialism, a conjugation where people can have parliamentary democracy along with a socialist economy.<sup>22</sup> Article 10 of the Bangladesh Constitution states that, ‘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 14 of our Constitution affirms the emancipation of toiling masses, the peasants, workers and backward section of the people from all forms of exploitation as a fundamental responsibility of the state. Articles 15, 17, 19, 20 subsequently acknowledge the basic necessities of life, free and compulsory education, equality of opportunity and work as a right and duty. Article 19 speaks of equality opportunity,<sup>23</sup> article 27 speaks of equality before

<sup>16</sup>Article 8 of the Bangladesh Constitution ‘The principles of nationalism, socialism, democracy and secularism, together with this principles derived from those as set out in this part, shall constitute the fundamental principles of state policy.’

<sup>17</sup> Article 9 of the Bangladesh Constitution ‘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.’

<sup>18</sup>*Supra note*, 6.

<sup>19</sup>In Quest of Socialism, available at: <https://www.mujiolympiad.gov.bd/en/quiz/content/115>, (retrieved on 25<sup>th</sup> October, 2021)

<sup>20</sup>Dr. Jahan, R., ‘The Political Philosophy of Bangabandhu’, Dhaka Tribune, 10/09/2019 .available at: <https://cpd.org.bd/the-political-philosophy-of-bangabandhu-dr-rounaq-jahan/>, (retrieved on 25<sup>th</sup> October, 2021)

<sup>21</sup>Preamble of the Bangladesh Constitution, ‘Further pledging that it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation—a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens’.

<sup>22</sup> Amey, A.A., A tale of Democratic Socialism and Our Constitution, The Business Standard, 01/02/2021 available at: <https://www.tbsnews.net/thoughts/tale-democratic-socialism-and-our-constitution-194926>, (retrieved on 25<sup>th</sup> October, 2021)

<sup>23</sup>**Article 19:** 1. The State shall endeavour to ensure equality of opportunity to all citizens. 2. 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. 3. The State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life

law,<sup>24</sup> article 28 declares that there will be no discrimination on the ground of religion<sup>25</sup> and article 29 ensure equal opportunity in public employment and there shall not be any discrimination in regard of gender, origin, religion and race.<sup>26</sup>

Therefore, the enthusiastic attention of Bangabandhu to establish a society based on the principles of socialism and equality play a vital role in asserting socialism as one of the fundamental principles of state policy in the Constitution. In recognizing the idea of socialism of Bangabandhu Prof Amartya Sen said:

“He wanted to create an egalitarian society where there would not be any privileged elites. One of his driving beliefs was the fact he should never reproduce the constructs of the Pakistan state in a newly liberated Bangladesh.”<sup>27</sup>

**4.3 Secularism:** The concept of ‘secularism’ has been defined as the right of every citizen to acknowledge, perform or promulgate any religion. Bangabandhu was one of the clearest exponents of secularism who always discouraged the political use of religion, but he always believed in the freedom of people to practice their religion. The vision of him to unite the people of Bangladesh to establish a state where cultural identity (language and traditions mostly) of the people will rule over their religious identity.<sup>28</sup> Bangabandhu frequently used the word “Bangalee” which means to offer a “non-religious” understanding of nationalism.<sup>29</sup> He was determined to secure the lives of the ordinary people of Bangladesh regardless of their religious identity. Bangabandhu made it clear in his speech also when he said, “as a Muslim I will observe all the Muslim religious rites and rituals. The Hindus will observe theirs”. In his historic 7<sup>th</sup> March he declared, “Hindus, Muslims, Bengalis and non-Bengalis, all those who live in this Bangla are our brothers. The responsibility of protecting them is on you. Ensure that our reputation is not smeared in any way.”<sup>30</sup> Thus, the secularism theory of Bangabandhu ensures the religious practices of all communities.

**Secularism in the Constitution of Bangladesh:** The Constitution of Bangladesh has explicitly acknowledged secularism as one of the four fundamental pillars of the State. The preamble of the Constitution of Bangladesh declares<sup>31</sup> secularism as one of the high ideals of the Constitution and article 8<sup>32</sup> cemented the aspiration of the preamble by incorporating secularism as a fundamental principle of the state policy. Subsequently, the constitution defines secularism and freedom of religion to provide a guideline for the legislature and policy maker to understand the nature of secularism in Bangladesh. Article 12 of the Constitution<sup>33</sup> collectively defined secularism and freedom of religion and article 41<sup>34</sup> complements it.

Religious freedom was held very high place in the ideologies of Bangabandhu and discouraged the political use of religion. The vision of him to connect the inhabitants of Bangladesh is to institute a shape where national identity of the people will imperative over their religious characteristics.

<sup>24</sup> **Article 27:** All citizens are equal before law and are entitled to equal protection of law.

<sup>25</sup> **Article 28:** 1. The State shall not discriminate against any citizen on ground only of religion, race, caste, sex or place of birth. 2. Women shall have equal rights with men in all spheres of the State and of public life. 3. No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution. 4. Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

<sup>26</sup> **Article 29:** 1. There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic. 2. No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic. 3. Nothing in this article shall prevent the State from making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic. giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination; c. reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

<sup>27</sup> ‘Bangabandhu and Visions of Bangladesh,’ ‘Bangabandhu Lecture Series,’ 2021, organised jointly by the London School of Economics (LSE) and the Bangladesh High Commission in London -was held as part of the celebrations of the birth centenary of Father of the Nation Bangabandhu Sheikh Mujibur Rahman.

<sup>28</sup> Rahman, A., ‘Secularism, Bangabandhu, Bangladesh’, The Daily Star, 15/08/2015 ; available at: <https://www.thedailystar.net/op-ed/politics/secularism-bangabandhu-bangladesh-127036>, (retrieved on 05<sup>th</sup> November, 2021)

<sup>29</sup> *Ibid.*

<sup>30</sup> *Supra* note 6.

<sup>31</sup> The second paragraph of the Preamble states that, ‘Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution’.

<sup>32</sup> *Supra* note 16.

<sup>33</sup> Article 12 of the Bangladesh Constitution, ‘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 practicing a particular religion’.

<sup>34</sup> Article 41 of the Bangladesh Constitution, ‘(a) every citizen has the right to profess, practice or propagate any religion; (b) every religious community or denomination has the right to establish, maintain and manage its religious institutions. (2) No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own’

**4.4 Democracy:** Bangabandhu Sheikh Mujibur Rahman, the architect of the independence of Bangladesh, was a supporter of democracy. It was his lifelong cherished dream to provide real empowerment for all the people of Bangladesh. His plight for democracy was marked by his words, "I believe in democracy, I believe in the people's right to vote". He resisted the dictatorship of Ayub Khan, and fought persistently to reestablish democracy in East Pakistan. In his book *Amar Dekha Noya Chin*, Bangabandhu mentioned that, "No revolution is possible without the support from the people". Whenever Pakistani rulers gave opportunities for election he participated in them, though the elections were often not free and fair and attempts were made to foil the election results.<sup>35</sup> In *Karagarer Rojnamacha* he points out repeatedly that by limiting the democratic space an autocratic regime ultimately leads the country towards terrorist politics. He writes:

"I was alarmed that they [the Pakistani government] are trying to shut down democratic politics ..... My fear is, they are leading Pakistan toward terrorist politics. We do not believe in that politics. But those of us who want to do well for the people through democratic politics, our space are shrinking."

His devotion for democracy was articulated in his 7<sup>th</sup> March Speech also when being in a very upsetting situation, he expected a democratic solution. In his speech he said, "Today I met President Yahya Khan and discussed everything with him. Being the leader of not only of Bangla but of the majority party of Pakistan, I requested him to convene the National Assembly of 15<sup>th</sup> February." Thus, the vision of Bangabandhu was to set up democracy as guiding principle in the country to support peace and prosperity of his fellow people.

**Democracy in the Constitution of Bangladesh:** On November 4, 1972, while the Constitution was being adopted in the Constituent Assembly session, Bangabandhu delivered a speech where his ideas about secularism got more clarified.<sup>36</sup> Regarding democracy, Bangabandhu said: "We believe in democracy. It is that democracy that brings welfare for the ordinary people..... We want democracy for the exploited." The aspirations of Bangabandhu to establish democracy in Bangladesh leads the way to declare democracy as one of the fundamental principles of state policy in the Constitution. The Preamble of Bangladesh Constitution has started with the words, "We, the people of Bangladesh....." demonstrates the philosophy of democracy of Bangabandhu.<sup>37</sup> Next, article 8 of the Constitution includes democracy as fundamental principle of state policy.<sup>38</sup> The explanatory article 11 includes Human Rights within the Domain of Democracy.<sup>39</sup> The constitution complements this section by inserting a chapter fully on Election process.<sup>40</sup>

Bangabandhu, Sheikh Mujibur Rahman, the father of the nation dedicated his whole life in the battle of establishing the rights of the deprived people. Throughout his life, Bangabandhu was a rigid campaigner of the principle democracy and the drafter of the very first constitution of Bangladesh were influenced with his way of thinking and placed democracy in the constitution as a fundamental principle of state policy.

**4.5 Independence of Judiciary:** Judiciary is the last hope and aspiration to restore the rights of citizen in a country.<sup>41</sup> But judiciary cannot perform its duty properly unless and until it is free from any undue influence and interference of any other organ of the Government. Bangabandhu Sheikh Mujibur Rahman has been tortured through the judicial process by the autocratic government throughout his life and he has felt the plight of independence of judiciary during his detention time. On 6<sup>th</sup> February 1956 in a speech in the constituent assembly of Pakistan Bangabandhu said, "In order to do justice to the people judiciary must be separated from the Executive." In 1970, before the Historic Election Bangabandhu promised to establish independence of judiciary through the following words:

"The independence of the judiciary will be guaranteed through the constitution. The constitution will guarantee the complete separation of the judiciary from the administration. Such a provision will be made in the constitution so that only people of character, knowledge and justice can be members of the judiciary to maintain the independence of the judiciary."<sup>42</sup>

**Independence of Judiciary in the Constitution of Bangladesh:** Bangabandhu Sheikh Mujibur Rahman initiated the process to establish an independent judicial system in a completely new-born state within a year. After

<sup>35</sup> *Supra note 20.*

<sup>36</sup> The speech is available at: <https://www.albd.org/articles/news/36456/Four-principles-of-Bangladesh:-Democracy-leads-to-the-idea-of-national-identity>, (retrieved on 05<sup>th</sup> November, 2021)

<sup>37</sup> The first para of the preamble of the Constitution of Bangladesh, 'We, the people of Bangladesh, having proclaimed our independence on the 26<sup>th</sup> day of March, 1971 and through a historic struggle for national liberation, established the independent, sovereign Peoples' Republic of Bangladesh.'

<sup>38</sup> *Supra note 16.*

<sup>39</sup> Article 11 of the Constitution: '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 and in which effective participation by the people through their elected representatives.'

<sup>40</sup> Part VII of the Constitution of Bangladesh deals with the various aspects of Election.

<sup>41</sup> Hannan, A. M. & Ariffuzaman, Md. (2021), 'Separation of Judiciary and Judicial Independence in Bangladesh: An Appraisal', Open Access Library Journal, 8, 1-21 available at: <https://www.scirp.org/journal/paperinformation.aspx?paperid=108910>, (retrieved on 05<sup>th</sup> November, 2021)

<sup>42</sup> The proclamation of Awami League before the Election of 1970 ;available at: <https://www.albd.org/articles/news/35282/1970:-An-Election-Fifty-Years-Ago> (retrieved at 15<sup>th</sup> November, 2021)

Independence, at the time of preparation of the Constitution, Bangabandhu specially mentioned about separation of judiciary in a speech. He said,

“I will take immediate steps to ensure that the High Court and the lower courts can function. I would like to make sure that steps are taken to rectify some of the fundamental flaws in the judiciary in order to eradicate corruption and procrastination. The policy of separating the judiciary from the administration will be scrutinized.”<sup>43</sup>

On 18<sup>th</sup> December, 1972 in the eve of inauguration of Supreme Court of Bangladesh Bangabandhu uttered with Confidence that. “The rights of the court will not be interfered”.

Thus, Bangabandhu entails to include Independence of Judiciary in the Constitution of Bangladesh. Article 22 of the Constitution of Bangladesh states that, “The State shall ensure the separation of the judiciary from the executive organs of the State” as one of the fundamental principle of state policy.

The 1972 Constitution fairly developed the concept of Independence of Judiciary but his journey to implement the concept into reality was stopped with the brutal assassination of Bangabandhu in 1975. Attempt was taken to separate the judiciary from executive was finally taken when the renowned *Masdar Hossain Case* was filed. In this landmark judgment, The Appellate Division directed the Government to put into operation ‘twelve points’ directives include formation of separate judicial service commission and Judicial Service Pay Commission to separate the judiciary from the control of the executive. But the initiatives undertaken to implement these directives by the Government in power were very time-consuming. Finally, in 2007 the Caretaker Government (2006-2008) undertaken a very encouraging steps towards the separation of judiciary from the executive based on the constitutional principle and the judgment of the *Masdar Hossain Case* and establish separate Judicial Service Commission. Thus, the remarkable voyage towards the independence of judiciary started from 1<sup>st</sup> of November, 2007.

**4.6 Access to Justice:** During the period of detention, Bangabandhu experienced the bitter reality about the judicial system of the country. He believed that without establishing the right to access to justice for all sections of the society, thinking about rule of law and democracy is pointless. He emphasized to make the court accessible to all. His experience in the jail has been penned in his book ‘*Karagarer Rojnamacha*’. In this book, he wrote about many instances where poor people were excluded from justice. On 25<sup>th</sup> January, 1975, in Bangladesh he urged for right to access to justice in The Parliament by stating that, “.....people should get justice easily and get justice immediately.”

**Access to justice in the Constitution of Bangladesh:** Bangabandhu was conscious to establish a judicial system where every citizen of the country irrespective of class, religion and economic status should be entitled to get justice. Article 31 of the Bangladesh Constitution affirms the right of access to justice.<sup>44</sup>

**4.7 Right to Fair Trial:** Bangabandhu had to pass a very significant amount of his life behind bars as a political prisoner and without any trial. So, he was very much aware about the inconsistencies in the existing judicial system. He had written his concerns about the inexistence of trial through the following words:

“If anyone has done wrong, adjudge quickly. There is many people in this prison who have been imprisoned for two or three years for a little crime. If tried, he could not be jailed for more than 6 months. The same injustice is in the name of justice.”<sup>45</sup>

In page 185 he shared, “They want to make fun in the name of justice. I got justice even when martial law was going on. Nowadays, the telephone rings whenever there is talk of bail” Again in another speech he said, “Now make a new structure. Let it be a straightforward trial”.

**Right to fair trial in the Constitution of Bangladesh:** Bangabandhu felt that the judicial system was contrary to right to free trial and natural justice. So, he decided to establish a judicial system which would ensure the right to fair trial for every citizen of the country. The constitution has specifically guaranteed one’s rights to enjoy the protection of the law, to be treated ‘in accordance with law’,<sup>46</sup> and to consult and be defended by a legal practitioner of his choice.<sup>47</sup> Again, The Constitution has guaranteed certain rights which are the components of right to a fair trial such as the right to ‘a speedy and public trial by an independent and impartial court or tribunal’, ‘right to be secured from double jeopardy’, ‘right to non-self-discrimination’ and protection against ‘torture or cruel, inhuman, or degrading punishment or treatment’.<sup>48</sup>

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<sup>43</sup> A speech of Bangabandhu published in the *দৈনিক বাংলাদেশ পত্রিকা* on 15<sup>th</sup> January, 1972.

<sup>44</sup> Article 31 of the Bangladesh Constitution: 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.

<sup>45</sup> Rahman, S.M., *Karagarer Rojnamcha* (Prison Diaries), Dhaka: Bangla Academy, 2017, Page-136.

<sup>46</sup> *Supra* note 44.

<sup>47</sup> Article 33 of the Bangladesh Constitution.

<sup>48</sup> Article 35 of the Bangladesh Constitution.

**4.8 Freedom of Expression:** Bangabandhu supported and adhered to freedom of expression throughout his life. He assumed that attaining Independence without freedom of expression barely means independence. In the closing part of his book '*Amar Dekha Noya Chin*' he wrote, "I believe, people should have the right to demand and attain food security, but at the same time, they should have the right to preach their own opinion, otherwise human life would be as dry as a rock"<sup>49</sup> The heinous stab of autocratic government to calm the newspaper and to suppress the freedom of expression has been brought up and seriously disparaged in his book, '*Karagarer Rojnamacha*'.<sup>50</sup> He wrote on 5<sup>th</sup> June, 1966,

"Newspapers arrived. I was alarmed that they (the Pakistani government) are trying to shut down democratic politics ... If anybody criticizes the government there will be cases against them under the proposed act ... I myself am facing five cases under article 124, section 7 (3) for making public speeches ...."<sup>51</sup> On 4<sup>th</sup> June, 1966, he wrote, "After seeing the news of the 7th June protest, it seems like the government gave order of not printing any news related to it. .... This is the freedom of newspaper! We are ashamed! The world probably laughs at this freedom of media of ours!"

**Freedom of expression in the Constitution of Bangladesh:** Bangabandhu had a bottomless respect toward freedom of speech and expression and he promised to establish it in independent Bangladesh. As soon as the first constitution was prepared for the new born nation, he had ensured that freedom of thought, conscience and speech are all ensured under the fundamental rights section.<sup>52</sup> The Constitution of Bangladesh protected Freedom of Expression as one of the Fundamental Rights of Bangladesh. Article 39 of the Bangladesh Constitution ensures the right subject to reasonable restrictions.<sup>53</sup>

Freedom of the speech and expression is an enormously significant requirement to ensure democracy and Bangabandhu had persistently felt it. The hardnosed struggle of Bangabandhu to guarantee political and cultural rights had led the way to ensure freedom of expression in a completely new independent country.

**4.9 Freedom to form association:** Bangabandhu assumed freedom to form association is an integral part of instituting democracy. Without this freedom forming a political party is not possible which is an essential institution of democracy.<sup>54</sup> Therefore, when the autocrat Pakistan Government declared the activities of the Communist Party illegal, Bangabandhu Sheikh Mujibur Rahman, an uncompromising character to any kind of injustice rose his voice against the decision and in 4<sup>th</sup> February of 1956 in a debate in the constituent assembly of Pakistan Bangabandhu uttered with confidence that,

"Citizens shall have the right to form associations, trade unions and political parties for the end which are not forbidden to individuals by penal law."<sup>55</sup>

In the same speech he demanded the acknowledgement of the right to form Trade Union of the laborers of different organizations.

**Freedom to form association in the Constitution of Bangladesh:** Having achieved independence, all sections of the Bangladesh started their new journey with full of expectations and enthusiasm. To hear the voice of every sector of the Country is an integral part to establish democracy. Bangabandhu was very aware of this prerequisite and thus he had urged to introduce freedom of association as a fundamental right in the Constitution of Bangladesh in article 38.<sup>56</sup>

**4.10 Women Participation in the Parliament:** Bangabandhu Sheikh Mujibur Rahman had profound respect for the women and struggled in various forums for the establishment of the women with full dignity. To empower women in politics he demanded to reserve women seats in the Constituent Assembly of Pakistan. In a debate in the assembly on 28<sup>th</sup> February, 1956 he said: "I appeal to ..... for the reservation of 20 seats for women in the National Assembly because they are our sisters and they have got every right. .... If we do not provide this safeguard for them, it will be difficult for them to compete in open seats with men."

**Women Participation in the Parliament in the Constitution of Bangladesh:** Bangabandhu introduced women participation in the Parliament through the 1972 Constitution. It reserved 15 seats for women in the Parliament for 10 years<sup>57</sup> which was later increased to 50 through the 15<sup>th</sup> Amendment to the Constitution of

<sup>49</sup>Rahman, S.M., *Amar Dekha Noya Chin*, Dhaka, Bangla Academy. 2020.

<sup>50</sup> 'Bangabandhu and Freedom of Expression in Bangladesh', *the Daily Observer*, 17/03/2020 available at: <https://www.observerbd.com/news.php?id=249738>, (retrieved on 10<sup>th</sup> November, 2021)

<sup>51</sup> *Supra note 45*.

<sup>52</sup> *Supra note 50*.

<sup>53</sup> Article 39: 1. Freedom of thought and conscience is guaranteed. 2. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence- a. the right of every citizen of freedom of speech and expression; and b. freedom of the press are guaranteed.

<sup>54</sup> Islam, Mahmudul, *Constitutional Law of Bangladesh*, 2<sup>nd</sup> edition, Mullick Brothers, 2003, page-231.

<sup>55</sup> *Ibid.*, p.55.

<sup>56</sup> Article 38, 'Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order.'

<sup>57</sup> Article 65 of the Bangladesh Constitution.



Bangladesh. Thus, Bangabandhu had taken the maiden march towards the mainstreaming women in the political empowerment in Bangladesh.

#### **V. Conclusion:**

Sovereign Bangladesh was not formed overnight. The prehistoric heroes of this land had dreamed of an independent Bengal for thousands of years. That is why Bangabandhu cherished the dream of independent Bengal in his heart, and he sacrificed his adolescence and youth to make the dream of an independent map a reality.<sup>58</sup> He was a nationalist in character, a democrat in behavior, a socialist in belief and a secularist by conviction.<sup>59</sup> After the independence of Bangladesh, He started rebuilding his 'Sonar Bangla' with firm conviction that his dream and vision for his beloved country would continue to encourage all nations to uphold the values of fundamental freedoms and human rights, rule of law and democracy. His ideologies will be honored when his values as enshrined in the Constitution such as access to justice, right to fair trial, freedom of association and equal rights to all citizens will actually be enforced. Bangabandhurealised that to implement one of them, there is a need to ensure the implementation of all these. He demonstrates his legal philosophies in valuable speeches, in his writings during different phases of his political life. Before departure, we would like to conclude by saying that in our Constitution, now we can see all the principles, fundamental rights and fundamental principles of state policies guaranteed, are nothing but the pure reflection of the legal philosophies of Bangabandhu Sheikh MujiburRahman.

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<sup>58</sup>Murad R. Hasibur&MimArfin, 'The Magical Leadership of Bangabandhu Sheikh MujiburRahman', *Pakistan Languages and Humanities Review*, vol. 4(1),2020, pp.1-16, available at: <https://plhr.org.pk/issues/v4/1/the-magical-leadership-of-bangabandhu-sheikh-mujibur-rahman.pdf>,(retrieved on 10<sup>th</sup> November,2021)

<sup>59</sup>*Supra note 1.*