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**Emergency Provisions of the Constitution of Bangladesh; A
Critical Analysis**

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Consent Form

The dissertation titled '**Emergency Provisions of the Constitution of Bangladesh; A Critical Analysis**' is prepared by **MD. Omar Sunny ID: 2017-1-66-036**, submitted to **Ali Mashraf Lecturer, Department of Law at East West University** for the fulfilment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

Ali Mashraf

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Signature of the Supervisor

Date: 21/05/2023

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Declaration

I am giving confirmation that I wrote the thesis titled '**Emergency Provisions of the Constitution of Bangladesh; A Critical Analysis**' entirely by myself and that it has not been changed in any manner for academic purposes. I certify that I completed this thesis for the EWU Department of Law's LLB program (Supervised Dissertation). It is solely my work, and it has never been used in conjunction with any other degree or academic honour. A list of references is also supplied in order to preserve citation information.

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Abstract

This research work mainly focuses on critical analysis of Bangladesh's Constitutional provisions for emergencies. A state of emergency is an extreme situation when the constitutional apparatus of a country is broken down to the level where the government cannot control it or when there is a threat of war, foreign aggression, or internal unrest on the nation or any part of the territory which can also be financial and security in nature, at that time the President of Bangladesh made the last call and proclaims an emergency by the pre-signature of the Prime Minister.

The paper talks about the historical development of emergencies in Bangladesh, the types of emergencies and also the conformity and inconformity of the emergency provisions with the Constitutional Principles of Bangladesh. The paper also talks about the nature of the Fundamental rights during Emergency etc.

These topics are covered in this paper with citations to significant case law, the provisions of the Constitution, publications, and research studies. The article finishes with a number of sets of proposals and recommendations that may be adopted to address problems in the future.

CHAPTER ONE

Preliminary

Preliminary: The constitution is the main governing instrument of any democratic country. It grants various basic rights to its citizens and also includes provisions regarding State policy.¹ The Bangladesh Constitution is supreme over all the laws of Bangladesh. It presents Bangladesh as a democratic country in which all power belongs to the people of Bangladesh, characterizes the state's fundamental political principles and protects the fundamental rights of all its citizens.² On November 4th, 1972, it was adopted by the Bangladeshi Parliament; it has been in effect since December 16, 1972. The People's Republic of Bangladesh was established through this struggle for national liberation, and the Constitution is the clearest evidence that Bangladesh is a unitary republic that is independent and based on this struggle. It establishes a solid base of nationalism, secularism, democracy and socialism as basic characteristics representing the Republic and claims to seek a society that gives public their people - the rule of law, basic and independent civil rights as well as justice and even politics, economic and social. Like most other constitution, the Bangladesh Constitution includes provisions for declaring a state of emergency in the event of a situation that affects or is likely to affect to the people or their property, posing a risk to public safety, economy, or security.³

There are some special provisions in the Bangladesh constitution that is emergency. According to Article 141 of the Bangladesh construction. President can declare the emergency on the grounds of threat of war, foreign aggression, or internal unrest.⁴

Literature Review: Many authors have written about the state of emergency. They tried to find out about the emergency. They could not reach a conclusion on the matter. In an article '*The Unjust Exercise of Emergency Powers in Bangladesh*' written by M. Ehteshamul Bari, he tried to find out the consequent of the emergency power during state of emergency. He made

¹ 'What is a constitution?' (2022) The Constitution Unit. <<https://www.ucl.ac.uk/constitution-unit/explainers/what-constitution>> (Accessed: 14 March 2023).

² Md. Razidur Rahaman., 'Basic structures of the Constitution of Bangladesh', Readcube. <<https://www.readcube.com/articles/10.2139/ssrn.2439906>> (Accessed: 14 March 2023).

³ A.K.M MASUDUL HAQUE, 'Emergency powers and caretaker government in Bangladesh'. <<https://www.austlii.edu.au/au/journals/JIALawTA/2008/9.pdf>> (Accessed: 14 March 2023).

⁴ The Constitution of Bangladesh

an effort to argue that because it places limitations on citizens' fundamental rights, it should only be applied sparingly and as a last resort only nevertheless, he failed to offer any suitable solutions.

A.K.M MASUDUL HAQUE tried to said in an article '*Emergency Powers and Caretaker Government in Bangladesh*', the government abuse the emergency power during emergency situation, but he did not recommend how the abusing of the power by the government should be reduced.

In a research analysis titled '*Fundamental Rights in Times of Emergency: Aaur Rahman Vs Muhibur Rahman Revisited*' by Md Mustakimur Rahman, he tried to argue that the emergency should be declared to the protection of the human life not to make any danger for them. But he did not clarify any suggestions that how and by which way it should be done.

So that I chose to research this topic because I couldn't find any specific articles or publications that tried to critically analyse about the emergency provision of Bangladesh constitution and demonstrate the impact of the state emergency and status of fundamental rights during that period.

Methodology: This study employs a qualitative exploratory methodology, with some quantitative data added for depth. The primary information, the constitution People's Republic of Bangladesh. Secondary data was gathered through the content analysis of a number of Cases, scholarly articles, journals, books, and other publications on the subject.

Limitations: If there were no time limits, this analysis this analysis of Emergency Provisions under the Constitution of Bangladesh might produce a better finding. This analysis cannot be managed to complete in such a short period of time. When conducting this analysis, insufficient materials were discovered to address this issue.

Objectives of the Study: The objective of the study is to analyse the emergency provisions of the constitution. Find out its impact in the state and the fundamental rights of the citizens and the conformity with the constitutional principles of Bangladesh.

Scopes: This research work is mostly based on the provisions of the Constitution of Bangladesh. This paper also contains the state functions, conformity with the constitutional principles of Bangladesh and the status of the fundamental rights during national emergency.

Research Question:

1. Whether Suspension of Fundamental Rights During Emergency Situation is in Conformity with the Constitutional Principles of Bangladesh or not?
2. Whether the scope of government to abuse the Emergency power required to be narrow in the present context or not?

CHAPTER TWO

Introduction

Introduction:

The Emergency clauses were absent in the original constitution. This surprising exclusion was likely the result of abuse of the emergency clause in the predecessor Pakistani constitution. During Prime Minister Indira Gandhi's administration in the middle of the 1970s, the use of emergency provisions was not legitimate and proved to be misguided, even in the more or less reputable Indian democracy. Our constitution was amended in 1973 to include emergency provisions due to concerns about escalating instability brought on by Bangladesh's rapidly deteriorating socio-political and economic circumstances at the time. However, the declaration of emergency in 1974, and his subsequent declarations of emergency under different situations in 1981, 1987 and 1990, failed to rectify the declared situation for which they were proclaimed.⁵

Definition of Emergency:

The dictionary meaning state of emergency is a situation in which a government is given the authority to implement policies for the safety and protection of its citizens that it would ordinarily be prohibited from taking. During a natural disaster, civil unrest, armed war, medical pandemic or epidemic, or any other biosecurity concern, a government may declare such a state.⁶ The term "emergency provision" refers to a governmental declaration that may stop some routine operations of the executive, legislative, and judicial branches of government, notify the public to modify their usual conduct, or direct government agencies to enact emergency preparedness measures. In the constitution the emergency provision is not clearly defined. According to Lord Dunedin in the case of *Bhagat Singh v. the King Emperor*, "A situation of emergency is something that does not permit of any exact definition. It suggests a

⁵ 'Emergency Provisions in Bangladesh', The Lawyers & Jurists, <<https://www.lawyersjurists.com/article/emergency-provisions-bangladesh-critical-analysis/>> (Accessed: 18 March 2023).

⁶ 'State of emergency', Wikipedia, < https://en.wikipedia.org/wiki/State_of_emergency > (Accessed: 18 March 2023).

situation necessitating immediate action.⁷ According to Stephen P. Marks, an emergency is a perilous situation that emerges from a temporary condition that puts a state institution in jeopardy and makes the authorities feel justified in suspending the implementation of particular norms.⁸

According to Article 141(A) of our constitution it means the existence of the circumstance which the security or economic life of Bangladesh, or any part of Bangladesh, is threatened by war or foreign aggression, or internal unrest.⁹

Classification of Emergencies:

From the perspective of territorial scope, there are two sorts of emergencies: partial or state emergencies and national emergencies.

In terms of territorial expansion, there are two types of emergencies: national emergency and partial emergency.

- I) National Emergency: A national emergency is any situation where an emergency has been declared over the entire state's territory, regardless of its origin.
- II) Partial Emergency: When an emergency is declared in a specific area of a unitary state or a state of a federation, it is referred to as a partial or state emergency.¹⁰

Types of Emergencies:

Based on its nature, an emergency can be of the following categories:

- I) Emergency of War: When a state of emergency is declared as a result of war or foreign invasion, it is known as a state of war emergency. For example, a state of war

⁷ Bhagat Singh vs Emperor on 27 February, 1931, 33 BOMLR 950, <<https://indiankanoon.org/docfragment/617286/?big=0&formInput=state%20emergency>> (Accessed: 18 March 2023).

⁸ Md. Ashikuzzaman Mukul, 'Impact of emergency on administration: Bangladesh perspective', (Academia.edu. 2015) <https://www.academia.edu/14627208/Impact_of_Emergency_on_Administration_Bangladesh_perspective> (Accessed: 18 March 2023).

⁹ The constitution of Bangladesh.

¹⁰ 'Emergency provisions in Bangladesh', (LinkedIn, 2015) <<https://www.linkedin.com/pulse/emergency-provisions-bangladesh-bdlex-manupatra>> (Accessed: 18 March 2023).

emergency was declared in British India during World War II, a state of emergency declared by the British government under the authority of the Emergency Powers (defence) Act. 1939.

- II) Emergency of Subversion: It is referred to as a subversive emergency when a state of emergency is proclaimed as a result of internal unrest within the state to avert a civil war, any anti-government movement or riot in a specific region of the nation, or in response to a natural disaster. For instance, internal unrest led to the declaration of an emergency five times in Bangladesh.
- III) Economic Emergency: Economic emergency is the term used when a state of emergency is declared with the intention of resolving a situation in which the economy is either in the process of collapsing or has already collapsed.¹¹

Double Emergency:

Provisions for a double emergency are visible elsewhere. Three different types of emergencies have already been covered. This two-fold emergency is not exceptional. Declaring another form of emergency when one is already underway is referred to as a double emergency. However, the constitution of Bangladesh does not contain any such provision allowing for the declaration of a double emergency.

The constitution of Bangladesh article 141A has mentioned three types of emergencies as relating to war, external aggression and internal unrest.¹²

Historical Background of State Emergency of Bangladesh:

The Government of India Act of 1935 was the first law on the Indian subcontinent to authorize the declaration of an emergency. In accordance with Article 102 of the said Act, the Governor General may declare an emergency if, in his view, there is a serious threat to India's security, whether as a result of war or domestic unrest. In accordance with the aforementioned article, Pakistan adopted the state of emergency provision in article 191 of its constitution (1956), and

¹¹ 'Emergency provisions in Bangladesh: A critical analysis', The Lawyers & Jurists.

< <https://www.lawyersjurists.com/article/emergency-provisions-bangladesh-critical-analysis/> > (Accessed: 18 March 2023).

¹² Article 141(A) of Bangladesh Constitution.

it was also incorporated in the constitution of 1962. There were no emergency clauses in Bangladesh's original constitution. In 1973, Bangladesh's Constitution was amended to include emergency provisions.¹³

A state of emergency has been declared five times in Bangladesh's constitutional history. Each time declared due to internal unrest. The first state of emergency had declared due to internal unrest on 28th December, 1974 when the President Sheikh Mujibur Rahman was in power. The 2nd emergency was proclaimed on 30th May, 1981. The 3rd emergency was proclaimed on 26th November, 1987. The 4th emergency was proclaimed on 27th November, 1990. Till now the 5th and last emergency was proclaimed on 11th January, 2007 by the President Iajuddin Ahmed due to the political crisis and internal unrest.¹⁴

CHAPTER THREE

Emergency Provisions in Bangladesh Constitution, Consequences of a Declaration of Emergency

Emergency provisions in Bangladesh Constitution: The emergency provisions of our constitution are covered in Articles 141A, 141B, and 141C of Part 9A. In Bangladesh, a declaration of emergency primarily has two effects: 1. The suspension of some constitutional provisions in accordance with article 141B; and 2. The suspension of the enforcement of any fundamental rights in accordance with article 141C.¹⁵ However, the declaration of an emergency is covered by Article 141A (1) in detail. The following are the provisions of such articles:

Article 141A: Clause 1 of article 141A says that if the President determines that an imminent threat exists in which war, external aggression, or internal unrest, threaten Bangladesh's

¹³ Md. Ashikuzzaman Mukul, 'Impact of emergency on administration: Bangladesh perspective', (Academia.edu. 2015)

<https://www.academia.edu/14627208/Impact_of_Emergency_on_Administration_Bangladesh_perspective> (Accessed: 21 March 2023).

¹⁴ Somini Sengupta, 'Bangladesh Leader Declares State of Emergency' New York Times (New Delhi, 11 Jan 2007) < <https://www.nytimes.com/2007/01/11/world/asia/11cnd-bengla.html> > (Accessed: 21 March 2023).

¹⁵ Constitution of Bangladesh

security or economic vitality in whole or in part, the president may declare a proclamation of emergency for more than one hundred twenty days. But it provided that the Prime Minister's previous countersignature is necessary for the legality of such a proclamation.

Clause 2(a) of this article says that, by a further Proclamation, a Proclamation of Emergency may be withdrawn; subclause (b) mentioned that a proclamation of emergency must be presented to Parliament; and subclause (c) says that a proclamation of emergency shall be in effect if it is issued during the dissolution of Parliament and the period of one hundred twenty days mentioned in subclause (c). The proclamation shall expire thirty days after the date on which Parliament meets for the first time following its re-constitution unless a resolution is reached prior to the expiration of the foregoing period of thirty days.

Clause 3 of this article says that if the president is convinced that a war, such aggression, or such an internal unrest is imminent, he or she may issue the Proclamation of Emergency stating that Bangladesh's security, or any part of it, may be in danger before the actual incident from war, foreign aggression, or internal unrest.¹⁶

Article 141B: According to this article, in Articles 36, 37, 38, 39, 40, and 42 shall not limit the State's ability to enact laws or carry out executive orders that the State would be competent to do absent the provisions of Part III of this Constitution while a Proclamation of Emergency is in effect; however, any laws so enacted shall, to the extent of the incompetency, cease to be in force as soon as the Proclamation ceases to be in effect, except with regard to things done or omitted.¹⁷

Article 36 of Bangladesh constitution says that all citizen of Bangladesh shall have the freedom to travel around freely, to live and depart and re-enter Bangladesh, to reside in any part of therein, subject to any reasonable limitations imposed by law in the interest of the public.

Article 37 says, Subject to any rational limitations established by law in the interests of public order or public health, every citizen should have the right to gather and to participate in public meetings without arms.

¹⁶ The Constitution of Bangladesh

¹⁷ The Bangladesh Constitution

Article 38 says that, every citizen of Bangladesh has a right to create associations or unions, subject to any legal restrictions that are reasonable and necessary to protect public morals or order.

Article 39 deals about the rights regarding expressions, thoughts and speeches. Clause 1 of this article says that there is a guarantee of thinking and conscience freedom. But clause 2 provided that, all citizen of Bangladesh has the right to freedom of speech and expression, as well as freedom of the press, subject to any rational limitations imposed by law in the interests of the State's security, friendly relations with other countries, public order, decency, or morality, or in relation to cases of contempt of court, defamation, or incitement to commit an offense.¹⁸

Article 141C: Clause 1 of this article says, when a Proclamation of Emergency is in effect, on the written advice of the Prime Minister, the President may, by order, declare that the right to petition any court for the enforcement of any rights granted by Part III of this Constitution as may be specified in the order, and all proceedings pending in any of the court for the enforcement of the right so specified, shall remain suspended for the duration of the Proclamation's in effect, or for such shorter period as may be specified in the order, or both. Clause 2 says, any part of Bangladesh may be covered by an order issued under this provision. Clause 3, says every order made in accordance with this article must be presented to Parliament as quickly as possible.¹⁹

Consequences of a Declaration of Emergency:

The following circumstances can lead to the declaration of an emergency:

- A future proclamation may invalidate an earlier declaration of emergency.
- A declaration of emergency must be presented to parliament before going into effect, and it only lasts for 120 days unless a resolution of the legislature has already approved it.
- If a state of emergency is declared while parliament is suspended or is dissolved within 120 days of the declaration, the proclamation will expire 30 days after the first meeting

¹⁸ Bangladesh Constitution

¹⁹ The Constitution of Bangladesh

of parliament following the adoption of a resolution by that body approving the declaration of the emergency.

- When a state of emergency is declared, the fundamental rights listed in articles 36, 37, 38, 39, 40, and 42 are immediately suspended. This suspension is in effect for the duration of the emergency. The executive can therefore take any action that violates these rights, and the legislature can pass any statute that does the same. These rights will be fully protected under the constitution as soon as the state of emergency is lifted.
- The president may proclaim the suspension of enforcement of any of the fundamental rights granted by Part III of the Constitution by an order while a proclamation of emergency is in effect.²⁰

CHAPTER FOUR

Whether Suspension of Fundamental Rights During Emergency Situation is in Conformity with the Constitutional Principles of Bangladesh or Not?

Definition of Fundamental Rights:

The technical phrase "fundamental right" refers to a set of human rights that are enshrined in the constitution and are safeguarded by constitutional guarantee. They are referred to as fundamental rights because they are enshrined in the supreme law of the state, which is held to the highest standards of decency above all other laws of the land. The major goal of listing fundamental rights in the constitution is that they cannot be restricted through the regular legislative process, not that they are inviolable in any way. The legislative and executive branches are not allowed to operate in a manner that violates them.²¹

²⁰ 'Emergency provisions in Bangladesh', (LinkedIn, 2022) <<https://www.linkedin.com/pulse/emergency-provisions-bangladesh-bdlex-manupatra>> (Accessed: 24 April 2023).

²¹ 'DEFINITION OF FUNDAMENTAL RIGHTS', The Lawyers & Jurists, <<https://www.lawyersjurists.com/article/definition-of-fundamental-rights/>> (Accessed: 24 April 2023).

Fundamental Rights in Bangladesh Constitution:

Article 26 to 47A of the part three of our constitution guarantees the fundamental rights of the Bangladeshi people. The Constitution nullifies any prior laws that violate these rights and directs the State not to enact any new laws that do the same. According to Article 102, clause (1), every citizen has right to petition the High Court Division to have any of their fundamental rights guaranteed by Part III of the Constitution upheld. This right is guaranteed by Article 44 of the constitution.²² We are all aware that fundamental rights give citizens a sense of justice, freedom, and life. The Universal Declaration of Human Rights, 1948 which served as inspiration for Bangladesh's constitution, established some essential rights for the country's citizens. One of the key reasons for including some fundamental rights was to guarantee equality. In Part III of the Bangladesh Constitution, certain fundamental rights are outlined. Nevertheless, not all are absolute in nature. Here, we can see three various kinds of rights, including absolute rights, limited rights, and rights whose enforcement is essentially left up to the legislature. Eight absolute rights are listed in Articles 27 to 30, 33 to 35, and Article 44. In addition to these six qualified rights have also been incorporated under Articles 36 to 40 and 43. Finally, there are four rights Articles 31, 32, 40, and 42 whose enforcement is left up to the legislature.²³

Suspension of Fundamental Rights During Emergency Situation in Bangladesh:

During an emergency, which is acknowledged globally and in Bangladesh, the state may suspend some rights or its enforcements. The rights that might be suspended in an emergency are debatable, nevertheless. Clarifying this issue is crucial in the case of Bangladesh because, as is well known, the country has experienced five proclaimed emergencies since its founding.²⁴ The Constitution's emergency clauses are covered in Part 9A. The fundamental rights protected by Articles 36 to 40 and 42 are immediately suspended upon the issuance of the proclamation, in accordance with Article 141B. The main difference between Articles 141B and 141C is that an article 141B proclamation suspends the listed fundamental rights, but an

²² Constitution of Bangladesh

²³ The Constitution of Bangladesh

²⁴ M. Ehteshamul Bari, 'The Unjust Exercise of Emergency Powers in Bangladesh and Their Consequent Impact on the Fundamental Rights: A Critical Appraisal', *Mykolas Romeris University*, Vol 21, Issue No: 2(2014) P 584.

article 141C proclamation just suspends the execution of any fundamental rights.²⁵ In *Iqbal Hasan Mahmood vs Bangladesh* case²⁶, The High Court Division agreed with an Amicus Curiae's argument that a proclamation made pursuant to article 141C does not suspend any fundamental rights besides those listed in Articles 36 through 40 and 42 and does not give the government the authority to do anything that would violate those rights. This quotation makes it quite obvious that the President is prohibited from restrict any of fundamental rights listed in Part III of our Constitution.

Surprisingly, however, we have observed that all 18 fundamental rights were suspended while the emergency was in effect. For instance, in 2007 President Iajuddin Ahmed proclaimed a state of emergency and 18 fundamental rights were suspended in the nation. Bangladesh suspended all 18 of these rights for the first time at this period; throughout the previous four emergency regimes, only 12 rights had been suspended.²⁷ In a famous case names *Ataur Rahman vs Muhibur Rahman*²⁸, 2009 the supreme court noted that the President is authorized to suspend the application of any fundamental rights granted by Part III during the time that a proclamation of emergency is in effect, in accordance with to article 141C (1). The President has the authority to determine which fundamental rights should be suspended while the state of emergency is in effect, and this authority is not subject to any other constitutional clauses, including Article 26. This interpretation of the clause raises the issue of whether or not it renders Article 141B of the Constitution unnecessary. The words used in Articles 141B and 141C shouldn't be difficult to understand. In the case of Article 141B, no violation of Articles 36 to 40 and 42 during the emergency gives rise to a cause of action because those fundamental rights were suspended during that time, and the victim is unable to bring a claim against a violation of those rights even after the emergency has been lifted. However, under Article 141C, there is a cause of action created when a basic right guaranteed by Articles 27 to 35 and

²⁵ Constitution of Bangladesh

²⁶ *Iqbal Hasan Mahmood vs Bangladesh*, 60 DLR (2008) 88

²⁷ Md Mustakimur Rahman, 'Fundamental Rights in Times of Emergency: *Ataur Rahman Vs Muhibur Rahman Revisited*', *Brawijaya Law Journal* Vol.5 No 1 (2018)

²⁸ *Ataur Rahman vs Muhibur Rahman* [2009] 14 BLC (AD)

41 is violated because those rights cannot be suspended in times of emergency. As a result, after the emergency has been lifted, the offended party can challenge the action.²⁹

The Conformity of the Suspension of Fundamental Rights During Emergency Situation with the Constitutional Principle:

Our constitution is the embodiment will of the people of Bangladesh. The constitution added the emergency provision for the emergency situation in which the state may face. But many times, the emergency clauses of the constitution had been misused for the political purpose. The emergency provision has authorised the president so suspend the fundamental rights during emergency situation. As Article 141B of the constitution mentioned that, article 36, 37, 38, 39, 40, and 42 shall not limit the State's ability to pass laws or carry out executive actions during the time when a Proclamation of Emergency is in effect. These articles subject themselves to any reasonable limitations imposed by the law. On the other hand, article 7A of the constitution indirectly authorise the president to suspensions the constitutional provision especially the emergency provisions. Article 7A mentioned that if anyone attempts to or conspires to abrogate, repeal, or suspend this Constitution or any of its articles through the threat of force, the use of force, or any other unconstitutional methods he shall be punished with the highest punishment.³⁰ So, if the president suspends the fundamental rights according to article 141B that would be constitutional because this article authorizes the suspension of fundamental rights by the president.

The Inconformity of The Suspension of Fundamental Rights During Emergency Situation with the Constitutional Principle:

The Bangladesh constitution is the supreme law of the nation. It has set certain human rights as fundamental rights of the people of Bangladesh. But at some emergency situation the constitution allows the suspension of these rights. Article 141C of our constitutions allows the president to suspend any fundamental rights. As article 141C authorise the president to suspend any fundamental rights it has many inconformity with the constitutional principles. The preamble of the constitution which is one of the basic structures of the constitution states that,

²⁹ Md Mustakimur Rahman, 'Fundamental Rights in Times of Emergency: Ataur Rahman Vs Muhibur Rahman Revisited', Brawijaya Law Journal Vol.5 No 1 (2018)

³⁰ Constitution of Bangladesh

‘the core objective of the State is to create a socialist society through a democratic process that is free from exploitation and in which all citizens will enjoy the rule of law, basic human rights and freedoms, and political, economic, and social justice’ but article 141C of the constitution violate this States’ constitutional aims. Because the preamble states that all citizens will enjoy the rule of law, basic human rights and freedoms, and economic, political and social justice but article 141C authorise to restrict these rights. Article 141C also restrict that for the duration of the Proclamation of emergency, or for such shorter period as may be specified in the order, any of the rights given by Part III of the Constitution, as may be stated in the order, to petition any court for their enforcement, and all proceedings pending in any of the court for the enforcement of those rights so specified shall remain suspended. So, article 141C also violate the principle of the judiciary’s independence. Articles 36, 37, 38, 39, 40, and 42 of the Constitution shall not restrict the State's capacity to enact legislation or carry out executive acts when a Proclamation of Emergency is in place, according to Article 141B of the Constitution. Any reasonable restrictions put in place by the law are accepted for these articles. On the other hand, there are eight absolute rights are listed in Articles 27 to 30, 33 to 35, and Article 44 of the constitution and these rights are the equality before law as mentioned in article 27, discrimination on the basis of religion, etc. as mentioned in article 28, Equal of chance in public employment as mentioned in article 29, restriction on foreign titles, etc. as mentioned in article 30, safeguards as to arrest and detention as mentions in article 33, forbidding forced labour as mentioned in article 34 and protection in respect of trial and punishment as mentioned in article 35, of the constitution. These above-mentioned rights are not subject to any limitation by any law but article 141C authorise the president to suspend these rights which are inconformity with those absolute constitutional rights.³¹

³¹ Constitution of Bangladesh

CHAPTER FIVE

Whether the Scope of Government to Abuse the Emergency Power Required to Be Narrow in The Present Context or Not?

First, a state of emergency may be declared for three reasons: war, foreign aggression, and internal instability. For the first two bases, there is no criticism because of the concepts of "war" and "foreign aggression" have been specified in international law. However, the issue of bailout power misuse is found in the third base of "internal instability". It is a vague term, and because of its ambiguity the executive could easily misuse this emergency power. Thus, a state of emergency can be declared even in peacetime on the grounds of internal unrest, even though there is no actual unrest.

In fact, as was the case with the declaration of the state of emergency in Pakistan, the ruling elite use this power as a weapon, because of the ambiguity of the term "internal instability", to crush the opposition.³² A state of emergency has been declared five times in the constitutional history of Bangladesh. Due to internal unrest, it was declared. Three times a state of emergency was declared necessary for the political purposes to suppress the anti-government movement and maintain power.³³

Secondly, according to the provisions of the Bangladesh Constitution, it can continue to operate for four months (120 days) without parliamentary consent after the state of emergency is declared. And decisions on such approvals will be taken by simple majority vote. Both provisions are undemocratic. This is because there should not be a compulsory deadline for the duration of the emergency declaration. When a state of emergency is declared by the executive, it shall be submitted to Parliament for approval as soon as possible and, if the Parliament is not in session, the Emergency session shall be called within a short period of time as follows: must be clearly stipulated 7 days or 15 days etc. And for such approval, a decision must be made by two-thirds of the total number of members of Parliament so that the executive branch cannot

³² 'Musharraf Declares State of Emergency', New York Times, (Islamabad, Pakistan Nov 3, 2007) <<https://www.nytimes.com/2007/11/03/world/asia/04pakistan.html>> (Accessed: 24 April 2023).

³³ 'Emergency Provisions in Bangladesh: A Critical Analysis', The Lawyers & Jurists, <<https://www.lawyersjurists.com/article/emergency-provisions-bangladesh-critical-analysis/>> (Accessed: 24 April 2023).

extend the state of emergency. In 2007 the usual process of the caretaker government was to stay in power for three months to conduct a fair election but they had extended their term for two year which was a grave violation of our constitution and extended the state of emergency according to their need because before the fifteenth amendment the president could proclaim a state of emergency without specifying any time frame.^{34 35}

Note here that once a state of emergency is declared in India, an act of parliament must be passed by a majority of all members of each House within one month of the declaration. Not fewer than two-thirds of the members of each House who are in attendance and voting. In any other case, the emergency will end after a month. Both the 1956 Pakistani Constitution and the 1962 Pakistani Constitution had no mandatory deadlines for the declaration to expire. According to this constitution, the declaration should be submitted to parliament as soon as possible. According to Pakistan's current constitution, it must be submitted to parliament within two months.³⁶

When an emergency is declared, a special or emergency session of parliament must be called immediately if it is not already in session. This is an important aspect of emergency provisions in democratic nations. The British Parliament continued to meet throughout the Second World War until the emergency was lifted. During the period of emergency parliament should continue to operate so that it can directly exert its authority over the acts of the executive. The president must convene a joint session of Parliament under the current Pakistani Constitution within 30 days following the end of an emergency. There is a provision for special sitting in India. However, there is no such clause in our Constitution.

Fourth, Article 141B establishes that six fundamental rights Articles 36, 37, 38, 39, 40, and 42 will be automatically suspended when the state of emergency is declared, which is undemocratic. Since greater restrictions may be placed over fundamental rights rather than

³⁴ Zillul Razi, 'THE STATE OF EMERGENCY: RIDING A TIGER? A PROBE analysis', Academia.edu, <https://www.academia.edu/206381/State_of_Emergency_in_Bangladesh_2007> (Accessed: 24 April 2023).

³⁵ 'State of emergency maximum 120 days', Daily Star (Dhaka, 2 July 2011) <<https://www.thedailystar.net/news-detail-192444>> (Accessed: 24 April 2023).

³⁶ Md. Ashikuzzaman Mukul, 'Impact of emergency on administration: Bangladesh perspective', (Academia.edu. 2015) <https://www.academia.edu/14627208/Impact_of_Emergency_on_Administration_Bangladesh_perspective> (Accessed: 24 April 2023).

their suspension when a state of emergency is declared, they may not always be suspended. According to the 44th Amendment's amendment to the Indian Constitution, only six of the fundamental rights listed in Article 19 may be suspended during times of war and foreign attack and none during times of subversion.³⁷

Fifth, Article 141C gives the president the authority to suspend the execution of all fundamental rights once an emergency has been proclaimed. A right loses all validity if the enforcement of it is discontinued, just like a car without an engine. In Bangladesh, a state of subversion has been declared four times, and each time, all fundamental rights have been equally enforced. There are other rights, such as the right to property, that have nothing to do with the threat of subversion. The enforcement of all rights, however, remained postponed at the time. For this reason, it should be clearly stated in the Constitution which specific rights would be suspended during a time of war and which during a time of peace.³⁸

From the discussion mentioned above, it is evident that the emergency clauses in the Constitution were added specifically to uphold the status quo and crush the opposition. This law is nothing more than a necessary tool to undermine the country's political institutions, to disregard the primacy of the parliament, and to obstruct the development of a typical democratic system. These authoritarian powers are inherently opposed to the idea of supporting a vibrant democracy. In Bangladesh, a declaration of emergency essentially signifies the absolute rejection of fundamental rights since, unlike in other constitutional systems around the world, they become a worthless reality during an emergency.

Following India's independence, it was Jawaharlal Nehru who, throughout his 17 years as prime minister, cultivated parliamentary democracy's foundational institutions. In 20 months of emergency, his daughter Prime Minister Indira Gandhi restricted the very fundamental rights that her father had battled for. To get the ideals and protections he had fought so hard for as a young man back into the Indian Constitution, it needed another man of enormous stature, Prime

³⁷ Md. Ashikuzzaman Mukul, 'Impact of emergency on administration: Bangladesh perspective', (Academia.edu. 2015)

<https://www.academia.edu/14627208/Impact_of_Emergency_on_Administration_Bangladesh_perspective> (Accessed: 24 April 2023).

³⁸ 'Emergency Provisions in Bangladesh: A Critical Analysis', The Lawyers & Jurists, <<https://www.lawyersjurists.com/article/emergency-provisions-bangladesh-critical-analysis/>> (Accessed: 24 April 2023).

Minister Morarji Desai. Article 352(1) of their Constitution was changed to substitute "internal disturbance" with "armed rebellion" as a potential justification for declaring emergency so that a state of so-called emergency could not be readily duplicated in India to further undermine the institutions of democracy.

So, the emergency power in the emergency situation in the name of internal unrest to the Bangladesh constitution should be amended so that the ruling party shall not use it as a weapon against the opposition party or any other person. Because article 141B authorise the government to take any action in the emergency situation which the government cannot do because of the restriction of part three of Bangladesh constitution. And 141C of Bangladesh constitution empower the government to suspension of right to move the court to enforcement of the fundamental rights and also all cases shall be pending regarding these rights.³⁹ So, the government shall take any kind of actions flawlessly and without any fear against anyone as a weapon which make a dangerous situation for a democratic society.⁴⁰

CHAPTER SIX

Findings

Findings of the Research:

- First of all, our constitution added article 7A through fifteenth amendment of the constitution which said if anyone suspended the constitution or any of its article in any unconstitutional way that act shall be sedition and such person shall be guilty of sedition and he will be sentenced with the highest punishment by the existing laws.⁴¹
- During the time of emergency democracy is either restricted or eliminated in Bangladesh, as it is in other nations.
- According to Article 65 of our Constitution, the Parliament has the authority to pass laws. Normally, Parliament is not allowed to pass any legislation that violates

³⁹ Constitution of Bangladesh

⁴¹ Article 7A of the Bangladesh Constitution

fundamental rights. However, according to article 141B in times of emergency, the Parliament may pass any law that violates fundamental rights. No court may challenge the law as it has been created. This is due to the fact that during an emergency, a power of the Parliament is valid that cannot be used under regular conditions or when the emergency ends. As a result, Bangladesh's parliament, like that of other nations, has the freedom and authority to enact laws in times of emergency without worrying about judicial intervention.⁴²

- Our constitution does not include any provisions that allowing for the calling of a special or emergency session of the parliament to monitor and control an emergency situation.
- Our constitution has an important flaw in that once an emergency has been proclaimed and confirmed by the parliament, the executive branch is free to extend it as long as it pleases. It is therefore an undemocratic procedure.⁴³
- Another drawback of our constitution is that, in accordance with article 141C, the President may suspend any fundamental rights that might be used for political benefit.

CHAPTER SEVEN

Recommendations and Concluding Remarks

Recommendations:

- Article 141A (1) of our constitution should be modify to include a specific definition of internal disturbance or unrest as well as a term like "armed rebellion" to prevent the misuse of the emergency clause.
- Our constitution does not include any provisions allowing for the calling of a special or emergency session of the parliament to oversee and manage an emergency situation. on the other hand, the constitutions of Pakistan and India allow for joint parliamentary sessions during times of emergency. Therefore, a provision for a special session of the

⁴² Talukder, Dr. S. M. Hassan, Regarding Emergency: Bangladesh Perspective, pp. 84-89.

⁴³ Talukder, Dr. S. M. Hassan, Regarding Emergency: Bangladesh Perspective, pp. 84-89.

parliament shall be added such clause in the part of emergency provisions so that it can control and oversee the situation and hold the government accountable.⁴⁴

- The Emergency session shall be called within a short period of time as follows: must be clearly stipulated 7 days or 15 days etc.
- We should include a clause to the constitution that when the first term of the emergency shall expire, the further extension of the emergency term need to approval by the two-thirds members of Parliament. Additionally, the emergency will continue to exist after such approval for a further period that will be specified in the approval, so that the executive branch cannot extend the state of emergency according to their will.
- If a state of emergency is proclaimed, six fundamental rights are immediately suspended in accordance with article 141B. According to the 44th Amendment to the Indian Constitution the six fundamental rights are to stay suspended during times of war or external attack, but to remain in effect during times of internal unrest. These kinds of clauses ought to be added to the emergency provisions of Bangladeshi Constitution.
- Our constitution should add a provision to make it clear which rights are suspended in times of war and which are suspended in times of internal unrest.
- As in the 1997 case of *Bilkis Akter Hossain v. Government of Bangladesh*, anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation⁴⁵. So that the Supreme Court must be aware that it has the authority to impose the payment of compensation costs to a person who has been illegally or intentionally detained during an emergency.⁴⁶

⁴⁴ Md. Ashikuzzaman Mukul, 'Impact of emergency on administration: Bangladesh perspective', (Academia.edu. 2015)

<https://www.academia.edu/14627208/Impact_of_Emergency_on_Administration_Bangladesh_perspective> (Accessed: 30 April 2023).

⁴⁵ Md. Ashikuzzaman Mukul, 'Impact of emergency on administration: Bangladesh perspective', (Academia.edu. 2015)

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Concluding Remarks:

In times of emergencies States must balance competing obligations: on one hand, they must protect the civil liberties of their citizens, while on the other, they must safeguard public safety and order in less extreme situations or, in more moderate circumstances, the existence of the State itself. The worst human rights abuses are generally acknowledged to take place when individual liberties can be restricted under the pretext that doing so is necessary for maintaining national security.⁴⁷

In order to preserve the State during times of war, external aggression, internal unrest, or to safeguard Bangladesh's security or economy, emergency measures were added to the country's constitution in 1973.⁴⁸ Later, these clauses have been abused. Indeed, emergency provisions have both good and bad sides. In order to prevent abuse and hold the government responsible in times of emergency, the emergency provisions ought to be modified through constitutional amendment. Our Constitution's intention will be achieved if we apply the provisions for which they were added. If we use such provisions for which these provisions were inserted in our Constitution the purpose will be fulfilled.

- THE END -

⁴⁷ Md. Ashikuzzaman Mukul, 'Impact of emergency on administration: Bangladesh perspective', (Academia.edu. 2015)
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⁴⁸ Md. Ashikuzzaman Mukul, 'Impact of emergency on administration: Bangladesh perspective', (Academia.edu. 2015)
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