



Judicialization of Politics and Vice Versa: The Transformation of Constitutional Discourse in Bangladesh

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ABSTRACT

Transformation of constitutional discourse facilitated the judicialization of politics which is a political weapon to sustain the power of ruling party in shadow of legality in different countries at present. The way of using this weapon is the judicial review power of higher court. It is a great weapon in the hands of judges of the Supreme Court of Bangladesh that have been frequently asked to resolve various public issues i.e. expression and religious liberties, equal rights, privacy, freedoms, public policies pertaining to criminal justice, property, trade and commerce, education, immigration, labour, and environmental protection etc. In recent years, its application was expended in political controversies even in some settled issues that can be treated as “mega-politics”. Moreover, courts have played a significant role in policy making to govern the state by applying judicial review. Nowadays, the courts frequently interfere in policy-making processes either by its own motion or on the application of ruling parties. This is the question whether it is a blessing or alarming to uphold the constitutional spirit since the judiciary is called the guardian of constitution. This article explores the recent trends of judicialization of politics in Bangladesh. It also examines and illustrates the various forms and manifestations of the judicialization of mega-politics through recent examples drawn from leading case references. Finally this article seeks to explore the impact of judicialization of politics in a democratic country like Bangladesh.

Keywords: Judicialization of Politics, Judicial Review, Mega-politics and Constitutional Discourse

1. INTRODUCTION

Constitutional discourse experienced a revolutionary transformation over the last few decades. This dramatic shift facilitated the introduction process of judicialization of politics in the region by changing traditional understanding of the status of legislated law and the role of the courts in a democracy (Jaiver Couso, 2010). In the recent year's, world has witnessed intense transfer of power from different representative state organizations to judiciaries either in national or international arena. In South Asia, accordingly, judicialization of politics has

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achieved a large place within the higher judiciaries of Bangladesh, India, and Pakistan, although in differing degrees and types. Despite “increasing judicialization” of politics in India, the Indian Judiciary has largely maintained a balance between intervention and abstention regarding political questions (Shankar, n.d.). In Pakistan, by contrast, the recent history of judicial activity has been one of over-judicialization of politics, and at times a complete judicial usurpation of other organs’ powers and hence a threat to democracy itself (Anil Kalhan, 2013). In Bangladesh, judiciary is one of the three organs of the Government and it is structurally independent from other organs i.e. legislature and executive (Art. 22). The constitution itself has given the authority to judiciary to play the role of guardian to uphold the constitutional sovereignty whenever it is intervened (Art. 102). Armed with judicial review power, the high court has been empowered to intervene on any matter if it is exercised maliciously by any authority or whether it has been exercised within or beyond its jurisdiction power even on political issues matter. In recent times, in Bangladesh, judicialization of politics has embraced the phase of unprincipled and un-pragmatic judicial intrusion into “mega politics” (Hirschl, 2008).

The concept of judicialization of politics raises the questions: Do judges really adjudicate political questions, and does constitutional issues arising from political controversies are not legal questions? Given the normative relationship between politics and constitutional law, drawing a clear line between the ‘political’ and the ‘legal’ is often a complex exercise. In hard cases, judges indeed make “political decisions” in the sense that they have consequences for political controversies (Ronald Dworkin, 1985). Judges’ treading into political controversies or their making of policy suggestions may be functionally inescapable in a given case and in a given context of specific local conditions (Houque, 2011). Some measure of judicial role in the national politics of any country is, in fact, inevitable and constitutional adjudication is certain to produce political implications. Nonetheless, there are certain controversies which, although they arise in the background of conflicting constitutional claims made by opposing political parties, belong squarely to ‘mega’ or ‘pure’ politics, requiring pragmatic deference rather than adjudication by courts (Hirschl, 2010).

2. MEANING OF JUDICIALIZATION OF POLITICS

Judicialization of politics refers playing a significant role in policy-making under judicial framework. According to Tate and Vallinder (1995), *judicialization of politics refers, generally, to "the process by which courts and judges come to make or increasingly to dominate the making of public policies that had previously been made (or, it is widely believed, ought to be made) by other governmental agencies, especially legislatures and executives"* (Tate and Vallinder, 1995).

Broadly, judicialization of politics refers to judicial policy-making, for example, the court decided that any particular group of people within the country is entitled to receive citizenship or that the delimitation of any particular electoral constituencies is or is not legal.

The judicialization of politics should normally mean, either:

- (1) the expansion of the province of the courts or the judges at the expense of the politicians and/or the administrators, that is, the transfer of decision-making rights from the legislature, the cabinet, or the civil service to the courts, or, at least,
 - (2) the spread of judicial decision-making methods outside the judicial province.
- In summing up we might say that judicialization essentially involves turning something into a form of judicial process (Torbjörn Vallinder, 1994).

In the current view, it means judicial engagement with political issues. As Ran Hirschl (2006) said the "judicialization of politics" is an umbrella-like term referring to what are really three interrelated processes. At the most abstract level, the judicialization of politics refers to the spread of legal discourse, jargon, rules, and procedures into the political sphere and policy-making forums and processes.

More concrete aspect of the judicialization of politics is the expansion of the province of courts and judges in determining public policy outcomes, mainly through "ordinary" constitutional rights jurisprudence and the judicial redrawing of boundaries between state organs (e.g., the separation of powers, federalism).

The third emerging class of the judicialization of politics is the reliance on courts and judges for dealing with what we might call "mega-politics": core political controversies that define (and often divide) whole politics (Hirschl, 2006).

3. AN OVERVIEW OF JUDICIALIZATION OF POLITICS IN BANGLADESH

This section discussed on how the higher judiciary applied its power to intervene any political matter under its jurisdiction. This section also denotes the ways in which the Bangladeshi senior judiciary has dealt with political issues.

Judicial engagement with policy matters in Bangladesh is not uncommon. The Supreme Court, however, often shies away from recognizing its policy role. On several occasions, including when dealing with hard issues, it has claimed that it would "go by the law as it is" (56 DLR (AD) 13) or say nothing in policy matters (50 DLR (HCD) 84, 97) or that what in any case it does is interpretation of the Constitution, and not making of the law. Despite this claim, however,

Bangladeshi top constitutional courts have, right from the beginning of their journey, expressed policy preferences or exercise political power while adjudicating constitutional petitions. This tradition of judicialization of politics, which has not been yet thoroughly studied in Bangladesh, can be traced back to the political environment of unstable constitutionalism in early Pakistan, when the courts used to be frequently relied on for answers to political crises. The different forms of judicialization of politics have been discussed as follows:

3.1 Judicial Review

The major form of judicialization of politics is judicial review of legislative and executive actions. The basis of judicial review of legislative action is normally the codified constitution of the country. This form of judicial review should really imply keeping the legislature within its proper limits as stated in the constitution and, thus, protecting it from wrongful use of its powers. Somewhat in the same vein, judicial review of executive action may often be said to entail enforcing the decisions of the legislative majority by applying the ultra vires principle to the action in question (Vallinder, 1994).

In Bangladesh, the term 'judicial review' has not been mentioned in any article of the constitution but ultimately Articles 7(2), 26, 44(1) & 102 indirectly support the Judicial Review System. The example of the exercise of this judicial review power by the High Court Division is as regards the 16th amendment of the Constitution that empowered the parliament to impeach Supreme Court judges for incapacity or misconduct. The Court declared the amendment illegal, unconstitutional and against the principle independence of the judiciary. It is now up to the Appellate Division to decide on this case and declare its final judgment which will bind to be followed in all the spheres of administration.

The Marbury vs. Madison, 5 U.S. 137 (1803) case was a landmark decision in the implementation of Judicial Review. The decision of this case increased the Court's power by encouraging the judicial department to say what the law actually is. So from this, a court may now declare an Act of the Congress/Parliament as void if it proven that the Act was inconsistent with the Constitution. Bangladesh has also obtained this view and, as stated before, the articles 7(2), 26, 44(1) & 102 of the Bangladesh Constitution indirectly support it. Article 7(2) established supremacy of the Constitution by saying if any other law is inconsistent with this Constitution that law shall, to the extent of the inconsistency, be void. Article 26 and 44 denotes that laws inconsistent with fundamental rights will be void. However, this does not apply to any amendment of the Constitution made under article 142. While judicial review power is vested in the High Court Division under article 102(1) which is one of the basic structures of the constitution and it cannot be taken away. Whereas judicial review power under article 102(2) is not fundamental or guaranteed, it is only available if no other equally efficacious remedy is available. Again, there exists

article 47 according to which no law shall be deemed to be void on the ground of inconsistency with the Constitution if Parliament expressly declares that such provisions have been made to give effect to any of the fundamental principles of state policy. This article is a clear contradiction to the above articles. Hence, this is a hindrance to the Judicial Review system of Bangladesh as many inconsistent and harmful Acts can be passed through it (Rafid, 2006).

According to the literal meaning of the Constitution of Bangladesh, article 102 denotes conferment on the High Court Division jurisdiction to exercise judicial review only in two situations: first, declaring any executive or judicial acts, proceedings or laws unconstitutional on the grounds of their inconsistency with the provisions relating to fundamental rights and secondly, invalidating any 'acts done' or 'proceedings taken' on the grounds of want of lawfulness by any persons performing any functions of the republic or of a local authority. In practice, the High Court Division presently asserts original jurisdiction of judicial review ensuing no less than six types of consequences in cases filed under article 102 of the Constitution. They are: (1) judicial review of constitutional amendment, (2) judicial review of laws inconsistent with fundamental rights, (3) judicial review of laws which are inconsistent with the Constitution but do not involve questions of fundamental rights, (4) judicial review of executive or judicial acts and proceedings done in contravention of the Constitution, (5) judicial review of executive or judicial acts or proceedings done in contravention of law other than the Constitution, and (6) judicial review of delegated legislation vis-à-vis primary legislation. Therefore, it appears that the High Court Division's power of judicial review under article 102 of the Constitution in effect goes beyond its literal construction (Kawser, 2015).

It is to be noted that most of the cases where court exercise judicial review power in case of challenging constitutional amendments, primary legislations and delegated legislation on the grounds of inconsistent with the any constitutional provision is out of the mandate of article 101, 7(2) and 102 which provides the High Court Division original, appellate and other jurisdictions. In this cases, court exercises policy making power that is called judicialization of politics. For example, in *Kazi Mukhlesur Rahman vs Bangladesh* case (26 DLR (AD) 44, 1974), challenging the constitutionality of the Delhi-Dhaka Treaty of 16 May 1974 involving exchange of territories between Bangladesh, the Appellate Division exercised its jurisdiction and, thus, rejected the argument of non-justiciability of an "act of state" (the constitutionality of a treaty). Although it ultimately refused to issue the remedy, the Court made a policy advice that the Treaty could not be implemented without first amending the Constitution to change the definition of the state territory. Arguably, this case showed how strategic judicial intervention into political issues through legitimizing government actions can be made. By exercising its authority over an abstract judicial review, the Court in this case also set a ground for judicialization of politics in constitutional challenges in the future.

3.2 Public Interest Litigation (PIL)

Public Interest Litigation (PIL) is one of the primary means of transportation for judicialization of politics as well as for the politicization of the judiciary in Bangladesh. The concept was established by the decision taken in *Dr. Mohiuddin Farooque v. Bangladesh* case (17 BLD (AD) 1, 1997). Basically, since early 1990s to post-1990, the Supreme Court exercised judicialization of politics in adjudicating the disputes relating to fairness of election and voting rights, and the enforcement of wider principles of constitutionalism such as the representation of the people in governance or judicial independence (Writ Petition No. 2577). In this period, the PIL in Bangladesh became entrenched and judicial constitutional activism began to develop.

In 1995, *Anwar Hossain Khan v. Speaker, Jatyia Sangsad* (47 DLR (HCD) 42, 1995) case involve the issue of the legality of boycotting of parliament by opposition members (MPs). The parties considered a bargaining-chip to realise their demand for an apolitical caretaker government (CTG) and the case was adjudicated by the High Court Division. The Court not only issued an injunction enjoining the boycotting MPs to join the House, it also entangled itself in “pure politics” (Hirschl, 2006) by commenting, *ex gratia*, that the demand for the CTG was not supported by the Constitution (47 DLR (HCD) 42, 1995). On appeal, however, the Appellate Division took a pragmatic course and held that internal matters of Parliament were beyond the judicial scrutiny. It also observed that that a judicial order would not solve the (political) problem (60 DLR (AD) 108, 2008).

4. TRANSFORMATION OF CONSTITUTIONAL DISCOURSE AND JUDICIALIZATION OF POLITICS IN BANGLADESH

Over the last few decades, constitutional discourse experienced a revolutionary transformation in various parts of world. This dramatic shift facilitated the introduction of processes of judicialization of politics in this subcontinent as well by changing traditional understandings of the status of legislative law and the role of court in democracy. Among others, the introduction of constitutional courts, the granting of constitutional review powers to high courts, the incorporation of jurisdictional mechanisms aimed at providing justiciability to the right clauses of constitution, and the emergence of support structures facilitating the access of growing groups of citizens to the courts (Javier Couso, 2010). Especially in Bangladesh, the court’s power to annul any constitutional amendment, that is, the doctrine of basic structure (BSD), is by itself an intensely debated phenomenon. In South Asia, however, this power of the constitutional courts has appeared as a unique tool with potential to mitigate forces of unstable constitutionalism (*Jackson v Attorney General*, 2006). The doctrine (BSD),

particularly in Bangladesh, has recently been used as a vehicle for over-judicialization of politics.

5. JUDICIAL INTERVENTION ON CONSTITUTIONAL AMENDMENTS WITH A FEW ILLUSTRATIVE CASES

This Part takes a critical look at judicial engagement with mega political decisions in Bangladesh through the application of the doctrine of basic structure (BSD) with a special reference to the Court's annulment of the 13th, 8th, and 5th Amendment of the Constitution.

a) Court's annulment of the 13th Amendment of the Constitution (Civil Appeal No. 139 of 2005):

Facts

Adv. M. Saleem Ullah has filed a writ petition (4112/1999) challenging the validity of the Constitution (Thirteen Amendment) Act, 1996 (Act No. 1 of 1996). In 2004, upon the hearing of the parties the High Court Division held that—"Since the provisions of the 13th Amendment Act, as it appears to us, do not come within definitions of alternation, substitution or repeal of any provision of the Constitution and since for temporary measures some provisions of the Constitution will remain ineffective, we do not find any substance in the submission of the petitioner that Article 56 of the Constitution had been in fact amended by 13th Amendment Act. On the face of the 13th Amendment Act it appears that those provisions were made only for a limited period for ninety days before holding general election after dissolution of the Parliament or before expiry of the Parliament. We find that no unconstitutional action was taken by the legislature and as such we do not find any reason to interfere with 13th Amendment Act, we do not find any merit in the application and accordingly it is summarily rejected."

After Salimullah's death, another Supreme Court lawyer Abdul Mannan Khan filed an appeal in June 2005 against the High Court ruling in the Supreme Court. The appeal has been heard by Full Bench consisting of seven judges including Chief Justice.

Issue

Whether the Constitution (Thirteen Amendment) Act, 1996 (Act No. 1 of 1996) is ultra vires to the Constitution?

Held

Setting aside the decision of the HCD, the majority of the Judges held that the Constitution (Thirteenth Amendment) Act, 1996 (Act 1 of 1996) is prospectively declared void and ultra vires the Constitution because it destroys any basic structures of the Constitution. The election of the Tenth and the Eleventh Parliament may be held under the provisions of the above mentioned Thirteenth Amendment on the age old principles, namely, *quod alias non est licitum, necessitas licitum facit* (That which otherwise is not lawful, necessity makes lawful), *salus populi suprema lex* (safety of the people is the supreme law) and *salus republicae est suprema lex* (safety of the State is the Supreme law). The parliament, however, in the meantime, is at liberty to bring necessary amendments excluding the provisions of making the former Chief Justices of Bangladesh or the Judges of the Appellate Division as the head of the Non-Party Care-taker Government.

Only Justice Muhammad Imman Ali has given dissenting judgment. He said, I find that the Thirteenth Amendment was neither illegal nor ultra vires the Constitution and does not destroy any basic structures of the Constitution.

b) The 8th Amendment of the Constitution (41 DLR (AD) (1989) 165):

Fact

The case was about the legality of the famous Eighth Amendment of the constitution of Bangladesh. The Constitution (Eighth Amendment) Act, 1988, was passed amending article 100 of the constitution by setting up Permanent Benches of the High Court Division outside the capital city Dhaka. The amendment was challenged by two writ petitions on the ground that the High Court division of the Supreme Court, with judicial power over the republic, is a basic structure of the constitution and cannot be altered or damaged, and therefore the impugned amendment is void. A division Bench of the High Court Division summarily dismissed the said two writ petitions. Leave was granted by the Appellate Division. This appeal along with other two appeals of *Anwar Hussain Chowdhury v Bangladesh* is popularly known as the *Constitution (Eighth Amendment) case, 41 DLR (AD) 165*.

Issue

Whether the (Eighth Amendment) Act, 1988 valid?

Held

The majority Court (Afzal, J.) reasoned that the diffusion of one Division of the Supreme Court was against the unitary character of the Republic, a basic

structure of the Constitution. The impugned orders of the High Court Division are set aside. The impugned amendment of Article 100 along with consequential amendment of Article 107 of the Constitution is held to be *ultra vires* and hereby declared invalid.

Following the entrenchment of Basic Structure (BSD) in Bangladesh in 1989, the Supreme Court in 2010 and 2011 declared unconstitutional another three constitutional amendments – the 5th, 7th, and 13th amendments (Hoque, 2011).

c) The 5th Amendment Case (Civil Review Petition Nos. 17-18 of 2011):

Facts

The respondent (Bangladesh Italian Marble Works Ltd., Dhaka) of the case of *Bangladesh Italian Marble Works Ltd v. Bangladesh* (¹(2006, BLT (Special) (HCD) 1), along with its Managing Director, filed the writ petition stating, *inter alia*, that the company was registered with the Joint Stock Companies of the erstwhile East Pakistan as a private limited company in the name and style of Pak Italian Marble Work Limited. In the year 1962, it became the owner of the Holding No.11, Wise Ghat Road, Dhaka. In the year 1964, it constructed a cinema hall known as Moon Cinema Hall. After liberation of Bangladesh, in or around the last week of December, 1971, some people taking advantage of poor law and order situation prevailing at that time, took over forcible possession of the above Moon Cinema Hall from the staffs of the company. Subsequently, the management of the Moon Cinema Hall was taken to the Management Board purportedly in pursuance of the Acting President's Order No. Sec XI/IM/35/71/17. Then, in terms of the order passed by the Department of Trade and Commerce, by an order passed by the Registrar Joint Stock Companies, Bangladesh, the name of the company was changed to Bangladesh Italian Marble Works Ltd. Then by a Notification in exercise of the powers under Article 5 of the President's Order No. 16 of 1972, placed the Moon Cinema Hall under the disposal of Bangladesh (Freedom Fighters) Welfare Trust.

Then, on 28 April 1972, the company filed an application praying for release of the Moon Cinema Hall whereupon the Sub-Divisional Officer (South), Dhaka, directed an enquiry and the directors of the company personally appeared before the Officer-in-Charge of the Abandoned Property Cell. After enquiry the authority concerned filed an enquiry report with the finding that the Moon Cinema Hall was not an abandoned property and thereafter the Sub-Divisional Officer (South) Dhaka, after examining the documents placed the matter before the Deputy Commissioner, Dhaka. In due course the Additional Deputy Commissioner, Dhaka recommended release of the said property. But the respondent No.3 informed the company that the Moon Cinema Hall is an abandoned property and as such cannot be released. The

Company then filed an application before the Member, Advisory Council, in-charge, Ministry of Planning and Industries, praying for release of Moon Cinema Hall but without any result. Then finding no other alternative, the company filed Writ Petition No. 67 of 1976 praying for declaration that the taking over Moon Cinema Hall as abandoned property under the Acting President's Order No.1 of 1971 and its subsequent Order refusing to release Moon Cinema Hall are illegal and without lawful authority.

Issue

Whether the 5th Amendment to the Constitution of Bangladesh was void and illegal?

Held

The High Court Division declared Fifth Amendment to the Constitution of Bangladesh illegal and void. The HCD also declared *the Constitution (Fifth Amendment) Act 1979* that gave constitutional protection to the first martial law regime (20 August 1975 to 9 April 1979) and its actions and laws unconstitutional and it was inserted into the Constitution's 4th Schedule a paragraph (no. 18) to 'ratify' and 'confirm' martial law proclamations and regulations issued by the military ruler. The Appellate Division has also upheld the judgment of the High Court Division.

6. ANALYSIS, FINDINGS AND JUSTIFICATIONS

After analysing the above cases, there are many factors that causes of judicialization of politics.

Firstly, political democratic system of government which was established very outset of independence of country in 1971 and developed since 1990s till now. In this system government try to use the judiciary as a shield to keep their power out of hindrance.

Secondly, the supremacy clause that has been incorporated in article 7(2) of the constitution enabled the Supreme Court to declare *ultra vires* in exercise of its power of judiciary and this is the great weapon of judicialization of politics.

Thirdly, the large numbers of interest groups within society especially political parties are demanding judicial solutions to collective conflicts other than customary procedure to keep the matter beyond controversy.

Fourthly, Constitutional model delegates to the judiciary under article 102(1) to protect both individual rights and interests as well as collective and social rights.

Now it is the matter of question to justify whether judiciary should do it or not. If yes, then how long? The answer is very simple and easy. In existing framework, there is no controversy that the Supreme Court can address the aforesaid issue of inconsistency between law and judicial practice to determine constitutionality of a law, the validity of constitution amendments, and primary or delegated legislation in virtue of article 7 of the Constitution. But there are some laps and gaps which makes judiciary questionable either in shape of 'judicialization of politics' or 'inconsistency' in legal interpretation. The following steps can be a way out to remove these controversies in aspect of role of judiciary.

a) In literal interpretation, there is a question that whether judiciary can declare any constitutional amendment (64 DLR (AD) 169) void, applying its judicial review power of constitutional amendment, laws inconsistent with the Constitution save for Part III (fundamental rights) or delegated legislation which are not matter of fundamental rights under article 102(1) and under article 102 (2) (a) (ii) for invalidating any 'acts done' or 'proceedings taken' on the grounds of want of lawfulness by any persons performing any functions of the republic or of a local authority as because the terms 'act', 'proceeding' in the legal parlance of Bangladesh do not include a piece of legislation or a constitutional amendment. The word 'act' refers to acts, words and illegal omissions (Section 3(2) of the General Clauses Act, 1897). In this circumstance, it needs to be addressed very clearly in our constitution to avoid inconsistency between the letter of law and practice of court as well as judicialization of politics.

b) The second thing is having article 7 providing that a law inconsistent with the Constitution will be void to the extent of the inconsistency. But the supremacy clause is silent as to who wields the authority to decide whether a law is consistent with the Constitution or not. This has to be very specific and clear in our constitution to avoid any kind of controversy. In this case the Court can amend its rules of procedure enjoining to file lawsuits challenging constitutional amendments, primary legislations not involving issues of fundamental rights (but on the grounds of being inconsistent with other Constitutional provisions) under article 7 of the Constitution. Article 107 of the Constitution invests the Supreme Court with the rule making power for regulating the practice and procedure of each division of the Supreme Court (Article 107(1) of the Constitution).

Finally, when court exercise extra-ordinary judicial review power for constitutional amendments, should be exercised scarcely (Collett, 2010) especially if it is matter of policy making.

7. CONCLUSION

The instances of judicialization of politics discussed above show that the great weapon of politicization of judiciary is "judicial review" and one of the main

outcomes of this trend has been the transformation of constitutional discourse by which the courts played their role in politics and do policy making. Actually, the Court itself does not play role against factors of unstable constitutionalism or in perpetuating instability, the theories of constitutional supremacy and popular sovereignty require the Court to play vital role by applying the judicial review tool cautiously. In particular, the extra-ordinary judicial review power vis-à-vis constitutional amendments should be exercised scarcely (Collett, 2010) though it has immense power to do especially if it is a matter of political issue. It is also mentionable that the unprecedented involvement of courts in substantive political decision making is difficult to reconcile with some of the fundamental principles of constitutional theory. Now, it is matter of discussion that whether court should apply its supreme power in case of political issue even if it is related to amendment of constitution e.g. 13th and 16th amendment which caused a political conflict. It also remains to be seen whether court should interfere in any matter which is issue of mega-politics to avoid any further dissatisfaction among the democratic society.

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- Article 7(2) provides- “This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution and other law shall, to the extent of the inconsistency, be void.”
- Article 102(1) of the Constitution provides, “The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the

enforcement of any of the fundamental rights conferred by Part III of this Constitution.”

In *Abdul Mannan Khan vs. Bangladesh*. (2012). 64 DLR (AD) 169, at p. 234, para. 494, the Appellate Division of the Supreme Court has noted that the impugned constitutional amendment was called into question by a writ petition under article 102 of the Constitution.

See Section 3(2) of the General Clauses Act, 1897.

Article 107(1) of the Constitution provides, “Subject to any law made by Parliament the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of each division of the Supreme Court and of any court subordinate to it.” For example, the Supreme Court (High Court Division) Rules, 1973 was framed in virtue of this article

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