



Judicial Protection of Fundamental Rights in Bangladesh: Constitutional Remedies and Emerging Challenges

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ABSTRACT

The protection of fundamental rights constitutes one of the principal purposes of a modern constitutional democracy. Constitutional guarantees, however, have limited practical value unless individuals possess effective mechanisms through which violations of those guarantees can be challenged and remedied. In Bangladesh, Part III of the Constitution of the People's Republic of Bangladesh, 1972 guarantees a range of fundamental rights, while articles 44 and 102 establish the principal constitutional framework for their judicial enforcement. The High Court Division of the Supreme Court of Bangladesh consequently occupies a central position in protecting individual liberty, equality, due process, property interests, freedom of expression and other constitutionally protected interests. This article examines the legal and institutional framework governing the judicial protection of fundamental rights in Bangladesh. It analyses the constitutional remedies available under articles 44 and 102, the development of judicial review, the expansion of locus standi, the growth of public interest litigation and the emerging recognition of public law compensation as a constitutional remedy. Particular attention is given to the jurisprudential development initiated by *Dr Mohiuddin Farooque v Bangladesh*, commonly known as the BELA case, which significantly broadened access to constitutional justice in matters involving public injury and collective rights. The article further identifies several regulatory and institutional deficiencies that limit the practical effectiveness of constitutional remedies. These include procedural complexity, judicial delay, litigation costs, geographical barriers, restrictive interpretations of alternative remedies, inconsistent approaches to compensation, difficulties in implementing judicial decisions and limited public awareness of constitutional rights. The article also considers emerging challenges arising from digital technologies, surveillance, privacy, freedom of expression in online spaces, automated decision-making and the increasing involvement of private actors in activities affecting constitutionally protected interests. Using a qualitative doctrinal methodology supported by analytical and limited comparative approaches, the article argues that Bangladesh possesses an extensive constitutional architecture for judicial rights protection but faces a significant gap between the formal availability of remedies and their effective practical implementation. It concludes that the future effectiveness of fundamental rights protection depends upon procedural reform, improved access to constitutional justice, stronger implementation mechanisms, clearer remedial principles, enhanced judicial capacity and the development of constitutional jurisprudence capable of responding to contemporary technological and institutional challenges.

Keywords: Fundamental Rights; Judicial Review; Constitutional Remedies; Article 102; Public Interest Litigation; Locus Standi; Bangladesh Supreme Court; Public Law Compensation; Digital Rights

1. Introduction

Fundamental rights constitute the normative foundation of constitutional government. They operate as legal limitations upon the exercise of state power and, at the same time, recognize certain spheres of individual autonomy, liberty and dignity that require constitutional protection. The mere inclusion of rights within a constitutional text, however, does not automatically guarantee their effective enjoyment. Rights acquire practical significance only

when legal institutions possess the authority and willingness to identify violations, restrain unlawful power and provide meaningful remedies to affected individuals.

The Constitution of the People's Republic of Bangladesh establishes a written constitutional framework in which fundamental rights occupy an important position. Part III contains constitutional guarantees relating to equality before law, non-discrimination, protection of law, personal liberty, safeguards against arbitrary arrest and detention, protection in respect of trial and punishment, freedom of movement, assembly, association, thought, conscience, speech, profession, occupation, religion, property and privacy of correspondence, subject to the qualifications and limitations prescribed by the Constitution and law. The constitutional importance of these guarantees is reinforced by article 26, which provides that laws inconsistent with fundamental rights shall, to the extent of such inconsistency, become void. More significantly, article 44(1) guarantees the right to move the High Court Division in accordance with article 102(1) for the enforcement of fundamental rights. The constitutional right to seek judicial enforcement therefore occupies a distinctive position within the broader structure of rights protection.

Article 102 represents the principal constitutional mechanism through which the High Court Division exercises judicial review. Under article 102(1), the High Court Division may, on the application of any person aggrieved, issue such directions or orders to any person or authority as may be appropriate for the enforcement of fundamental rights. The constitutional language is significant because it enables the Court to fashion remedies appropriate to the circumstances of particular violations rather than restricting judicial protection exclusively to historically recognised common-law writs. The Supreme Court has repeatedly emphasised the importance of article 102(1) as a mechanism for the enforcement of fundamental rights. Judicial decisions have recognised that the right to invoke article 102(1) is closely connected with article 44 and cannot simply be treated as an ordinary discretionary remedy in the same manner as every form of administrative review.¹ The contemporary interpretation of article 102 has therefore developed beyond a narrow procedural conception of writ jurisdiction.

The development of constitutional remedies in Bangladesh has nevertheless been neither uniform nor uncomplicated. Early approaches to standing often reflected restrictive common-law concepts requiring a petitioner to demonstrate a direct and personal injury. Such a conception created serious difficulties in cases involving environmental degradation, systemic administrative failures and violations affecting large or indeterminate groups of people. The traditional model assumed that each affected person would independently approach the court, an assumption that was often unrealistic in a country where financial limitations, social inequality, geographical distance and limited legal awareness could prevent access to constitutional justice. A major transformation occurred through the decision in *Dr Mohiuddin Farooque v Bangladesh*. The Appellate Division recognised that where public injury, public wrong or an infringement of fundamental rights affects an indeterminate number of persons, the constitutional jurisdiction should not be confined to a multitude of separate petitions.² The development of this broader approach to locus standi contributed significantly to the emergence of public interest litigation in Bangladesh.

The expansion of standing is important because constitutional rights frequently have both individual and collective dimensions. Environmental degradation may affect the health and

¹Constitution of the People's Republic of Bangladesh 1972 art 44(1); see also Supreme Court of Bangladesh decisions recognising the distinct constitutional importance of article 102(1).

²*Dr Mohiuddin Farooque v Bangladesh* 49 DLR (AD) 1.

livelihood of entire communities. Illegal administrative practices may affect thousands of citizens. Failures to perform statutory duties may undermine constitutional protections without producing a single easily identifiable victim capable of pursuing litigation independently. A constitutional system committed to the rule of law must therefore develop procedures capable of responding to collective injuries. The judiciary has also increasingly been required to address the question of remedies. A declaration that an action is unlawful may not always provide sufficient relief. Where an individual has suffered prolonged unlawful detention, death or serious injury resulting from unconstitutional conduct or significant violations of personal liberty and dignity, effective constitutional protection may require remedies extending beyond declaratory relief. This has contributed to the gradual development of public law compensation under article 102(1).

The recognition of compensation as a constitutional remedy remains an evolving area of Bangladeshi jurisprudence. Article 102(1) authorises the High Court Division to issue such directions or orders as may be appropriate for the enforcement of fundamental rights. The broad remedial language has enabled arguments that monetary compensation may, in appropriate circumstances, constitute an effective response to a violation of constitutional rights.³ Nevertheless, the judicial development of public law compensation remains incomplete and at times inconsistent. The effectiveness of judicial protection also depends upon institutional realities. A constitution may guarantee access to the High Court Division, but litigation can remain inaccessible to individuals who cannot afford lawyers, travel to Dhaka or navigate complex procedural requirements. Judicial delay can transform an otherwise effective remedy into a largely symbolic one. Administrative non-compliance can weaken the practical consequences of judicial decisions. A constitutional system must therefore be evaluated not merely by examining the remedies formally available but also by considering whether those remedies are accessible, affordable, timely and enforceable.

The contemporary environment presents additional challenges. The expansion of digital technology has transformed the relationship between citizens, the state and private institutions. Personal information is increasingly collected, processed and transmitted through digital systems. Governmental decision-making may depend upon technological infrastructures. Online expression can be regulated through legal and administrative mechanisms. Surveillance technologies can create new forms of intrusion into privacy. Private corporations increasingly perform functions that may significantly affect rights traditionally associated with public law. These developments require constitutional jurisprudence to reconsider traditional distinctions between public and private actors, physical and digital spaces and direct and indirect forms of state interference. The question is no longer simply whether a government official has unlawfully detained or punished an individual. Constitutional rights may also be affected by data collection, automated decisions, digital surveillance, internet restrictions and technologically mediated systems in which responsibility is divided among multiple public and private actors.

This article examines the judicial protection of fundamental rights in Bangladesh within this broader constitutional and institutional context. It analyses the constitutional framework, reviews existing scholarship, considers the development of judicial remedies, identifies regulatory and institutional deficiencies and evaluates emerging challenges. The central argument is that Bangladesh possesses a substantial constitutional framework for rights

³Taqbir Huda, 'Fundamental Rights in Search of Constitutional Remedies: The Emergence of Public Law Compensation in Bangladesh' (2021) *Australian Journal of Asian Law*.

protection, but the effectiveness of that framework depends upon reforms that transform formal constitutional remedies into genuinely accessible and effective instruments of justice.

2. Literature Review

2.1 Introduction to the Existing Literature

The existing literature concerning the protection of fundamental rights in Bangladesh can broadly be divided into several interconnected categories. The first category examines the constitutional foundations of fundamental rights and judicial review. The second focuses on article 102 and the jurisdiction of the High Court Division. The third addresses locus standi and the development of public interest litigation. A fourth area examines particular forms of constitutional remedies, including compensation for rights violations. More recent scholarship and public discussion have begun to consider emerging concerns relating to privacy, digital governance, freedom of expression and technologically mediated forms of rights violations.

A major limitation of the existing literature is that these themes are often examined separately. Studies of constitutional law may focus primarily upon the formal text of the Constitution. Research on public interest litigation may concentrate on locus standi and environmental justice. Scholarship concerning public law compensation may examine the development of monetary remedies without placing those remedies within a broader institutional framework of access to justice and implementation. Consequently, there remains a need for an integrated examination of constitutional remedies, institutional effectiveness and emerging challenges.

2.2 Constitutional Rights and the Rule of Law

Constitutional scholarship generally recognises that fundamental rights perform both protective and structural functions. They protect individuals against arbitrary exercises of public power while also establishing normative standards that influence legislative, executive and judicial conduct.

In Bangladesh, the constitutional framework must be understood in light of the relationship between the supremacy of the Constitution, judicial review and the protection of individual rights. Article 7 establishes the Constitution as the supreme law of the Republic. Article 26 reinforces the constitutional protection of fundamental rights by declaring inconsistent laws void to the extent of inconsistency.

The protection of fundamental rights cannot, however, depend exclusively upon constitutional supremacy. A constitutional guarantee requires an institution capable of interpreting the Constitution and reviewing the legality of state action. The judiciary consequently occupies a central position in a written constitutional system.

Judicial review has been described in Bangladeshi constitutional jurisprudence as an essential feature of constitutional government. The courts have interpreted constitutional provisions in light of the broader purposes and structure of the Constitution rather than treating individual provisions as isolated legal texts.⁴ This purposive approach has been particularly important in cases concerning locus standi and public interest litigation.

The rule of law further requires that public authorities exercise power according to law and remain subject to judicial scrutiny. The relationship between constitutional rights and the rule of

⁴*Dr Mohiuddin Farooque v Bangladesh* 49 DLR (AD) 1.

law is particularly important in Bangladesh because constitutional remedies frequently provide the principal means through which individuals challenge unlawful administrative conduct.

2.3 Article 44 and the Constitutional Right to Seek Enforcement

Article 44 occupies a particularly significant position within the constitutional structure. It guarantees the right to move the High Court Division under article 102(1) for the enforcement of the rights conferred by Part III.

The constitutional guarantee of access to the High Court Division distinguishes the enforcement of fundamental rights from ordinary statutory claims. The Supreme Court has recognised that article 44 gives particular constitutional importance to the right to invoke article 102(1). Where a fundamental right has been infringed, the existence of an alternative remedy does not necessarily remove the constitutional jurisdiction of the High Court Division in the same manner as under article 102(2).⁵

This distinction is fundamental. Article 102(1) concerns the enforcement of fundamental rights, whereas article 102(2) addresses broader forms of judicial review and is expressly connected with the requirement that no other equally efficacious remedy is available. The constitutional design therefore reflects an understanding that the enforcement of fundamental rights requires particularly strong judicial protection. Nevertheless, practical access to article 102(1) remains affected by procedural, financial and institutional barriers.

2.4 Article 102 and the Development of Constitutional Remedies

Article 102 represents one of the most important provisions in Bangladeshi constitutional law. The High Court Division may exercise its powers under article 102 to enforce fundamental rights and to review certain unlawful actions of public authorities.

Historically, constitutional remedies have often been described using the terminology of the traditional prerogative writs, including habeas corpus, mandamus, prohibition, certiorari and quo warranto. While these concepts remain useful in explaining the nature of judicial relief, the language of article 102 provides a constitutional source of jurisdiction that is not limited to mechanical reproduction of historical common-law categories.

Under article 102(1), the High Court Division may issue directions or orders appropriate for enforcing fundamental rights. The language of “appropriate” relief is significant because it potentially enables the development of remedies responsive to the particular nature of constitutional violations.

Article 102(2), by contrast, provides broader powers concerning judicial review of unlawful actions and the enforcement of legal duties. The requirement of the absence of another equally efficacious remedy has played an important role in determining the circumstances in which the High Court Division will exercise jurisdiction. Judicial decisions demonstrate that the availability of an alternative remedy does not necessarily prevent intervention where there is a lack of jurisdiction, mala fide action or a violation of fundamental rights.⁶ This approach reflects the principle that ordinary statutory remedies should not always be treated as adequate substitutes for constitutional protection.

⁵*Bangladesh v SkMd Abdullah Faruque* and related constitutional jurisprudence concerning articles 44 and 102.

⁶Supreme Court of Bangladesh, constitutional jurisprudence concerning alternative remedies and article 102.

2.5 Locus Standi and the Emergence of Public Interest Litigation

The development of locus standi represents one of the most significant contributions of the judiciary to constitutional access to justice in Bangladesh. The traditional doctrine of standing generally required an applicant to demonstrate that he or she was personally and directly affected by the challenged action. This approach was relatively appropriate for conventional private disputes but created substantial obstacles in cases involving diffuse public injuries. The landmark decision in *Dr Mohiuddin Farooque v Bangladesh* transformed this area of constitutional jurisprudence. The Appellate Division rejected an excessively narrow interpretation of “person aggrieved” in circumstances involving public injury and the collective infringement of rights. The Court recognised that where an indeterminate number of persons are affected, constitutional justice should not depend upon every affected person filing a separate petition.⁷

The significance of this decision extends beyond procedural law. It reflects a substantive understanding that access to constitutional justice must respond to social realities. Poor and vulnerable populations may be unable to litigate individually. Environmental injuries may affect communities rather than identifiable individuals. Public authorities may fail to perform legal duties in ways that harm society generally. The development of public interest litigation consequently enabled public-spirited individuals and organisations, subject to the requirements established by the courts, to bring matters involving public wrongs before the judiciary. Subsequent jurisprudence has continued to recognise that a person with sufficient interest may, in appropriate circumstances, invoke the jurisdiction of the High Court Division in matters involving public duties and collective rights.⁸

2.6 Public Law Compensation

The literature on public law compensation represents an important contemporary development. Taqbir Huda's detailed study of public law compensation in Bangladesh examines how article 102(1) has been used as a basis for seeking monetary redress for violations of fundamental rights. The significance of this scholarship lies in its identification of a practical remedial gap. Victims of serious constitutional violations may encounter considerable difficulties when attempting to obtain compensation through ordinary private-law proceedings. Court fees, procedural delay, evidentiary requirements and the underdevelopment of certain aspects of tort law may make private litigation ineffective or inaccessible.⁹

The constitutional remedy of compensation therefore raises a fundamental question: if the state violates a constitutionally protected right, should the victim be required to pursue a lengthy and difficult private-law action before obtaining meaningful redress? The emerging jurisprudence suggests that article 102(1) may support broader forms of relief. However, the principles governing public law compensation remain insufficiently settled. Questions continue to exist regarding the circumstances in which compensation should be awarded, the appropriate standards of state responsibility and the relationship between constitutional compensation and private-law damages.

This represents an important gap in the legal literature and justifies further research.

⁷*Dr Mohiuddin Farooque v Bangladesh* 49 DLR (AD) 1.

⁸See subsequent decisions applying the principle of sufficient interest in matters involving public duties and public injury.

⁹Huda (n 3).

2.7 Judicial Activism and Judicial Restraint

Another strand of literature concerns the appropriate role of the judiciary within a constitutional democracy. Judicial activism may be understood broadly as a willingness by courts to interpret constitutional provisions dynamically in order to protect rights and address institutional failures. Judicial restraint, by contrast, emphasises the limits of judicial power and the importance of respecting the institutional roles of the legislature and executive.

In Bangladesh, the debate is particularly significant because the judiciary has often been asked to respond to administrative inaction, environmental degradation, human rights violations and failures of public institutions.

The expansion of locus standi and the development of public interest litigation may be viewed as examples of a judiciary responding to practical barriers in access to justice. At the same time, excessive judicial intervention can raise concerns regarding institutional legitimacy and separation of powers.

The appropriate balance cannot be determined through a simple preference for either activism or restraint. The central question should be whether judicial intervention is constitutionally justified, legally principled and necessary for the effective protection of rights.

2.8 Emerging Digital Rights Literature

Digital technology presents new challenges for constitutional law. Traditional fundamental rights were largely developed in response to physical forms of governmental power, such as arrest, detention, censorship and direct administrative action. Contemporary rights violations may instead arise through data collection, surveillance systems, digital platforms and automated processes.

Privacy, freedom of expression and personal liberty therefore require renewed interpretation within a digital environment. The increasing role of private actors further complicates constitutional analysis. A technology company may process personal information or make decisions that significantly affect individuals while operating within a regulatory environment influenced by the state. The existing Bangladeshi literature in this area remains comparatively underdeveloped. There is therefore a need to examine whether the constitutional remedies framework is capable of addressing technologically mediated rights violations.

2.9 Research Gap

The literature demonstrates substantial scholarly engagement with individual components of constitutional rights protection. However, several gaps remain.

First, there is limited integrated analysis connecting constitutional remedies with institutional access and implementation.

Secondly, existing studies often focus on established constitutional doctrines without adequately examining the challenges created by digital governance and emerging technologies.

Thirdly, public law compensation requires further analysis within the broader framework of effective constitutional remedies.

Fourthly, the practical difference between obtaining a judicial judgment and securing actual compliance has received insufficient integrated attention.

This article seeks to address these gaps by examining the judicial protection of fundamental rights as a complete constitutional process involving access, adjudication, remedies and implementation.

3. Research Objectives

3.1 General Objective

The general objective of this research is to examine the effectiveness of judicial mechanisms for the protection and enforcement of fundamental rights in Bangladesh and to identify regulatory, institutional and emerging challenges affecting constitutional remedies.

3.2 Specific Objectives

The specific objectives are:

1. To examine the constitutional framework governing fundamental rights and their judicial enforcement in Bangladesh.
2. To analyse the scope and operation of articles 44 and 102 of the Constitution.
3. To examine the role of the High Court Division and the Appellate Division in the development of constitutional remedies.
4. To evaluate the development of locus standi and public interest litigation in Bangladesh.
5. To analyse the emerging jurisprudence relating to public law compensation for violations of fundamental rights.
6. To identify regulatory and institutional barriers affecting access to constitutional justice.
7. To examine emerging challenges concerning digital rights, privacy, surveillance and technologically mediated violations.
8. To propose reforms for strengthening the accessibility and effectiveness of constitutional remedies.

4. Research Questions

This research is guided by the following questions:

1. How does the Constitution of Bangladesh provide for the judicial protection and enforcement of fundamental rights?
2. What is the scope of constitutional remedies available under articles 44 and 102?
3. How has judicial interpretation influenced access to constitutional justice in Bangladesh?
4. What role has public interest litigation played in protecting collective and diffuse rights?
5. Are existing remedies sufficient to provide effective redress for violations of fundamental rights?
6. What regulatory and institutional barriers limit access to constitutional justice?
7. How should Bangladeshi constitutional jurisprudence respond to emerging technological and digital challenges?
8. What reforms are necessary to strengthen judicial protection of fundamental rights?

5. Methodology

5.1 Research Design

This research adopts a qualitative doctrinal legal research methodology. Doctrinal research is particularly appropriate because the principal subject of the study is the interpretation and application of constitutional provisions, legislation and judicial decisions.

The research also employs analytical and limited comparative approaches. The analytical approach is used to evaluate the effectiveness of constitutional remedies and identify gaps between constitutional guarantees and their practical enforcement.

5.2 Sources of Data

The research relies upon both primary and secondary sources.

Primary Sources

Primary sources include:

- The Constitution of the People's Republic of Bangladesh, 1972;
- Relevant legislation;
- Rules governing proceedings before the Supreme Court;
- Decisions of the High Court Division;
- Decisions of the Appellate Division.

Secondary Sources

Secondary materials include:

- Books on constitutional and administrative law;
- Peer-reviewed journal articles;
- Academic commentaries;
- Research reports;
- Institutional publications.

Priority is given to authoritative and original sources wherever possible, particularly official constitutional texts and judgments of the Supreme Court of Bangladesh.

5.3 Doctrinal Analysis

The doctrinal method involves identifying and analysing relevant constitutional provisions and judicial principles. Particular attention is given to:

- Article 26;
- Article 27;
- Article 31;
- Articles 32–44;
- Article 44;
- Article 102.

Judicial decisions are analysed to identify developments concerning standing, public interest litigation, judicial review, alternative remedies and constitutional compensation.

5.4 Analytical Framework

The effectiveness of constitutional remedies is assessed using four principal criteria:

Accessibility: Whether individuals and communities can realistically approach the courts.

Timeliness: Whether judicial remedies are available within a period capable of preventing or redressing continuing harm.

Adequacy: Whether the remedies available are capable of providing meaningful redress.

Enforceability: Whether judicial decisions are effectively implemented.

This framework enables the study to move beyond a purely formal examination of constitutional provisions.

5.5 Comparative Perspective

A limited comparative approach is employed to understand broader developments in constitutional remedies and public law compensation, particularly within South Asian constitutional traditions.

The comparative discussion does not attempt to transplant foreign constitutional doctrines into Bangladesh. Rather, it considers how other jurisdictions have addressed similar challenges and whether general principles may provide useful insights.

5.6 Scope of the Study

The study focuses primarily upon the judicial protection of fundamental rights through the constitutional jurisdiction of the Supreme Court of Bangladesh.

The research does not provide a comprehensive examination of every human rights institution, international treaty mechanism or statutory tribunal. These matters are considered only where necessary to understand the effectiveness of constitutional remedies.

6. Constitutional Framework for the Protection of Fundamental Rights

6.1 Constitutional Supremacy

The judicial protection of fundamental rights begins with the constitutional principle of supremacy. The Constitution operates as the supreme legal framework governing the Republic. Legislative and executive authorities must exercise their powers consistently with constitutional limitations. The principle of constitutional supremacy is particularly important because fundamental rights operate as restrictions upon governmental power. If an ordinary law is inconsistent with constitutionally guaranteed rights, constitutional review becomes necessary to determine the validity and legal effect of that inconsistency.

6.2 Article 26 and the Protection of Fundamental Rights

Article 26 provides an important constitutional safeguard by addressing laws inconsistent with fundamental rights. It reinforces the principle that fundamental rights cannot be treated as merely political aspirations.

Nevertheless, the existence of article 26 does not eliminate the need for judicial intervention. In practice, individuals may need to invoke constitutional jurisdiction to challenge laws or governmental actions alleged to violate protected rights.

6.3 Article 31 and the Protection of Law

Article 31 guarantees the protection of law and recognises that no action detrimental to the life, liberty, body, reputation or property of a person shall be taken except in accordance with law.

This provision has broad constitutional significance. It establishes a foundational relationship between individual rights and lawful governmental action.

Article 31 can therefore operate as an important constitutional basis for challenging arbitrary or unlawful exercises of public power.

6.4 Article 32 and Personal Liberty

Article 32 provides that no person shall be deprived of life or personal liberty save in accordance with law.

Personal liberty has traditionally been among the most important areas of judicial protection. Unlawful arrest, detention and other restrictions upon liberty require particularly effective judicial remedies because delay may itself prolong the constitutional violation.

The constitutional protection of liberty therefore demonstrates why remedies must be timely as well as legally available.

6.5 Article 44

Article 44 is the constitutional bridge between substantive rights and judicial enforcement. A fundamental right without an effective enforcement mechanism may become largely symbolic.

By guaranteeing the right to move the High Court Division for the enforcement of fundamental rights, article 44 recognises access to constitutional justice as an essential component of the constitutional order.

6.6 Article 102(1)

Article 102(1) empowers the High Court Division to issue appropriate directions or orders for the enforcement of fundamental rights.

The scope of this provision is significant because its remedial language is broad. Judicial decisions have recognised that article 102(1) can provide relief where fundamental rights have been infringed and that its scope cannot always be confined by restrictive assumptions concerning traditional public-law categories.¹⁰

The constitutional importance of article 102(1) also arises from its relationship with article 44.

6.7 Article 102(2)

Article 102(2) provides the High Court Division with important powers of judicial review concerning unlawful actions and failures to perform legal duties. The requirement that no other equally efficacious remedy should be available has created an important distinction between constitutional enforcement of fundamental rights and other forms of judicial review. The courts have nevertheless recognised that alternative remedies may not always be sufficient where fundamental rights are infringed or where an action is without jurisdiction or affected by mala fides.¹¹

7. Judicial Remedies for the Enforcement of Fundamental Rights

7.1 The Nature of Constitutional Remedies

A constitutional remedy is not merely a procedural mechanism. It is the practical instrument through which constitutional guarantees are transformed into enforceable rights.

¹⁰Supreme Court of Bangladesh, judgments concerning the broad scope of article 102(1) in enforcing fundamental rights.

¹¹Constitution of the People's Republic of Bangladesh 1972, art 102(2); see also judicial decisions concerning lack of jurisdiction, mala fides and the inadequacy of alternative remedies.

The effectiveness of a remedy depends upon its capacity to respond to the nature of the violation. In some cases, a declaration of illegality may be sufficient. In others, the Court may need to prevent future action, compel the performance of a legal duty, secure the release of an unlawfully detained person or provide monetary compensation.

The constitutional language of article 102 therefore permits an approach to remedies that is responsive rather than purely formalistic.

7.2 Habeas Corpus

The remedy traditionally associated with habeas corpus protects personal liberty by requiring judicial examination of the legality of detention.

The importance of this remedy lies in its urgency. Where a person is unlawfully detained, an ordinary legal remedy that becomes available only after prolonged delay may be inadequate.

7.3 Mandamus

Mandamus is traditionally associated with compelling a public authority to perform a legal duty.

This remedy is particularly significant where rights are affected by governmental inaction. Constitutional violations do not always arise from affirmative acts. They may also result from a failure to perform a legal or constitutional duty.

7.4 Certiorari and Judicial Review

Certiorari is associated with reviewing and invalidating decisions or proceedings undertaken without lawful authority.

This remedy contributes to constitutional governance by ensuring that administrative authorities remain within the limits of their legal powers.

7.5 Prohibition

The remedy of prohibition operates preventively by restraining an authority or tribunal from continuing proceedings beyond its lawful jurisdiction.

Its importance lies in preventing an unlawful process before irreversible harm occurs.

7.6 Quo Warranto

Quo warranto concerns the legality of a person's claim to hold a public office.

Although less frequently discussed in relation to individual fundamental rights, the remedy contributes to constitutional accountability by ensuring that public offices are lawfully occupied.

7.7 Public Law Compensation

Public law compensation represents one of the most important emerging forms of constitutional relief. Where state action produces serious violations of fundamental rights, declaratory relief may be insufficient.

The jurisprudential question is whether article 102(1), through its broad reference to appropriate directions or orders, enables courts to award compensation directly as a constitutional remedy.

Scholarly analysis suggests that this remedial development has become increasingly important because ordinary private-law mechanisms may be inaccessible or ineffective for victims of constitutional violations.¹²

The future development of this area requires clearer judicial principles concerning eligibility, causation, responsibility and the calculation of compensation.

8. Public Interest Litigation and the Expansion of Access to Justice

Public interest litigation has become one of the most important mechanisms for addressing collective injuries in Bangladesh.

The traditional adversarial model assumes that an individual who suffers direct harm will initiate proceedings against the responsible party. This assumption is often unrealistic where the victims are poor, geographically dispersed or socially marginalised.

The development of public interest standing recognised that constitutional justice cannot depend entirely upon the ability of every individual victim to litigate independently.

The decision in *Dr Mohiuddin Farooque v Bangladesh* remains central to this development. The Court recognised the importance of interpreting constitutional standing within the broader purposes and objectives of the Constitution rather than relying exclusively upon restrictive common-law formulations.¹³

Public interest litigation has particular relevance in matters involving:

- Environmental protection;
- Public health;
- Governmental accountability;
- Collective rights;
- Administrative inaction;
- Vulnerable communities.

Nevertheless, public interest litigation should not become a mechanism for unrestricted judicial intervention in political disputes. Courts must continue to distinguish genuine public-interest claims from matters lacking sufficient constitutional or legal foundations.

The challenge is therefore to preserve meaningful access while preventing abuse of constitutional jurisdiction.

9. Regulatory and Institutional Gaps

9.1 Absence of a Comprehensive Remedial Framework

Bangladesh possesses a constitutional framework for judicial remedies, but the detailed principles governing the availability and implementation of constitutional relief have developed primarily through judicial interpretation and procedural rules.

A more accessible and systematic framework could reduce uncertainty for litigants without limiting judicial flexibility.

¹²Huda (n 3).

¹³*Dr Mohiuddin Farooque v Bangladesh* 49 DLR (AD) 1.

9.2 Procedural Complexity

Constitutional litigation can involve complex drafting, documentation and procedural requirements. For trained lawyers, these requirements may be manageable. For ordinary citizens, however, procedural complexity can become a substantial barrier.

Simplification of appropriate procedures, particularly for urgent rights-based cases, could improve access.

9.3 Financial Barriers

The costs of legal representation, travel, documentation and prolonged litigation may prevent economically disadvantaged individuals from seeking constitutional remedies.

Access to justice cannot be assessed solely by asking whether a legal remedy formally exists. The relevant question is whether the affected individual can realistically use it.

9.4 Geographical Centralisation

Because constitutional litigation is principally associated with the High Court Division, geographical distance can create additional barriers for individuals living outside the capital.

Digital filing and improved technological access may reduce some of these difficulties, but technological reform must also account for unequal digital access.

9.5 Judicial Delay

Judicial delay represents a major challenge to effective rights protection.

A delayed judgment may provide inadequate relief where a constitutional violation involves personal liberty, livelihood or other urgent interests.

Case-management reform and effective prioritisation of rights-sensitive cases are therefore necessary.

9.6 Alternative Remedies

The alternative-remedy doctrine can serve an important institutional purpose by preventing constitutional courts from replacing ordinary statutory mechanisms.

However, an alternative remedy should not automatically be treated as effective merely because it formally exists. Courts must assess whether the alternative is genuinely capable of providing timely and meaningful relief.

9.7 Implementation of Judicial Decisions

The effectiveness of judicial protection ultimately depends upon compliance.

A favourable judgment that remains unimplemented may have limited value for the individual whose rights have been violated.

Bangladesh therefore requires stronger institutional mechanisms for monitoring compliance with significant constitutional judgments.

9.8 Inconsistent Development of Compensation

The jurisprudence of public law compensation remains insufficiently settled.

Greater doctrinal clarity would help courts, litigants and public authorities understand when constitutional compensation may be appropriate.

10. Emerging Challenges

10.1 Digital Privacy

Digital technologies have transformed the concept of privacy.

The collection and processing of personal information may reveal highly sensitive aspects of an individual's life. Traditional understandings of privacy focused heavily upon physical spaces and correspondence. Contemporary constitutional analysis must also address data collection, digital communications and technological surveillance.

10.2 Surveillance

Governmental surveillance may be justified for legitimate purposes such as national security and criminal investigation. However, surveillance also creates risks of arbitrary intrusion.

Effective constitutional protection requires principles concerning legality, necessity, proportionality and accountability.

10.3 Freedom of Expression in Digital Spaces

Digital communication has expanded opportunities for public participation while simultaneously creating new forms of regulation and restriction.

Constitutional protection of freedom of thought and expression must therefore be interpreted in a manner capable of addressing online speech.

10.4 Internet Restrictions and Digital Access

Internet restrictions can affect communication, education, economic activity and political participation.

In an increasingly digital society, access to communication infrastructure may become closely connected with the effective enjoyment of other rights.

10.5 Private Actors and Constitutional Rights

Traditional constitutional litigation often focuses upon actions by the state.

However, private corporations increasingly perform functions capable of affecting rights. Technology companies, employers and other private institutions may exercise significant power over information, communication and individual opportunities.

Judicial interpretation must therefore consider the circumstances in which constitutional protection can address rights violations involving private actors.

10.6 Automated Decision-Making

Automated and algorithmic systems may increasingly influence decisions relating to employment, financial services and public administration.

These systems can raise questions concerning transparency, discrimination and procedural fairness.

Constitutional law may need to develop mechanisms for reviewing decisions where human responsibility is obscured by technological processes.

11. Limitations of the Study

This research has several limitations.

First, the study primarily employs doctrinal methodology and does not include large-scale empirical interviews with judges, lawyers, litigants or government officials.

Secondly, judicial jurisprudence continues to develop. Future decisions may therefore alter the interpretation of constitutional remedies.

Thirdly, the study focuses primarily upon constitutional remedies and does not provide a comprehensive analysis of all statutory, administrative or international mechanisms for human rights protection.

Fourthly, the emerging field of digital rights is developing rapidly, and future technological changes may create challenges beyond the scope of the present study.

12. Recommendations

12.1 Develop Clearer Procedural Guidance

The Supreme Court should continue developing accessible procedural guidance concerning constitutional petitions.

Simplified information and standardised guidance could assist litigants and lawyers.

12.2 Strengthen Legal Aid

Publicly supported legal assistance should be expanded for serious constitutional and public-interest cases.

Financial inability should not prevent victims of serious rights violations from seeking judicial protection.

12.3 Prioritise Urgent Rights Cases

Courts should develop effective case-management mechanisms for urgent matters involving personal liberty and continuing constitutional violations.

12.4 Establish Compliance Mechanisms

Significant constitutional judgments should be supported by institutional mechanisms capable of monitoring implementation.

Where appropriate, public authorities should provide compliance reports to the courts.

12.5 Clarify Public Law Compensation

The Supreme Court should gradually develop coherent principles concerning constitutional compensation.

Such principles should address:

- The seriousness of the violation;
- The relationship between state action and the harm suffered;
- The circumstances in which compensation is appropriate;
- The relationship between constitutional compensation and private-law remedies.

12.6 Strengthen Digital Rights Protection

Bangladesh should develop a coherent legal framework addressing privacy, personal data, surveillance and digital expression.

Constitutional principles should guide the development of this framework.

12.7 Continue the Development of Public Interest Litigation

The liberal approach to standing should be maintained in genuine cases of public injury and collective rights violations.

At the same time, courts should ensure that public interest litigation remains connected to genuine constitutional and legal concerns.

12.8 Promote Public Legal Awareness

Citizens should be better informed about fundamental rights and available remedies.

Universities, legal institutions, civil society organisations and public authorities can play important roles in promoting constitutional literacy.

12.9 Strengthen Judicial Capacity

Judicial protection can be improved through:

- Enhanced constitutional research support;
- Judicial education;
- Digital case-management systems;
- Improved access to legal databases;
- Specialised knowledge concerning technological and digital rights.

12.10 Adopt a Rights-Based Approach to Technological Governance

New technologies should be assessed according to constitutional principles rather than solely administrative efficiency.

Technological innovation should remain consistent with privacy, equality, liberty and due process.

13. Conclusion

The judicial protection of fundamental rights is essential to the functioning of constitutional democracy. Bangladesh possesses a substantial constitutional framework for such protection. Articles 26, 31, 44 and 102, together with the broader guarantees contained in Part III, provide a legal basis for challenging unlawful exercises of power and seeking judicial remedies. The development of constitutional jurisprudence has strengthened this framework. The expansion of locus standi and the emergence of public interest litigation have enabled courts to address public wrongs and collective injuries that could not effectively be addressed through traditional individual litigation. The recognition of broader remedial possibilities under article 102(1), including the emerging doctrine of public law compensation, demonstrates the continuing capacity of constitutional law to develop in response to practical realities. However, the existence of constitutional remedies does not guarantee their effective operation. Judicial delay, litigation costs, geographical barriers, procedural complexity and difficulties in implementing judgments continue to affect access to constitutional justice. The contemporary environment also requires new approaches. Digital surveillance, personal-data processing, online expression, automated decision-making and the expanding role of private

actors create forms of potential rights violations that were not contemplated in traditional models of constitutional litigation.

The future of judicial protection in Bangladesh will therefore depend upon the ability of constitutional institutions to preserve established guarantees while responding to new forms of power. Effective constitutional remedies must be accessible, timely, adequate and enforceable. Judicial protection should not be understood merely as the power of courts to declare governmental actions unlawful. It must include the broader constitutional capacity to provide meaningful relief to individuals and communities whose fundamental rights have been violated. Ultimately, the strength of fundamental rights depends upon the practical availability of remedies. A right that cannot be enforced effectively risks becoming a constitutional promise without practical substance. The continued development of constitutional jurisprudence, institutional reform and accessible judicial remedies is therefore essential to ensuring that the fundamental rights guaranteed by the Constitution of Bangladesh remain living and effective protections.

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