

Constitutional Responsibility of the Government of Bangladesh for Implementing Compulsory Primary Education: Issues and Challenges

**Thesis submitted for the
Degree of Doctor of Philosophy (PhD) in Education**

**Submitted by
Farhana Helal Mehtab
Reg No: 01/2012-2013**



**Institute of Education and Research (IER)
University of Dhaka
September, 2017**

CERTIFICATE

This is to certify that the thesis entitled “**Constitutional Responsibility of the Government of Bangladesh for Implementing Compulsory Primary Education: Issues and Challenges**” submitted by **Farhana Helal Mehtab**, Registration No. 01/2012-2013, for the award of Degree of Doctor of Philosophy (PhD) in Education to the University of Dhaka, is a record of research work under my guidance and supervision during the period of her study, in the Institute of Education and Research (IER), University of Dhaka. This thesis has not previously formed the basis for the award of any degree, diploma, fellowship, associateship or any other similar title.

Place: Dhaka, Bangladesh

Date:

(Professor Dr. Md. Abdul Maleque)

Research Supervisor

DECLARATION

I, **Farhana Helal Mehtab**, declare that this thesis and the work presented in it are my own and has been prepared by me as the result of my own original research based on different documents review and in-depth interviews of experts.

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Constitutional Responsibility of the Government of Bangladesh for Implementing Compulsory Primary Education: Issues and Challenges

I confirm that

1. This work was done entirely while in candidature for a PhD research degree at the Institute of Education and Research (IER), University of Dhaka under the supervision of Dr. Md. Abdul Maleque, Professor, Institute of Education and Research (IER), University of Dhaka;
2. Where I have consulted the published work of others, this is always clearly attributed;
3. Where I have quoted from the work of others, the source is always given;
4. I have acknowledged all main sources of help;
5. Neither of this work has been published before submission, nor have parts of this work been published anywhere.

Farhana Helal Mehtab
Registration No. 01/2012-13
University of Dhaka

ACKNOWLEDGEMENT

First and foremost, I offer my gratefulness to the Creator for providing me the ability to do the entire research work efficiently. I am thankful to my alma mater, University of Dhaka that bestowed upon me the opportunity to work on the topic “*Constitutional Responsibilities of the Government of Bangladesh for Implementing Compulsory Primary Education: Issues and Challenges*”. My sincere acknowledgment to the Institute of Education and Research (IER), University of Dhaka, for enrolling me in the PhD program and enabling me to complete this work.

I would like to express my humble gratitude and sincere thanks to my PhD supervisor, Dr. Md. Abdul Maleque, Professor, Institute of Education and Research (IER), and Founder Chairman of the Social Science Education Department, IER, University of Dhaka, for his valuable guidance and constructive suggestions for conducting the research and preparing this thesis. It is he who inspired me to undertake such a unique work based on “Law & Education” which was my dream and desire. I would like to thank him for encouraging me in doing this research and for allowing me to grow as a researcher. In fact, it has been an honor to be his Ph.D. student. He reliably allowed this paper to be my own work, but steered me in the right direction whenever he thought I needed it.

My heartfelt gratitude to the founder Vice Chancellor and Professor Emeritus of Daffodil International University, Dr. Aminul Islam, for his immense faith on my ability for conducting such a PhD research. My indebtedness goes to Mr. Md. Sabur Khan, Chairman, Board of Trustees, Daffodil International University and Professor Dr. Yousuf M Islam, Vice Chancellor, Daffodil International University. Their positive attitude towards my aptitude motivated me to do the work assertively. These two great personalities communicated with me often for knowing the updates on my work, even during my long study leave from Daffodil International University.

I would like to express my special appreciation and thanks to my teachers, Dr. Mizanur Rahman, Professor, Department of Law, University of Dhaka and former Chairman, National Human Rights Commission, Bangladesh; Dr. Golam Rahman, Chief Information Commissioner, Information Commission, Bangladesh, and former Professor, Department of Journalism and Mass Communication, University of Dhaka; Md Sohul Hossain, former Election Commissioner, Election Commission of Bangladesh and former Law Secretary, Ministry of Law, Justice and Parliamentary Affairs, Government of People’s Republic of Bangladesh; for their accurate guidance, suggestions and encouragement.

I would also like to thank the honorable fifteen personalities, i.e. legal experts, educationists and policy administrators who positively participated in the in-depth interviews of this research. Without their passionate and perfect participation and input, this research could not have been conducted so competently.

Words are perhaps inadequate to express my thankfulness to my classmate and friend Sheikh Hafizur Rahman Karzon, Associate Professor, Department of Law, University of Dhaka for helping me at different points of time for the last four years of my PhD research period. His immense support brought my work towards completion. I am grateful to Dr. Leo James Pereira, former Principal, St. Joseph Higher Secondary School, Dhaka and Shah Shamim Ahmed, Associate Professor, Institute of Education and Research, University of Dhaka for helping me in shaping the basic structure of my research paper. My gratefulness to Dr Md Abdus Salam, Associate Professor for his valuable suggestions before my first seminar of this PhD research.

I always consider my workplace as my second home. I value the enthusiasm that was shown by my esteemed colleagues, especially by Md Riaduzzaman, Acting Head, Department of Law, Daffodil International University, till the completion of the work. I acknowledge my deep appreciation to both my colleagues, Abdullah Al Arif, a PhD candidate at Macquarie University, Sydney, Australia, and Md Abu Saleh, an outstanding alumnus of South Asian University, New Delhi, India, who worked as the resource persons throughout my research. Besides my colleagues, S. M. Rayhanul Islam, an independent researcher, was a source of support and cooperation at the final stage of my PhD.

Last but not least, I would like to convey a very special thanks to my family. Words cannot express how grateful I am to both my parents, Helaluddin Ahmed and Farida Begum, former teachers, for all of the care that they took on my behalf. My beloved husband, Ali Mohammad's prayers sustained me this far. I cannot thank him enough for providing a peaceful environment to complete my research. The spontaneous support of my daughter Rabeya Bashree and my sons Ali Mahtab and Ali Mashraf during the final stage of this Ph.D. is much cherished. I appreciate the contributions of my son Ali Mashraf, who is pursuing his LLB (Honors) degree from the Department of Law, University of Dhaka, in dedicating his precious time and editorial knowledge behind this work. My one and only younger brother, Dr. Sayeed Uddin Helal, Head, Medical Wing, Center for the Rehabilitation of the Paralyzed (CRP), Dhaka, himself, was a great inspiration during my research. The keenness he has for study and research was contagious and motivational during the tough times of my PhD. And I would like to extend my sincerest thanks and appreciation to my childhood classmate-friends for their soulful prayers.

I recognize every single deed of the above mentioned names throughout the long journey and experience of my research work. Finally, I acknowledge all the persons who in one way or another contributed to the completion of this thesis for the degree of Doctor of Philosophy (PhD).

Farhana Helal Mehtab
September 30, 2017

ABBREVIATIONS

ADB	Asian Development Bank
APEID	Asia and the Pacific Program of Educational Innovation for Development
ASK	Ain O Salish Kendra
AUEO	Assistant Upazila Education Officer
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BKSP	Bangladesh Krira Shikkha Protishtan
BLAST	Bangladesh Legal Aid and Services Trust
BNWLA	Bangladesh National Women Lawyers' Association
BRAC	Bangladesh Rural Advancement Committee
CA	Content Analysis
CADE	Convention Against Discrimination in Education
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CP Rights	Civil and Political Rights
CPEIMU	Compulsory Primary Education Implementation Monitoring Unit
CRC	Convention on the Rights of the Child
DFA	Dakar Framework for Action
DPE	Directorate of Primary Education
DPSP	Directive Principles of State Policy
DSB	District School Board
EDI	Education Development Index
EFA	Education for All
ESC Rights	Economic, Social and Cultural Rights
FDI	Foreign Direct Investment

FFYP	First Five Year Plan
FPSP	Fundamental Principles of State Policy
FRs	Fundamental Rights
GDP	Gross Domestic Product
GEP	General Education Project
HRBAD	Human Rights-Based Approach to Education
HSC	Higher Secondary Certificate
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
IER	Institute of Education & Research
ILO	International Labour Organization
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDIs	In-depth Interviews
JSC	Junior School Certificate
MCQ	Multiple-Choice Questions
MDGs	Millennium Development Goals
NBR	National Board of Revenue
NCTB	National Curriculum and Textbook Board
NGO	Non-Governmental Organizations
NER	Net Enrollment Rate
NFE	Non-Formal Education
NPA	National Plan of Action
PEC	Primary Education Completion
PEDP-I	Primary Education Development Project –I
PEDP-II	Primary Education Development Program –II
PTI	Primary Teachers Training Institute
SAARC	South Asian Association for Regional Cooperation
SACEP	South Asia Co-operative Environment Programme

SDGs	Sustainable Development Goals
SFYF	Second Five-Year Plan
SMC	School Management Committee
SSC	Secondary School Certificate
TA	Thematic Analysis
TFYP	Third Five Year Plan
UCEP	Underprivileged Children's Education Program
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNGA	UN General Assembly
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UPE	Universal Primary Education
VAT	Value-Added Tax
WCEFA	World Conference on Education for All
WHO	World Health Organization
WTO	World Trade Organization

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Constitutional Responsibility of the Government of Bangladesh for Implementing Compulsory Primary Education: Issues and Challenges

ABSTRACT

Education and its dissemination are said to have links with inequality, development and poverty alleviation. All the countries of the world have consistently supported the notion that every child in every country should be given the opportunity to complete at least primary education aiming to achieve basic skills which are necessary for better living. The 1990 World Conference on Education for All set this goal to be achieved by 2000 and the World Education Forum in Dakar in 2000 reaffirmed the commitment. Millennium Development Goals (MDGs) again declared universal primary education as a major goal to be achieved. The Sustainable Development Goals (SDGs), the new global agenda, have correctly recognized the critical role of education due to the interlinkages between education and transformative change, driving progress towards sustainable development.

Primary education can be considered the most important part of the whole gamut of education as it constructs the foundation of the basic skills of the children; builds founding blocs of their values, and morality; and reduces intra and inter-generational discriminations. Free, compulsory, and universal primary education is the very first step to build a just, egalitarian, and humanity based society. Given this reality, primary education has been recognized as fundamental human right by the international organizations as well as international human rights laws.

The overall objective of this thesis is to examine the constitutional responsibility of the Government of Bangladesh for implementing compulsory primary education as well as to identify the issues and challenges related to its implementation. Specific objectives of this study are: (a) to explore the core spirit of the Bangladesh Constitution relating to primary education; (b) to determine the nature of the constitutional responsibility of the Government of Bangladesh as to primary education; (c) to examine the legal framework and measures taken by the Government of Bangladesh for implementing primary education; and (d) to identify the major issues and challenges relating to implementation of primary education in Bangladesh. This study has used a basic qualitative research approach as its methodology to determine the nature of the constitutional obligation of the Bangladesh Government as to primary education. In order to attain the objectives, the study has used two research techniques: (i) review of related

documents; and (ii) in-depth interviews of selected legal experts, educationists and policy administrators.

For attaining the major and specific objectives of the study, this thesis has been divided into seven chapters. Chapter one contains background information, and has stated objectives, significance and value of the study, and its limitations. Chapter two comprises literature review, and chapter three deals with the methodology of the study. Chapter four has analyzed the nature of constitutional responsibility of the Government of Bangladesh as to implementing free and compulsory primary education. Chapter five has discussed and evaluated the laws enacted, the policies adopted and the measures taken by the successive governments to ensure basic education. Chapter six has analyzed and interpreted the data. Chapter seven has stated the findings and discussions, underlined the issues and challenges, and finally put forward conclusions where the researcher has put forward a number of recommendations for the current and future policy makers.

The important task of this study has been to determine the constitutional responsibility of the Bangladesh Government to implement compulsory primary education according to the core spirit and nature of the Constitution. The study has found that though international organizations and international human rights laws have recognized education as a fundamental human right, the Constitution of Bangladesh is yet to recognize education as a fundamental right. It is an astounding fact that Bangladesh's supreme law of the land has not mentioned 'primary education' as a fundamental right, let alone providing a separate and detailed provision as to free and compulsory primary education in terms of its objectives, structure, and essence.

This study has found that the nature of constitutional responsibility of the Bangladesh Government is declaratory, not mandatory, as under the Bangladesh Constitution, education is a basic necessity and policy instrument. But the legal experts are in full agreement that the successive governments cannot evade their responsibility relating to free and compulsory primary education by saying that this is not judicially enforceable and the constitutional articles do not impose any mandatory obligation on the state functionaries. The apex court of Bangladesh also expressed the same view as to the constitutional responsibility of the Bangladesh Government, but put utmost importance on education saying that the state functionaries have unavoidable responsibility to ensure education for all gradually and progressively.

At the onset, this researcher fully agrees with the value of the constitutional articles relating to education, as they have said about establishing a uniform, mass-oriented, and universal system of education and extending free and compulsory education to all children; removing illiteracy and relating education to the needs of society. Nevertheless, it is a hard fact that primary education is not a fundamental human right under the Bangladesh Constitution. Even Bangladesh lags behind other South Asian countries, namely India, Sri Lanka, Pakistan, and Nepal, as those countries have progressed further in implementing the constitutional responsibilities laid down upon their governments regarding the right to primary education.

Given the fact that it was a war devastated country and Bangladesh had scanty resources, the recognition of education as a basic necessity and policy instrument together with the progressive government responsibility to ensure free and compulsory primary education for all children under the original Bangladesh Constitution may be considered satisfactory. But the failure of the consecutive governments to provide a separate and detailed constitutional provision as to free and compulsory primary education by an amendment cannot be overlooked.

As to legislative measures, the immediate government after the independence of Bangladesh had nationalized the primary schools by the Primary Education (Taking Over) Act, 1974. The Primary Education (Compulsory) Act was promulgated in 1990 to fulfill Bangladesh Government's obligation to ensure universal primary education. A National Education Policy was adopted in 2010 and an education bill is now waiting to be a full-fledged law to further promote the cause of education.

The successive governments have spectacular successes in distributing free text books among the primary school students at the beginning of the year, increasing enrollment rate particularly the enrollment of the girl students, recruiting good teachers, and developing infrastructure. Nevertheless, current and future state functionaries need to take effective measures to ensure qualitative, effective and inclusive primary education in Bangladesh. Particularly, the legal experts, educationists, and the policy administrators are in consensus that the successive governments have miserably failed to establish a uniform, mass-oriented and universal system of primary education in Bangladesh, a constitutional obligation of the state functionaries under the Article 17 of the Bangladesh Constitution.

Based on analyses, findings and detailed discussions, the study has identified nine major issues relating to free and compulsory primary education in Bangladesh. The study has clearly underlined the challenges relating to ensuring free, compulsory and quality primary education in the light of the identified issues. As to recommendations for ensuring uniform, mass oriented and universal system of primary education in Bangladesh, it seems fairly likely that the state functionaries should immediately put emphasis on ensuring quality of primary education; successful completions of primary education; recruiting more qualified teachers and making them children-friendly by proper training; taking measures for further development of infrastructure and logistics; and bringing all marginalized segments of children under an umbrella by an inclusive policy. Regarding the long term imperatives and policy decisions, this researcher considers that policy makers should deeply think of including a separate and detailed constitutional provision as to free and compulsory primary education by a constitutional amendment. What this researcher thinks appropriate and with which all the legal experts, educationists, and policy administrators are in agreement is that the current and future governments must establish a uniform, mass-oriented and universal system of education gradually within a reasonable time.

Though this qualitative study has reflected outlooks, views and the perspectives of limited participants, but it has provided knowledge-based expert perceptions, experience-based observations, insights, and recommendations for establishing a uniform, mass-oriented and universal system of primary education for all. People who are interested in the development of primary education will get a detailed and fairly credible picture regarding the issues and challenges relating to primary education. This research will help the educationists, legal experts, policy administrators and civil society members for taking positive steps for development of primary education in Bangladesh.

This study can be used by the future education and legal related researchers for critically analyzing the education system of any country in the light of the constitutional provisions, and education related laws and policies. They can analyze and determine to what extent the state functionaries of any country have been successful to achieve the objectives stated in their Constitution, laws and policies. Here lies the value and originality of this study.

CHAPTER ONE

INTRODUCTION

1.1 Introduction

Education, with the development of modern democratic society, emerging information technology, and ongoing globalization, has been considered as an effective tool to shape the mindset and outlook of the people; to develop their varied skills; and to promote overall national and global development. Education is *sine qua non*¹ for developing human resources, both educating and enlightening the people at large, and for developing further knowledge. About the utility of education in preparing rational human being, world famous scientist Albert Einstein said, “Education is not the learning of facts, but the training of the mind to think.”

Education has many tiers – primary, secondary, higher-secondary, and tertiary – and every tier has its own curriculum, textbooks, teaching staffs and its unique objectives. Among the different tiers of the education, primary education constitutes the most important part as it deals with the learning of the children; who are emotionally fragile, and sensitive; but have lots of queries and inquisitiveness. Most importantly, the children are the future citizens of the society. In this context, primary education is very challenging for the state functionaries or policy makers, school authorities, and teachers on the one hand; and both animating and agitating for the children on the other.

Primary education should be the basic human right of every child. It is not only the state functionaries, but also the parents and households, who should ensure the availability of standard primary education for their children. Primary education

¹*Sine qua non* (/sami kwei 'nɒn/) is an indispensable and essential action, condition, or ingredient. It was originally a Latin legal term for "a condition without which it could not be".

constructs the foundation of the basic skills of the children; builds founding blocs of their values, codes, and morality; and reduces intra and inter-generational discriminations. Free, compulsory, and universal primary education is the very first step to build a just, egalitarian, and socialist society, and its sustainable development.

Considering its all-extensive externalities, the UN and the UNESCO have recognized education as a fundamental human right. The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 has imposed obligations on the Member States to ensure free and compulsory primary education for their citizens. The Constitution of Bangladesh, unfortunately, has not recognized education as a fundamental human right. It is very unfortunate that Bangladesh's supreme law of the land has not mentioned 'primary education', let alone providing a separate and detailed provision containing the objectives, structure, and essence of primary education.

This researcher does not deny the value of the constitutional articles relating to education, as they have said about – (a) Establishing a uniform, mass-oriented, and universal system of education and extending free and compulsory education to all children; (b) Removing illiteracy and relating education to the needs of society; and (c) Using education as a tool to ensure basic necessities of the people, the right to work, planned economic growth, a constant increase of the productive forces, and a steady improvement in the material and cultural standard living of the people. Nevertheless, it is hard fact that education and primary education are basic necessity, and a policy instrument under the Bangladesh Constitution. Even Bangladesh lags behind other South Asian countries, namely India, Sri Lanka, Pakistan, and Nepal, as those countries have included the right to primary education in their constitutions.

For attaining the major and specific objectives of the study, this thesis has been divided into 7 chapters. Chapter one contains background information, and has stated objectives, significance and value of the study, and its limitations. Chapter two comprises literature review, and chapter three methodology of the study. Chapter four

has analysed the nature of constitutional responsibility of the Government of Bangladesh as to implementing free and compulsory primary education. Chapter five has discussed and evaluated the laws enacted, the policy adopted and the measures taken by the successive governments to ensure basic education. Chapter six has analysed and interpreted the data, information, and views got from the legal experts, educationists, and policy administrators by the In-depth Interviews (IDIs). Chapter seven has stated the findings and discussions, underlined the issues and challenges, and finally followed by conclusions where the researcher has put forward a number of recommendations for the current and future policy makers

1.2 Background of the Study

Education is a seminal human right that is instrumental to individual and social development. It not only promotes advancement of knowledge, but also ensures sustainable growth. Celebrated economist and Nobel laureate Amartya Sen put importance on education and investment in a sound social infrastructure to attain and sustain growth.² Professor Sen in his speech at the Commonwealth Education Conference said,

“In promoting friendship and loyalty, and in safeguarding the commitment to freedom and peace, basic education can play a vital part. This requires, on the one hand, that the facilities of education be available to all, and on the other, that children be exposed to ideas from many different backgrounds and perspectives and be encouraged to think for themselves and to reason.”³

The Universal Declaration of Human Rights (UDHR) states that, “Everyone has the right to education.” It says that, in addition to it, education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. The UDHR also stipulates that education should be directed towards the full development of the human personality and strengthening respect for human rights. Finally, it

² “Amartya Sen is right on growth and development”, The Economic Times, 27 September 2013

³ “Amartya Sen: The importance of basic education”, Amartya Sen’s Speech to the Commonwealth education conference, Edinburgh, the guardian, 28 October 2003

acknowledges that parents have a prior right to choose the kind of education that shall be given to their children. International Covenant on Economic, Social and Cultural Rights (ICESCR) is spectacular in that as it sets out detailed formulations of the right to education. Article 13 of ICESCR contains a general statement that everyone has the right to education and that education should contribute to the full development of the human personality.

For well-grounded reasons, all the countries of the world have consistently supported the notion that every child in every country should be given the opportunity to complete at least primary education. Moreover, education—particularly free primary school for all children—is a fundamental right to which governments committed themselves under the 1989 Convention of the Rights of the Child.⁴ Furthermore, Education for All (EFA) is an international commitment made by the countries to ensure complete primary education for all the children. Subsequently, EFA was adopted as the Millennium Development Goal (MDG) for achieving universal primary education.

In 1990, delegates from 155 countries and representatives of 160 organizations affirmed their collective commitment to education as a human right in the World Conference on Education for All in Jomtien, Thailand. They also pledged to achieve the goal by the end of the decade. However, the goal was not achieved by the year 2000. As a result, in the World Education Forum in Dakar 1,100 participants from 164 countries reaffirmed their commitment to achieve Education for All. Millennium Development Goals (MDGs) again declared the completion of primary schooling by all boys and girls and elimination of gender disparity in primary and secondary education as major goals to be achieved globally by 2015. Sustainable Development Goals (SDGs) was introduced after the Millennium Development Goals (MDGs). The role of education as envisaged by the SDGs is wider than the MDGs. The core message of the SDGs has been resonated earlier by the EFA as all the studies

⁴ UNICEF- Goal: Achieve Universal Primary Education, 2 October 2013

worldwide indicate that education for all is the key to sustainable development, both local and global. It requires education to be kept at the center of spreading new ideas and technologies, augmenting cognitive and other skills, constructing sustained growth and democratic societies.

Education for All (EFA) can be explained in such ways: (i) everyone has right to education; (ii) equal educational opportunities for all; (iii) enhanced individual capabilities and social capital; and (iv) investment in national development and human security. Birdsall and Londoño hold that more equitable distribution of education is closely linked with lower poverty, inequality and faster economic growth. More education for girls has yielded positive impacts on the health of children, immunization rates, family nutrition, and the next generation's schooling attainment.

After a long social, cultural and political struggle, Bangladesh became independent in 1971. During this struggle, the students and conscious citizens of Bangladesh dreamt for an education policy suitable for it. Accordingly, the constitutional framers incorporated the education-related aspirations into the provisions of the Bangladesh Constitution, the purpose of which was to educate all the citizens and develop a productive, enlightened, and egalitarian society. The successive governments from 1971 – 2017 have achieved remarkable successes in the sector of primary education in Bangladesh. Nevertheless, critics pose question marks as to the quality and ultimate outcome of the primary education in Bangladesh. It is a fact that the state functionaries have failed to establish a uniform, mass-oriented and universal system of primary education in Bangladesh even after 45 years of its independence.

1.3 Objectives of the Study

The general objective of this study is to examine the constitutional responsibility of the Government of Bangladesh for implementing compulsory primary education as

well as the issues and challenges of implementation. The specific objectives of this research are:

- To explore the Core Spirit of the Constitution of the People’s Republic of Bangladesh relating to primary education
- To determine the Nature of Constitutional Responsibility of the Government of Bangladesh for the development of primary education
- To examine the Legal Framework and Measures taken by the Government of Bangladesh for implementing primary education
- To identify the Major Issues and Challenges relating to implementation of primary education in Bangladesh according to the constitutional responsibility

1.4 Operational Terms

Challenges: Challenges are something that need great effort and determination in order to be done successfully. Challenges involve people to participate in a competitive situation.

Constitution: A body of the basic principles and laws of a nation or state by which a state or nation is governed. Constitution determines the powers and duties of the government and guarantees certain rights to the people in the particular nation or state.

Compulsory Primary Education: Compulsory Primary Education refers to a period of educational attendance required of all students. Depending on the country, the period of compulsory primary education is often determined by the specific age of the children. It is typically the first stage of education, coming between early childhood education and secondary education which usually takes place in a primary school or elementary school.

Curriculum: A curriculum usually contains a statement of aims and of specific objectives; it indicates some selection and organization of content, it either implies or manifests certain patterns of learning and teaching, whether because the objectives demand them or because the content organization requires them. Finally, it includes a program of evaluation of the outcomes.⁵

⁵ Taba in Curzon, 2004, 185; Quoted by Wilson, 2004, 508.

Directive Principles of State Policy: The Directive Principles of State Policy (DPSP) are the set of principles given to the central and state governments of India, to be kept in mind while framing laws and policies. These provisions, contained in Part IV (Article 36-51) of the Constitution of India. DPSPs are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws.

Drop-out: A drop-out is someone who leaves school or institution before completing studies.

Economic, Social and Cultural Rights: These rights are known as socio-economic rights that includes right to education, right to housing, right to adequate standard of living, right to health and the right to science and culture. Economic, social, and cultural rights are the freedoms, privileges and entitlements that individuals and communities require to live a life of dignity.

Education Policy: It is the collection of laws and rules that govern the operation of education systems in a country. Basically it consists of the principles and government policies in the educational sphere which occurs in many forms for different purposes through the institutions. Education policy directly influences the education at people engage in.

Enrolment: Number of students officially enrolled in a given grade or level of education regardless of age in a school or institution.

Fundamental Rights: Fundamental Rights are the basic rights of the people which are guaranteed by the Constitution of a country. These rights give the citizens dignity of life in an atmosphere of freedom and justice.

Fundamental Principles of State Policy: The Fundamental Principles of State Policy are the guidelines or principles given to the institutes governing the state of any country, to be kept in citation while framing laws and policies. In other words, it indicates primarily those principles which are considered fundamental in matter of policy formulating by the government. From the view of Bangladesh Constitution, though fundamental principles of state policy behave as fundamental guide to making the policies and laws, and interpreting the Constitution and legislation but they have no judicial enforcement.

Issues: Issues are some specific points or matters of which are special o public importance. An issue can be described as a subject or problem that people are thinking and talking about.

Non-Governmental Organizations: A non-governmental organization (NGO) is a non-profit, citizen-based group that functions independently of government. NGOs, sometimes called civil societies, are organized on community, national and international levels to serve specific social or political purposes, and are cooperative, rather than commercial, in nature. Examples of NGOs include those that support human rights, advocate for improved health, education or encourage political participation.

Sustainable Development: Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development is maintaining a subtle balance between the human need to improve lifestyles and feeling of well-being on one hand, and on the other, preserving natural resources and ecosystems, on which we and future generations depend.

Second-Generation Right: It is the socio-economic right. Second-generation rights guarantee equal conditions and treatment. They are not rights directly possessed by individuals but constitute positive duties upon the government to respect and fulfill them. Second-Generation Rights or Socio-economic rights began to be recognized by government after World War II and are embodied in Articles 22 to 27 of the Universal Declaration. They are also enumerated in the International Covenant on Economic, Social, and Cultural Rights.

Universal Declaration of Human Rights: It is an international document that states basic rights and fundamental freedoms to which all human beings are entitled. This declaration consists of thirty articles affirming an individual's rights but they do not have any legal bindings. The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly on 10 December 1948.

1.5 Right to Primary Education

The right to education was known as a second-generation right. As such, it did not appear in the initial declarations of the modern period, nor did it appear in the declarations from the dawn of United States independence or the *Déclaration des Droits de l'Homme et du Citoyen* (*Declaration of the Rights of Man and of the Citizen*) of 1789. It was when social rights became prominent in the second half of the nineteenth century that the right to education was included, first in national normative instruments and later, in the second half of the twentieth century, in international declarations and conventions: the Universal Declaration of Human Rights, 1948, the European Convention on Human Rights and Fundamental Freedoms, 1953, the International Covenant on Economic, Social and Cultural Rights, 1966, and the Convention on the Rights of the Child, 1989.

The various ways of conjugating such sets of rights gave rise to several tensions, including those between the state and the individual, the parent and the child, autonomy and belonging, inclusion and exclusion, sovereignty and authority. The first internationally agreed definition of the right to education was formulated in Article 26 of the 1948 Universal Declaration of Human Rights and which provides for:

- “1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.”

The aim and contents of the universal right to education is determined and shaped through a number of iterations. Emerging from its earlier versions, including a basic right to free and compulsory education it developed to explicate aims and purposes,

and finally; the adoption of the prior responsibility (right) of parents to choose the kind of education that their children are to be given.⁶

Education is an important form of human capital investment. Yet, not all children have a chance to go to school. Some children from poor households are likely to be poor in the future because their parents are unable to invest in their education.⁷

Education in developing countries takes place under conditions that are very different from those in developed countries. Differences exist in curriculum, school environment, teacher student ratio, teacher qualification, and the health and nutritional status of the learners.⁸ Although primary education has been accepted as a human right for almost half a century and it is well known that quality primary education is vital for the development of any nation, it is still far from being universally available in most developing countries.⁹ A majority of developing countries still face serious challenges in advancing the basic education of their young and adults.¹⁰

1.6 Compulsory Primary Education

Compulsory education has been adopted throughout the world due to the genuine belief that it leads to increased literacy and discourages child labor. Moreover, additional years of schooling are associated with better health, employment, and earnings. The United Nation's Millennium Development Goals aim for all countries to offer universal primary education by 2015, which in turn will help reduce disparities in education and long-term outcomes, such as income, among social

⁶Ylva Bergstro, "The Universal Right to Education: Freedom, Equality and Fraternity" *Stud Philos Educ*, Springer (2010) 29:167–182 at 1169.

⁷Xin Meng · Jim Ryan, "Does a food for education program affect school out comes? The Bangladesh Case" *J Popul Econ* (2010) 23:415–447.

⁸Lockheed, M. E. 1993. The Condition of Primary Education in Developing Countries, in H. M. Levin and M. E. Lockheed, eds., *Effective Schools in Developing Countries*. London: The Falmer Press.

⁹Colclough, C., with Lewin, K. M. 1993. *Educating All the Children: Strategies for Primary Schooling in the South*. New York: Oxford University Press.

¹⁰Levin, H. M. 1993. Accelerated Schools in the United States: Do They Have Relevance for Developing Countries, in H. M. Levin and M. E. Lockheed, eds., *Effective Schools in Developing Countries*. London: The Falmer Press.

groups. However, it is important to assess the institutional factors that drive to the benefits of compulsory education. For example, although economic returns to compulsory schooling have been high in many countries, studies show that compulsory schooling yielded zero returns in West Germany from 1948 to 1970¹¹ and in France in 1967.¹² Both studies argue that the magnitude of the returns depends on national labor institutions and schooling systems. Regarding health outcomes, whereas Llera-Muney¹³ and Oreopoulos¹⁴ find that an additional year of compulsory schooling improved the health indicators of individuals in the US, such as increased life expectancy and reduced incidence of physical or mental health disabilities, other researchers¹⁵ find little evidence of positive effects on mortality due to changes in compulsory-schooling laws in the UK and Sweden.¹⁶

Like many other developing countries, Bangladesh is facing difficulties in eradicating illiteracy despite having constitutional obligations. These difficulties primarily reflect the economic and social status of the country.

1.7 Shaping Primary Education in Bangladesh

The Economist on December 23, 1995, recalled that Henry Kissinger had labeled Bangladesh a basket case but added that there is a more hopeful story.¹⁷ This was confirmed when the country's position was 146 out of 174 countries surveyed in the

¹¹ Pischke, J.-S., & von Wachter, T. (2008). Zero returns to compulsory schooling in Germany: Evidence and interpretation. *The Review of Economics and Statistics* no., 90(3), 592–598. *Education for all: Quasi-experimental estimates of the impacts of compulsory primary education in Hong Kong*

¹² Grenet, J. (2013). Is extending compulsory schooling alone enough to raise earnings? Evidence from French and British compulsory schooling laws. *Scandinavian Journal of Economics* no., 115(1), 176–210.

¹³ Llera-Muney, A. (2005). The relationship between education and adult mortality in the United States. *Review of Economic Studies* no., 72(1), 189–221.

¹⁴ Oreopoulos, P. (2007). Do dropouts drop out too soon? Wealth, health and happiness from compulsory schooling. *Journal of Public Economics* no., 91(11–12), 2213–2219.

¹⁵ Clark, D., & Heather Royer. Forthcoming. “The effect of education on adult health and mortality: Evidence from Britain.” *American Economic Review* 2012.

¹⁶ Dongshu Ou, “Education for all: quasi-experimental estimates of the impacts of compulsory primary education in Hong Kong” *Asia Pacific Educ. Rev.* (2013) at 267. n

¹⁷ Craig Baxter, *Bangladesh: From Nation to a state*, West View Press, USA at 131.

1992 calculation of Human Development Index.¹⁸ Bangladesh faces no greater problem than its ever-increasing population. Related to the problem of overpopulation is the problem of developing the educational system.

On achieving independence in 1971, Bangladesh inherited a disparate and incomplete education system. Over the next 20 years very little progress was made in the universalization of primary education. The national literacy rate increased only 6.3 per cent in the first three decades after Independence.¹⁹ Due to incompleteness of the system, many children did not attend school.²⁰ Significant gender variation existed in enrolment and drop-out rates were unacceptably high.²¹ The Compulsory Primary Education Act was implemented all over the country only in 1993. There are several categories of schools in operation to provide primary education in Bangladesh. The majority of these schools provide formal education following the curricula set by the National Curriculum and Textbook Board (NCTB). These schools may be government or private. There are also several non-governmental organizations (NGOs) that provide non-formal education. These organizations generally work in the rural areas to serve the grassroots level. The non-formal education program of the Bangladesh Rural Advancement Committee (BRAC) is the largest one, which covers more than 1.1 million children.²²

Education is the principal ingredient to terminating the cycle of poverty, to closing the gap between the highest and lowest income states. While education alone will not end poverty, its pervading nature renders it essential to attaining other global objectives.

¹⁸ Human Development Report, 1995 (New York: Oxford University Press for the United Nations Development Programme, 1995), table 1, P. 157.

¹⁹ Bangladesh Bureau of Education Information and Statistics 1992

²⁰ Brock, C. and Cammish, N. K., *Education Research: Factors Affecting Female Participation in Education in Six Developing Countries*, London: Overseas Development Administration (1991).

²¹ Nath, S. R., Mohsin, M. and Chowdhury A. M. R., Gender Difference in the Arithmetical Knowledge of Children in Bangladesh. *Research in Education* (1997) 58.

²² Samir R. Nath, Kathy Sylva and Janice Grimes “Raising Basic Education Levels In Rural Bangladesh: The Impact of a Non-Formal Education Programme” *International Review of Education – Internationale Zeitschrift für Erziehungswissenschaft – Revue Internationale de l’Education* 45(1): 5–26, 1999

Hossain²³ after evaluating the historical process of the existing macro-structural administrative situation with regard to primary education in Bangladesh opines that:

“Bangladesh school education system is left with an extremely centralized, non-participatory, non-transparent and bureaucratic educational administration, management and planning system. The system appears to be quite inadequate for the challenge of achieving the goal of education for all, including UPE, in Bangladesh.”

Primary education is the foundation on which the nation's edifice of education has to be built in and the ground laid for the individual's pursuit of further learning and fulfillment of life's potentials. From the time of the British rule to Pakistani regime and finally Bangladeshi system, education has evolved not only in methods but also in fundamental character like language and governance. In other words, throughout history, Bangladesh has gone through various phases of education systems and these phases are Hindu Period, Muslim Period, British Period, Pakistan Period and Present Situation.

In the independent Bangladesh, two laws related to Primary Education were enacted; Primary Schools (Taking Over) Act, 1974 and Primary Education (Compulsory) Act 1990. In order to fulfill the constitutional obligation of Universal Primary Education, the Government promulgated the Primary Education (Compulsory) Act 1990. To implement this Act and to co-ordinate, monitor and observe the progress of implementation, Compulsory Primary Education Implementation Cell was created under the Ministry of Education in 1990. Subsequently the word "Cell" was replaced by the word "Unit". The Unit started preparatory activities for implementation of Compulsory Primary Education from January 1991 as a wing of the Ministry of Education. At present Compulsory Primary Education Implementation Monitoring

²³ See Hossain, M.H., 'Decentralization of Educational Management and Planning of Primary Education in Bangladesh' in Jalaluddin A.K. et al. (eds), *Getting Started : Universalizing Quality Primary Education in Bangladesh*, University Press Ltd. (UPL), Dhaka, pp. 74-113.

Unit (CPEIMU) is a unit under the Ministry of Primary and Mass Education, Government of Bangladesh.²⁴

1.8 State of Different Streams of Primary Education in Bangladesh

The Constitution of Bangladesh, adopted in 1972, provided for free and compulsory education as one of the “fundamental principles of state policy”. Article 17 of the Constitution says that the state shall adopt effective measures for the purpose of— establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law - relating education to the needs of the society and producing properly trained and motivated citizens to serve those needs; and removing illiteracy within such time as may be determined by law. At present, there are different streams of primary education existing in Bangladesh.

It is difficult to outline one single uniform method in primary education. Some argue that non-uniformity within different streams may cause barrier to the realization of constitutional and international policy goals. Generally speaking, there are three major systems: Public Schools (Government and Registered), Private (Nongovernment), and the Madrasah. Most schools of Bangladesh are under the government (Government and Registered) where most of the students study. Nevertheless, Madrasah account for a huge number of students while English Medium schools are comparatively small in number and mostly situated in major cities.

Overview of Primary Education in Bangladesh

Though there are three major systems in Bangladesh: Public Schools (Government and Registered), Private (Nongovernment), and the Madrasah; usually these systems

²⁴Compulsory Primary Education Implementation Monitoring Unit (CPEIMU), Ministry of Primary and Mass Education, Government of Bangladesh

are introduced in three ways, General Education, English Medium Education and Madrasah Education.

a. General Education

General Education is mostly provided in Bangla and known as Bangla medium school. The first level of education is comprised of 5 years of formal schooling (class/grades I - V). Education, at this stage, normally begins at 6+ years of age up to 11 years. Primary education is generally imparted in Government Primary School, Registered Non-Government Primary School, Non-Registered Non-Government Primary School, NGO-run Primary School, Kindergarten Primary School, BRAC Non-Formal Primary School, Pre-Cadet Primary School, and Underprivileged Children's Education Program (UCEP) School etc.

The English Version schools generally follow the same structure as their Bangla Medium/Version counterparts but, as the name implies, students in the English Version gain a stronger foundation in English.

b. English Medium Education

English Medium Schools in Bangladesh are providing an alternate form of private education. Even though the numbers of the English Medium Schools are comparatively not so high but their demand is gradually increasing. They follow mostly the British syllabus and curriculum which may create the barrier in grooming with the sense of nationalism. Children of English medium schools may become apathetic towards their own country and culture due to lack of proper courses in Bangladesh history and culture.

c. Madrasah Education

The old scheme of madrasah education was introduced in 1780 with the establishment of Calcutta Madrasah which has been continuing with some modifications according to the demand of time. The government has been providing government grants to the

teachers and employees of the non-government madrasahs like other non-government education institutions (schools and colleges). Ebtedayee education is the first level of madrasah education equivalent to primary level of general education. It is comprised of 5 years of schooling (grades I - V). Normally, the children of 6 years of age begin in class 1 and finish class V at the age of 11 years. Ebtedayee education is imparted in independent Ebtedayee Madrasahs and Ebtedayee sections of Dhakhil, Alim, Fazil and Kamil Madrasahs.

Besides the government approved Madrasah, there is another kind of madrasah, named, Qawmi Madrasah. Qawmi is not regulated by the Bangladesh Madrasah Education Board. This type of madrasahs are supported almost exclusively by donation. The theological curriculum of the Qawmi madrasahs predominantly follow the Islamic Deobandi model. In the past, the degrees they conferred lacked accreditation or official recognition. Two years after the founding of the privately run Befaql Mudarressin education board for Qawmi madrasahs, the Government of Bangladesh began to recognize some Qawmi degrees.²⁵

Bangladesh had not yet been able to lay down a common policy for primary education that reflects basic spirit of the Constitution of the People's Republic of Bangladesh. There exist different stakeholders apart from government with notable shifts and variations in course curriculums and teaching-learning methods. Still, provisions ensuring universal primary education are part of fundamental principles of the State Policy of the Constitution. On the contrary, India made significant progress in universalizing primary education. Free and compulsory education for all children from six to fourteen years had been included in the Indian Constitution as a fundamental right in its 86th amendment in 2002. Then, the Act of 2009 made it obligatory for the state to ensure that every child gets free elementary education. The Indian Constitution not only included a provision but also made the government

²⁵ Syed Mahbubul Alam Al-Hasani, et al, Creating a Practicing Muslim: A Study of Qawmi Madrasah in Bangladesh, *British Journal of Education, Society & Behavioural Science*, 20(3): 1-9, 2017; ISSN: 2278-0998

accountable for ensuring that a child attends school. In Philippines, the amendment to the Constitution declares that

“The State shall protect and promote the right of all citizens to quality education, of all levels, and shall take appropriate steps to make such education accessible to all.”

In the context of Bangladesh, Article 17 of Constitution mentions free and compulsory education. It articulates that

“The State shall adopt effective measures for the purpose of (a) establishing a uniform, mass oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law and (b) relating education to the needs of society and developing properly trained and motivated citizens to serve those needs; removing illiteracy within such time as may be determined by law.”

The government gave commitments in this regard on various national and international platforms. In the National Education Policy of 2010, a clause asserts that- 1. Formulation of Consolidated Education Law: Steps will be undertaken in the light of this Education Policy and taking into account all laws regulations and policies, directives related to education to formulate a newly coordinated Education law and to ensure its proper implementation. This is a big undertaking. Several policies and conventions, including CRC; ICESCR, 1966; CEDAW, 1979; UDHR, ratified by the government of Bangladesh reiterates this statement. Government of Bangladesh has formulated a draft Education Law 2013 and that draft law was posted on the Ministry of Education’s website on August 5, 2013, for opinion from different strata of the society. Based on this law, a draft Education Law 2014 was prepared, and it was shared for ideas with educationists and concerned government officials. Voices were raised for the right to quality primary education agenda considering the budgetary implication and institutional capacity. It is expected that government will take appropriate measures for approving the Right to Education Law as per the commitment of the Education Policy 2010.

Most countries of South Asia – Pakistan, India, Sri Lanka and Nepal, have included the right to primary education in their Constitution. Why is Bangladesh not being able to do the needful to ensure that the same happens here? The country made declarations and ratified different conventions in this regard. Bangladesh has made different kinds of amendments to the Constitution at different times, but unfortunately, the country has not been able to do the same in this case.

1.9 Significance of the Study

Bangladesh is a developing country with a population of about 160 million. Its Constitution cast heavy responsibility on the State functionaries to ensure education for all. Article 17 of the Constitution of Bangladesh imposes obligation on the State to adopt effective measures for “establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law.” Under this article the state is obliged to relate education to the needs of society and remove illiteracy. In addition to Article 17, there are a number of constitutional provisions, namely, Articles 15, 16, 28 and 41, which state education with much emphasis. Particularly, Articles 15 and 16 clearly declare that education is a basic necessity and improvement of education is required to remove disparity in the living standards between urban and rural areas.

To fulfill the constitutional obligation the first government of Bangladesh formed Kudrat-e-Khuda Education Commission. Report of this commission could not be materialized because of an unfortunate change of state power in 1975. In the next 41 years, more than 6 Education Commissions/ Committees were formed. Moreover, Bangladesh signed the Declaration of the World Conference on Education for All. Successive governments repeated their commitments in the EFA ministerial meetings held in Indonesia in 1995, in Pakistan in 1997, and in China in 2001. The government reaffirmed its commitment in the Education Forum, Dakar to achieve EFA goals by 2015. Furthermore, Bangladesh Government’s National Plan of Action for Education for All endorses all the EFA goals to ensure basic learning for all.

After independence, Bangladesh had only 16.8% literacy rate. Successive governments have taken different initiatives to promote the cause of education since then. Immediately after the independence, the government nationalized 36,165 primary schools and regularized them under the Primary Education (Taking Over) Act, 1974. To realize the constitutional provisions and international commitments, the government also enacted the Primary Education (Compulsory) Act, 1990.

Bangladesh's rank was 11th in terms of complete basic education, 5th in terms of state action for EFA programs, 6th in terms of quality inputs, 10th in terms of gender equity and 10th in terms of overall equity among the 14 developing countries from Asia Pacific. Bangladesh had ranked 105th in Education Development Index (EDI, Value of 0.663) out of 121 countries. Actual EDI value decreased from 0.692 in 2005 to 0.663 in 2006, indicating sliding back in EDI during that one year. It ranked 83rd in total primary NER (Net Enrollment Rate), 116th in adult literacy, and 102nd in Gender related EFA index and 116th in survival rate to grade V.²⁶

The UNESCO report 2006 revealed that a quarter of young Bangladeshis cannot complete primary education and are left without the required skills to get a job. There are over 8 million such people aged between 15 and 24 years. The data placed the country among the top 5 nations in the world which have the most number of young people not completing primary school. Secondly, Government has budget constraints to achieve EFA goals. Moreover, it does not have sufficient infrastructure, adequate number of efficient teachers, and other logistics. In spite of commitments and efforts to achieve EFA goals, the progress rate is not very prospective.

A recently published Education Watch Report²⁷ indicates that literacy rate for the 11+ population increased from 41.4% in 2002 to 51.3% in 2016. Primary school education is the main source for literacy attainment, but the quality deficits in schooling has also been a hindrance on progress in literacy. Strong relationship between literacy status and years of schooling completed indicates contribution of primary school education.

²⁶ UNESCO, EFA Monitoring Report, 2006.

²⁷ Report of Education Watch, 2016.

The Report also shows that from 2002 to 2016, literacy skills improved somewhat at different grade levels, but it still remains unsatisfactory for primary grade completers. More than one third (1/3) of the fifth grade completers were found to be non-literate in 2002. The situation has not improved much since then. The whole primary education is constrained by two formidable barriers. First, still 30 percent (approximately) of the total people of this country are poor. Poverty has excluded thousands of children from primary education. The majority of these ‘excluded children’ are either living in isolated rural communities, or disaster-prone areas, or urban slums, or areas having marginalized ethnic minorities. Moreover, many poor parents are not sufficiently motivated to send their children to schools.²⁸

This study has determined the constitutional responsibility of Bangladesh government to ensure compulsory primary education for all. Under the constitution and as a signatory of the education related international instruments, Bangladesh government is pledge-bound to ensure primary education for all. To fulfill its obligation, successive governments have enacted laws and taken measures and programs. The study will assess the value of the laws and effectiveness of the measures and programs taken by the incumbents to make all the children complete their primary education. The distinctive feature of this research lies in the fact that it will make in-depth discussion of the findings and issues relating to primary education in Bangladesh, which, among others, includes objectives and importance of quality primary education. After assessing the provisions of the laws, effectiveness of the government programs and determining and analyzing the issues, the study will underline the challenges to be addressed by the state functionaries to ensure primary education for all. Finally, the research will make a number of recommendations for further study.

²⁸ Report of Education Watch 2016: “Literacy, Skills, Lifelong Learning: SDG4 in Bangladesh: Where Are We” published by Campaign for Popular Education (CAMPE) in cooperation with European Union of Bangladesh, December 2016

In the above mentioned contexts, this research is significant to explore the state responsibility regarding compulsory primary education. Moreover, this study will be an important contribution to promote the cause of primary education in Bangladesh, as the policy makers, and successive governments will get nuanced ideas about the constitutional imperatives as to primary education.

1.10 Limitations of the Study

This study is aimed at examining the constitutional responsibility of the Government of Bangladesh for implementing compulsory primary education as well as the issues and challenges of implementation. To the best of the knowledge of the researcher of this study, this type of research has not been done earlier in Bangladesh. This is a new arena of research of law and education in this country. Therefore, literature related to the research topic has been either scanty or hardly available. However, this researcher has examined and reviewed the Government documents related to compulsory primary education, Constitution of People's Republic of Bangladesh, the Primary Education (Taking Over) Act, 1974 and the Primary Education (Compulsory) Act, 1990, Education Policy 2010, draft Education Law 2016. Lastly, the researcher studied the international instruments related to primary education where Bangladesh is a signatory. Moreover, samples for In-depth Interviews (IDIs) are limited to fifteen (15) legal experts, educationists, and policy administrators.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The main aim of this research study is to examine the constitutional responsibility of the Government of Bangladesh for implementing compulsory primary education as well as the issues and challenges of implementation. Research study requires systematic way of investigation where literature review gives a guideline for successful completion of research. The purpose of this literature review is to conduct a comprehensive search and systematic review of literature with a view to finding out the previous works done in this area. In dealing with above mentioned research aim and to fulfill the objectives of the study, relevant sources are required to be reviewed methodically. Pertinent treaties, Conventions, Statutes, Resolutions of UN, Reports of different international organizations, relevant provisions of the Constitution of different countries, national legal framework of Bangladesh, case-laws, statement and official documents of the Ministry of Primary and Mass Education, Reports of different Education Commissions and other pertinent documents relating to issues and challenges for the universalization of primary education in line with constitutional obligations are brought into picture to look at from a scrutinizing view. Important sources including books, journals, articles, online resources, statements, presented papers, documents of relevant national, international and non-governmental organizations and other materials are taken into account for proper analysis, comprehensive understanding and consistent conclusion.

From the sources, important information has been collected and qualitative method has been used for nuanced analysis of the information which, inter alia, includes development of primary education policy in Bangladesh, evolution of state responsibility for primary education, constitutional provisions relating to primary education and other laws relating to primary education. The following literature

review therefore appears to be helpful in building the speculative construct of this study as well as conducive to understanding the context of the relevance and appropriateness of this research.

2.2 Review of Literature

The present research endeavors to explore primarily four research objectives. The first objective of the research is “to explore the core spirit of the Constitution of the People’s Republic of Bangladesh relating to primary education”.

Since the **first objective** is to find out the core spirit of the constitution, so it is pertinent to start with the Proclamation of Independence. **Justice Mustafa Kamal** in his book “**Bangladesh Constitution: Trends and Issues**” reveals that this document is the first constitutional document by which the new country made a constitutional start. It contains the genesis of the creation of the country. The primary philosophy behind the evolution of Bangladesh was to ensure equality, human dignity and social justice. The country dreamt of such a society which will be free from all kinds of social and economic injustice and disparities.²⁹ This goal envisions of establishing a country having a uniform education system for the Bangladeshi nationals irrespective of religious, economic or any other differences.

The preamble of the Constitution visualizes the core spirit of the constitution. The preamble clearly states the purposes of establishing this State, which unequivocally declares that “...It shall be a fundamental aim of the State to realize through the democratic process a socialist society, free from exploitation—a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens...” The plain interpretation of the preamble hints that the framers of the Constitution wanted to establish an egalitarian society free from exploitation with the belief that bringing social and economic

²⁹ Justice Mustafa Kamal, “Bangladesh Constitution: Trends and Issues”, University of Dhaka, 1994.

transformation, through a democratic process, would create a just society having uniform method of primary education at the very foundational level of enlightenment.

Dr Kamal Hossain in an interview expressed that the core spirit of the Constitution lies within the preamble and the fundamental principles of the state policy. He said that the fundamental principles of state policy as stipulated in Part II of the Constitution sought to spell out the vision of an exploitation-free society that we believed represented the aspirations of the people of Bangladesh. It provided that national unity and solidarity of the people of Bangladesh were the basis for which the Republic was established. It further provided that a socialist economic society would be established with a view to ensuring the attainment of a just and egalitarian society that will be free from exploitation. It was provided that the Republic would be a democracy, in which fundamental human rights, freedom and the dignity of worth of the human person would be guaranteed.³⁰

While it is argued in theory that primary education as a part of ESC rights is not justifiable, there is sufficient case laws to demonstrate otherwise. However, **Shiffat Sharmin** argues that the core spirit of the constitution hints that ESC rights are seen as basic human rights and the realization of these rights, which was policy in nature, is now considered as a duty to be fulfilled by the State in collaboration with national judicial institutions. She also added that Bangladesh, like other third world and communist countries placed a heavy emphasis on the importance of realizing ESC rights. The cotemporary human rights jurisprudence suggests parity between CP rights and ESC rights and describes both these two sets of rights as universal, indivisible, interrelated and interdependent. She concludes by examining the core spirit of the constitution and remarks that ESC rights are undoubtedly justifiable and it

³⁰ Dr. Kamal Hossain, The Last Word: On Realizing Our Constitutional Dreams, The Daily Star forum, Volume 3 Issue 11, November 2010

largely depends upon court to take the responsibility and that judges should be activist in promoting ESC rights to fulfill constitutional responsibility.³¹

Mohammad Badruzzaman and Md. Nannu Mian, analyzing the obligation of the government of Bangladesh proposed right to primary education to be included within part two of the constitution to comply with constitutional obligations and core spirit. The evaluation method and course curriculum must be uniform in all streams of primary education to ensure uniform and universal education. They argued that Bangladesh has a constitutional obligation for the right to education that is pursuant to the provision of Article-8(2) of the Constitution, the constitutional provisions of “equality clause” contemplated under Article 27, “equality of opportunity in public employment” contemplated under Article 29 and “protection of the right to life and personal liberty” contemplated under Article 32. These must be read and interpreted together with the provisions of Article 17 of the Constitution. On the other hand, equality of opportunity in public employment must necessarily include equality of access to the opportunity in public employment, which must encompass the obligation of the State to adopt necessary measures to achieve the full realization of the contents of Article 17 to allow the citizens to be properly trained or educated to get access to Article 29 and not to be deprived of life to enjoy the rights enshrined in Article 32. All the mentioned articles justify free and compulsory education as a fundamental right of the people. Hence, there is no scope to deny the demand for constitutional recognition of education as a fundamental right.³²

MD. Abu Naser Al Asad focused on the basic objectives of the constitution setting two sets of rights. He mentioned that the framers of the Constitution intended to give both social and economic ideals and the Constitution serves two primary purposes. First, the constitution lays down the form of political democracy and second, it also

³¹ Shiffat Sharmin , A Review on Judicial Activism in Enforcing Economic, Social and Cultural Rights The Chittagong University Journal of Law, Vol. XVII, 2012 p 1-23.

³²Mohammad Badruzzaman and Md. Nannu Mian, Right to Education in Bangladesh: An Appraisal for Constitutional Guarantee, Journal of Studies in Social Sciences, Volume 13, Number 1, 2015.

lays down the ideal of economic democracy and every government whoever comes into power shall strive to bring about economic democracy. He drew the conclusion that the core spirit of the constitution directs progressive realization of ESC rights in a democratic manner, ensuring the principle of non-discrimination. He quoted Dr. Ambedker for obligating the government to be the bearer to fulfill constitutional mandate.³³

The second and the most decisive **objective of the research** is “to determine the nature of constitutional responsibility of the Government of Bangladesh for the development of primary education”. It starts with the constitutional mandate and the nature of its responsibility. **Article 17** of the Constitution says,

- “The state shall adopt effective measures for the purpose of—
- (a) establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;
 - (b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs;
 - (c) removing illiteracy within such time as may be determined by law.”

Article 15 says that,

- “It shall be a fundamental responsibility of the State to attain through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens—
- a. the provision of the basic necessities of life, including food, clothing, shelter, education and medical care...”

Since both these Articles are part of fundamental principles of the State policy where

Article 8(2) specifically declares that these principles

“...shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable”.

³³Md. Abu Naser Al Asad, Constitutional Status and Necessity of Fundamental Principles of State Policy incorporated in the Constitution of Bangladesh, UAP Journal of Law, Vol. 1, No. 1, 2010.

Moreover, the preamble clearly states the purposes of establishing this state, which unequivocally declares that

“...It shall be a fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation—a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens...”

It has become a matter of longstanding debate whether the right to primary education is judicially enforceable in Bangladesh.

Muhammad Ekramul Haque takes effort to examine the nature of ESC rights under the constitution. The constitution of Bangladesh places primary education as a part of ESC rights. These rights are known as fundamental principles of state policy. The constitution itself qualifies these as principles not laws. Besides, education has been declared as a part of basic necessities. Those basic necessities are a part of economic rights of the people.³⁴

Md. Jobair Alam and Md Ataul Karim justifies the philosophy of the distinct status of ESC rights of the constitution. They point out that it was extremely difficult for the war-driven country to make those ESC rights directly judicially enforceable.³⁵

Constitutional Law of Bangladesh³⁶ written by **Mahmudul Islam** is an authoritative book to understand the interpretation and application of the constitutional provisions. Mr. Islam has discussed the constitution of Bangladesh in six chapters; each of them deals with one significant topic. The introductory chapter, i.e. Chapter one focuses on the preliminary issues including the historical background, rules of interpretation of constitution, preamble, fundamental principles of state policy, rule of law etc. Since “right to education” is placed under “fundamental principles of state policy,” this part is most relevant to the present research.

³⁴ Muhammad Ekramul Haque, *“legal and constitutional status of the fundamental principles as embodied in the constitution of Bangladesh”* The Dhaka University Studies, Part F, Vol.XVI, 2005, at 45.

³⁵ Md. Jobair Alam and Md Ataul Karim, *Realizing ESC Rights through Budgetary Allocation: A viable alternative for Bangladesh*, 13:1 & 2 (2013) Bangladesh Journal of Law at 134.

³⁶ Constitutional law of Bangladesh, Mahmudul Islam, 2nd edition, Mullick Brothers, 2003

The scheme of fundamental principles of state policy is placed in Chapter 2 of Bangladesh Constitution and provides a set of rights which are popularly known as economic and social rights. These principles include, inter alia, promotion of local government institution, participation of women in all spheres of national life, establishment of a uniform, mass-oriented and universal system of education, free and compulsory primary education, raising level of nutrition, promotion of international peace, security and solidarity etc.

Article 8(2) of the Constitution states that these principles shall be fundamental to the governance of Bangladesh and shall be applied by the State in making of laws, however, these principles are not judicially enforceable. Although in a number of instances these principles were sought to be enforced through the court, in most cases the court responded to those petitions negatively. In one such case, *Winifred Rubie v. Bangladesh*, the High Court Division and the Appellate Division were of the opinion that the fundamental principles are, according to the scheme of the Constitution of Bangladesh, not enforceable. Mr. Islam is of the view that while defining “public purpose” in relation to education, the High Court division was under constitutional obligation to consider Article 17 of the Constitution that mandates the state to adopt effective measures to establish a uniform, mass-oriented and universal system of education.

According to Mr. Islam, there is a clear distinction between the enforceability of the principles of state policy and the interpretation of laws in conformity with those principles. This view of the author is an echo of the provision of Article 8(2) of the constitution that says, these fundamental principles of state policy shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens. This also means that other provisions of Bangladesh Constitution shall be interpreted in conformity with these principles of state policy.

In the UN General Assembly “**Report of the Special Rapporteur on the right to education**”³⁷ by **Kishore Singh** deals with “right to education” from a legal perspective, both in national and international context. This report also investigates the judicial enforceability of right to education through judicial and quasi-judicial mechanism. According to the author, the role of adjudication is to ensure that the right to education as an internationally recognized right as established by numerous treaties and legislation is respected, protected and fulfilled. Its most basic tenets, free and compulsory primary education for all the progressive realization of secondary and tertiary education, and the immediate non-discrimination in their application, are universally recognized.

The report examined the justifiability of the right to education as a fundamental human right. The report shed light on the enforcement of the right to education through judicial and quasi-judicial mechanisms. It also presents the existing legal framework and available jurisprudence on right to education at the national, regional and international levels.

In the report, the author mentions some international instruments that establish right to education, e.g. UNESCO’s Convention against Discrimination in Education, 1960, and articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, 1966. The author also focuses on state obligations for the right to education under International Human Rights Law. Here the author says that states have the primary responsibility to realize the right to education for all individuals in their territories.

The report deals with domestic legal obligations for the right to education and the author highlights that constitutions and laws should provide for the right to education in line with state obligations under these. In another part of the report, the author

³⁷ United Nations, General Assembly, Report of the Special Rapporteur on the right to education, Kishore Singh, A/HRC/23/35, 10 May 2013

examined the justiciability of the right to education in national legal systems. The author acknowledges the fact that justiciability of right to education has its bases in national legal systems which provide “grounds” for the “right of action.”

While discussing the judicial and quasi-judicial mechanisms for the enforcement of the right to education, the author mentions that judicial mechanisms such as national, regional and international courts are of key importance to adjudicate claims based on national or international law and quasi-judicial mechanisms, such as ombudspersons, and national human rights institutions play an important role in protecting the right to education by monitoring its implementation at the national level.

Moha. Waheduzzaman came up with progressive views analyzing latest case laws and he affirmed that Bangladesh has reached such a position where ESC rights should be guaranteed. He started his paper mentioning that incorporation of Economic, Social and Cultural (ESC) rights in the constitution evidences a state’s concern for creating conditions which will allow every individual to develop his maximum potential. He further added that the principal object of having social and economic provisions in a constitution is simply to put the state under an obligation to utilize its available resources maximally in order to redress social and economic imbalances and inequalities and thereby creating equal opportunities for all. He claimed that these rights are indispensable for an individual’s dignity and the free development of his personality.³⁸ This work has significance in legal academia to adopt more progressive interpretation to give effect to ESC rights within the ambit of the Constitution.

The third objective of the research is to examine the legal framework and measures taken by the Government of Bangladesh for implementing primary education. First, the paper intends to review the historical evolution of laws relating to primary education in Bangladesh and then, the paper goes on to identify the present legal

³⁸Moha. Waheduzzaman, “*Economic, Social and Cultural Rights under the Constitution: Critical Evaluation of the Judicial Jurisprudence in Bangladesh*” 14: 1 & 2 (2014) Bangladesh Journal of Law

framework and measures taken by the government for ensuring right to primary education in the country. This part also takes effort to review the national legal framework of some other countries relating to primary education.

The Charter Act of 1813 authorized the East India Company to undertake the responsibility to educate the Indian people and thereby ensuring their moral elevation.³⁹ Section 43 of this Act defined the objective of the Company's education policy in India. According to the section, "It shall be lawful for the Governor General in Council to direct that ... a sum not less than one lakh of rupees in each year shall be set apart and applied to the revival and improvement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of British territories in India."⁴⁰

The Wood's 'Dispatch'⁴¹ of 1854 marked an important development in the attitude of the government towards primary education. The 'Dispatch' ordered that the attention of the government should be devoted more to primary than to higher education and that the active measures of government should be directed towards the education of the masses. Furthermore, it promised certain measures for achieving some purposes, namely:

- a. Indigenous schools should be incorporated in the official system of education;
- b. Larger amounts should be spent for primary education; and
- c. A system of grant-in-aid should be evolved for the spread of education among the masses.⁴²

³⁹J. A. Richter, *A History of Missions in India*, 1908, pp. 150-151

⁴⁰ See W. H. Sharp, *Selections from Educational Records*, Vol.1. P. 22

⁴¹ 'Dispatch' means message of government or newspaper or army authority. Here 'Despatch' means message of the Court of Directors of East India Company.

⁴²Dispatch from the Court of Directors of East India Company to the Governor General of India in Council on the Subject of the Education of the People of India. No. 49, 19 July 1854

However, **Stanley's Dispatch of 1859** reversed these orders and directed that local rates should be levied for educational purposes and also provided that the Department should mainly rely on government schools for the spread of mass education.

On February 3, 1882, Lord Ripon appointed the **Indian Education Commission** under the Chairmanship of William Hunter, a member of Executive Council of the Viceroy. The Commission, popularly known as Hunter Commission after the name of its Chairman, had twenty members, some of whom were Indian. The main aim of this commission was to assess the position of primary education and to give suggestions for its reform. The Commission made a number of recommendations for extension of primary education in the rural areas. The commission observed that the primary education should be related to life. It should be practical and useful. The commission also recommended that primary education should be imparted in the student's mother tongue. Though the Commission recommended for including primary education as a part of the whole system of Public Instruction, it vested the financial responsibility upon the provincial revenues and local funds, i.e. District Boards and Municipal Boards and Town Areas. Thus, the commission made the government free from its responsibility. It was also recommended that extension of primary education might be done by legislation suited to the circumstances of each province.⁴³

Regarding indigenous schools, it was suggested that the principle of aiding and improving them should be recognized as an important means of extending elementary education. There were other suggestions that primary examinations should be simplified, practical subjects needed to be introduced in the primary education curriculum, but no attempt was made to secure general uniformity throughout India.⁴⁴

⁴³ R.N. Sharma, R.K. Sharma, History of Education in India, Atlantic Publishers and Distributors, New Delhi, 2004, p 116-117

⁴⁴Report of the Indian Education Commission, Recommendations on Primary Education, p. 586.

Deplorable condition of primary education also drew Lord Curzon's attention. **The Government of India's Resolution of 1904** to a great extent embodied his ideas on education. Lord Curzon put emphasis on primary education. Due to his endeavor, primary education drew attention of both the Government of India and the Local Governments, and he viewed that primary education should create a leading charge upon provincial revenues. He also suggested that primary education should be promoted and encouraged in those provinces where its spread had been hindered by many obstacles. In spite of his understanding for the spread of primary education, Lord Curzon did not take any concrete measure for solving the immense problem of illiteracy in Indian Sub-Continent.

People started thinking about mass illiteracy and compulsory primary education since the beginning of the twentieth century. G. K. Gokhale first raised specific demand for introducing compulsory primary education. On 19 March 1910 he moved the following resolution in the Imperial Legislative Council:

“That this council recommended that a beginning should be made in the direction of making elementary education free and compulsory throughout the country and that a mixed commission of officials and non-officials be appointed at an early date to frame definite proposals.”⁴⁵

The resolution was withdrawn with an assurance from the government that the question would be examined critically very soon. The government, however, did not carry out their promise. Gokhale therefore introduced another Bill after one year for the promotion of primary education. This Bill embodied the principles of the English Compulsory Education Acts of 1870 and 1876 and the Irish Education Act of 1892.

The Bill was placed for discussion on 17 March 1912. After a contentious and fierce debate, the motion to refer the Bill to a Select Committee was defeated by 38 votes to 13. Though Gokhale's effort finally could not come up with any concrete law, his endeavor did not entirely go in vain. His efforts considerably strengthened the

⁴⁵Gokhale's Speech quoted in J.P. Naik and Syed Nurullah, A Student's History of Education in India, Macmillan, P. 252

movement in favor of mass education and created consciousness about government responsibility towards public education. The principle of compulsory education was theoretically accepted in almost all the provinces and compulsory education laws were passed.

At the time of independence of India and Pakistan in 1947, primary education was administered, controlled and managed according to the provisions of a number of laws enacted by the Government of (undivided) Bengal. The primary education, both in urban and rural areas in Bengal, had been regulated by two major laws, namely: (a) **the Bengal Primary Education Act of 1919**; and (ii) the **Bengal (Rural) Primary Education Act of 1930**.

The Bengal Primary Education Act was enacted in 1919. By the provisions of this Act and subsequent Act of 1921, primary education for boys was extended to the municipalities. It was also provided in the Act of 1921 that primary schools under the jurisdiction of unions might also be brought under its purview by special order of the local government. However, the Acts of 1919 and 1921 proved insufficient for dealing with 90 percent illiteracy of the province. No commendable advance could be made as the provision of funds was left to the options of local bodies. A Bill for promotion and spread of education in rural areas was drafted and circulated in 1927. After some modifications, the Bill on the Bengal (Rural) Primary Education was passed in the Council on 26 August 1930 and assented to by the Governor General on 10 January 1931. Primary education in the rural areas of pre-partition Bengal was governed by the Act of 1930. These Acts of pre-partition period controlled primary education of East Bengal even after the partition of 1947.

The Act of 1919 provided for extension of primary education in municipalities and in certain other areas in Bengal. The Act also made the provision for inspection of primary schools. It was provided that all primary schools maintained by the Commissioners within a municipality or any part thereof, should be open to

inspection free of any charge by the inspecting officers of the Education Department that the Local Government might appoint on their behalf.⁴⁶

Since the enactment of the **Bengal (Rural) Primary Education Act of 1930**, the primary education in the rural areas of the province as well as in East Bengal after the partition had been governed by this Act. The main feature of the Act was that it embodied in its preamble the vision of the farmers who had firm commitment to make better provision for progressive expansion and better management and control of primary education in rural areas in Bengal, so as to make it available to all children of the age group between 6—11 and with a view to making it compulsory within ten years. The other important feature of the Act was the constitution of a District School Board (D. S. B.) consisting of a number of members elected by the local bodies such as the Union Board, Panchayets, the District Board and the Primary School Teachers. The Board managed and controlled both compulsory and voluntary primary education under its jurisdiction. As a result two types of schools were created, they were: (i) compulsory and (ii) non-compulsory, in the undivided Bengal under the District School Board.⁴⁷

It is to be mentioned that the Acts of 1919 and 1930 were the main laws regulating primary education in pre-partition Bengal. In addition to these two laws, certain provisions of the Local Self Government Act of 1885 and the Bengal Village Self Government Act of 1919 also contributed to the management and control of primary education in this area.

In Pakistan era, the **Bengal (Rural) Primary Education (East Bengal Amendment) Act of 1951** was the first law to initiate the development of primary education in Bangladesh (former East Pakistan). The Government of East Bengal considered primary education as a necessary pre-condition to national development. So, the

⁴⁶ Section 19, The Bengal Primary Education Act, 1919

⁴⁷ Sections 56-63, The Bengal (Rural) Primary Education Act, 1930

government constituted a high powered committee after the name “East Bengal Educational System Reconstruction Committee”. In pursuance of the recommendations of the committee, the government adopted a “Scheme of Compulsory Free Primary Education” to be effective from 1951. The scheme provided for introduction of compulsory universal free primary education in 10 years by stages directly under the auspices of the government.

The main purpose of the Act of 1951 was the implementation of Ten Year Scheme on Free and Compulsory Primary Education in East Bengal. The scheme continued for two years and covered about 5,000 primary schools in the selected unions. The scheme, unfortunately, was suspended after two years of operation. The **East Pakistan (Rural) Primary Education (Supplementary Provisions) Act of 1957** put an end to the Compulsory Primary Education Scheme initiated by the Act of 1951. The Act of 1957 abolished compulsory primary education scheme in East Pakistan (now Bangladesh.) The government undertook a separate scheme for converting compulsory primary schools into model ones. The other schools remained as non-model schools.⁴⁸

The East Pakistan Registration of Private Schools Ordinance, 1962 was enacted to bring all private schools under a uniform rule so that anomalies among private and unregistered schools could be minimized and all schools could maintain a minimum standard for efficient teaching. Schools imparting primary education⁴⁹ were also included in the scope of the Ordinance. Later, detailed rules of registration were notified in the Dacca Gazette called East Pakistan Registration of Private School Rules.

⁴⁸Letter from the DPI East Pakistan to the District and Sub-divisional Inspectors, Dacca, 1 October, 1957

⁴⁹Sub-section (f) of Section 2 of the Ordinance defines primary education as education pertaining to classes I, II, III, IV and V and includes all courses of study in the Nursery, Preparatory and Kindergarten Schools.

Unfortunately, the provisions of this Ordinance did not have uniform effect on all private schools. All schools did not equally comply with these provisions or conditions set forth by the Ordinance and specified in the Rules. Many privately managed schools showed a glaring disobedience to this Ordinance. Ultimately, three types of primary schools were created; one group with registration, another group without registration, and the last group though registered but not showing respect to the provisions of the Ordinance.⁵⁰

After establishment of Bangladesh as an independent country, the first government adopted progressive views about education and enacted the **Primary Schools (Taking Over) Act, 1974**. This was the reflection of the philosophy of nationalization inspired by the socialist principles which were incorporated into the original constitution of Bangladesh. The government nationalized a large number of primary schools by an Ordinance promulgated on 26 October 1973. The nationalization of the primary schools was legalized by the Primary Schools (Taking Over) Act, 1974. The Act enjoined the government with a number of important responsibilities to recognize, administer and manage large number of primary schools.

In Bangladesh, the launching of universal primary education (UPE) project in 1980 can be considered an important event. Throughout the whole decade, the UPE project had become one of the major priority goals of the successive governments. Primary education entered into a new phase with the enactment of the **Primary Education (Compulsory) Act, 1990**. Later on, primary education was made compulsory by a notification issued by the Ministry of Education on 11 December 1991 in 64 selected upazillas. This notification came into effect from 1 January 1992.

One can find the status of education in Pakistan and Bangladesh in the **Objectives Resolution of 1949**, the Constitution of 1956 and the Constitution of 1962 of Pakistan and in the original Constitution of Bangladesh. The Objectives Resolution passed by

⁵⁰Government of Bangladesh, Draft of Bangladesh Shikhya Code, p. 4.

the Constituent Assembly was the first major steps towards framing the Constitution in Pakistan. The Resolution was religious in character and put emphasis on realization of the principles of the religion of the majority of the people, i.e. it wanted to inculcate the principles of Islam into the Muslim people's mindset. The Resolution therefore made it clear that the nature of education would be religious and the curriculum and syllabus of the educational institutions needed to be designed along religious lines. Secondly, the values, ideals and ethical principles enunciated in the Resolution would be embedded into the young learners' understanding through education system. Thirdly, the Muslims would guide their lives according to the teachings of Islam. Finally, it was assured that minority communities of Pakistan would not be affected by the basic principle of the Resolution. Since the adoption of the Objectives Resolution it was observed to be the guiding philosophy in any major educational policy decision.

The Objectives Resolution of 1949 was incorporated into the preamble of the Pakistan Constitution of 1956. As a result, the proclaimed goal of the Resolution to achieve religious objectives through education remained same under the first Constitution. Article 28 of this Constitution stated important responsibility of state in respect of primary education. According to Article 28, "The state shall endeavour to remove illiteracy and provide free and compulsory primary education within the minimum possible period." Article 28 neither specified the duration of primary education nor set the time limit within which free and compulsory primary education would be provided for all. In this respect the relevant Article of the Indian Constitution helps one to understand the vague nature of Article 28.

Article 45 of the **Constitution of India** reads:

"State shall endeavour to provide within a period of ten years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of 14 years. "

This Article has been placed in the part of Directive Principles of State Policy and as such is not enforceable by law, but the policy makers and citizen of India expressed their firm commitment to promote and provide compulsory primary education for all. As a result, laws for compulsory primary education had been enacted in most of the States and in three Union territories.⁵¹ Contrary to the Indian commitment and practice, the policy makers of Pakistan were not observed to have any firm commitment for promoting the cause of primary education. They did not inspire the provinces for enactment of legislations to spread primary education among the masses.

The Constitution of Islamic Republic of Pakistan of 1956 included some other provisions which had indirect bearing on primary education. For example, it guaranteed equality before law to all citizens in clause (1) of Article 5. Regarding access to educational institutions, the fundamental right stated in clause (3) of Article 13 provided that no citizen would be denied of admission to any educational institutions receiving aid from public revenues solely on the grounds of race, religion, caste, or place of birth. Additionally, as a part of directive principles of state policy, clause (a) of Article 28 ensured educational and economic interests of the people of the special areas, the backward classes and the scheduled castes.

Provisions of the **Constitution of Islamic Republic of Pakistan of 1962** on primary education and other aspects of education were similar to those of the Constitution of 1956. Section 7 of the Constitution of 1962 provided that, “Illiteracy should be eliminated and free and compulsory primary education should be provided for all, as soon as practicable.” Thus, one can understand the fragile commitment of the Pakistani rulers to ensure free and compulsory education for all from the uncertain and vague nature of section 7. As a result, the country by the end of the sixties had the

⁵¹Durga Das Basu, *Introduction to the Constitution of India*, New Delhi: Prentice Hall of India Pvt. Ltd., 1985, p. 144.

highest rate of illiteracy in the world.⁵² Due to the negligent policy of the Pakistani rulers, East Pakistan not only experienced a setback in primary education, but its literacy rate also decreased substantially.

What would be the nature and objective of education in independent Bangladesh had been stated in the preamble and education related provisions of the original constitution. One may deduct from the preamble that education in Bangladesh should be imbued with the “high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in the national liberation struggle...”⁵³

Article 17 of the Constitution of the Peoples’ Republic of Bangladesh has embodied the ideals and aspirations of the people which they want to achieve through education. In the Pakistan era, the students, teachers and the mass people assembled and demonstrated in different times for promotion and spread of uniform, mass oriented and universal system of education. After the establishment of Bangladesh, the constitutional framers rightly incorporated all the aspirations of the people into the constitution. In chapter three, education related constitutional provisions have been discussed. Again, it is to be mentioned that the first Government of Bangladesh took administrative measures and enacted new laws to promote the cause of primary education in addition to the incorporation of the important provisions into the constitution. The government nationalized a large number of primary schools in 1973 and the nationalization of the primary schools was legalized by the Primary Schools (Taking Over) Act, 1974.

A F M Fazle Rabbi focused in his paper that this Act imposed upon the government the responsibility of bringing the primary school system under a centralized

⁵²W. M. Zaki and M. Sarwar Khan, *Pakistan Education Index*, Islamabad: Central Bureau of Education, 1970, p. 187.

⁵³ Preamble, The Constitution of the People’s Republic of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs, Department of Legislative & Parliamentary Affairs, October, 2011

administration from the previous district based management. Instead of providing good results, the policy had some setbacks in the overall management of the primary education system.⁵⁴

Ahmed et al presents a different opinion claiming that as a result of centralizing management, the system became non-responsive to the varied circumstances and needs in primary education delivery.⁵⁵

Primary Education (Compulsory) Act, 1990, to fulfill the constitutional obligation of Universal Primary Education, the Government promulgated this Act. The Act gives discretions to the government to define the ambit of primary education and it denotes child as someone from 6 to 10 years of age. The Act empowered Government to declare primary education obligatory in whatever area from whenever onwards by notification in the official Gazette. The Act established Obligatory Primary Education Committee and covered areas to ensure that every children of the designated areas enroll in and regularly attend the primary education institutes of such areas. In addition, the Act prescribes punishment for both the committee and the guardians for failure to discharge their respective duties.

The Draft Education Act, 2016, the Government has publicized the proposed draft of Education Act, 2016 through the Ministry of Education's website. This draft Act proposed four tiers of education system in the country.

1. Pre-primary (4 to 6 years)
2. Primary (pre-primary to class 8)
3. Secondary (class 9 to class 12)

⁵⁴A F M Fazle Rabbi, Primary Education in Bangladesh: Viability of Achieving Millennium Development Goals at 12 working paper available

⁵⁵ Ahmed et al, "Access to Education in Bangladesh: Country Analytic Review of Primary and Secondary School" (2007) in Zia-Us-Sabur and Manzoor Ahmed, "Debating Diversity in Provision of Universal Primary Education in Bangladesh" Research Monograph No 34, Institute of Education and Development, BRAC University, Dhaka, Bangladesh May 2013, page 11

4. Higher education (post-class 12 to higher education including Honors and Master's)

The subjects that students at primary level will study include Bangla, English, mathematics, Religion and Moral Education, Bangladesh Studies, Introduction to World, Information Technology and Science and Paribeshparichiti by the National Curriculum and Textbook Board (NCTB).

This Draft Act has transformed the previous trend of governmental obligation into entitlement of children as the right to free and compulsory education. The Act seems to be the bearer of fulfilling universal education for all streams in true sense. The draft Act is yet to be approved by the parliament.

The fourth objective of the research is the perfect combination of both social and legal issues. The objective is to identify the major issues relating to implementation of primary education in Bangladesh and to find out the challenges for the Government of Bangladesh in implementing primary education according to the Constitutional Responsibility.

Dr. Kazi S.M. Khasrul Alam Quddusi, opines that there exists huge diversity and disparity in terms of quality education. He argues that gross and sheer discrimination starts at this very tier of education in Bangladesh. It is indeed an irony that children of well-off families hardly go to government primary schools these days. They are rather sent to kindergartens and English medium schools, many of which are just misnomers of such schools given their quality of English. However, the charges the schools and institutions take or impose upon the guardians are cutthroat, and these issues are still prevalent in our country.⁵⁶

⁵⁶Dr. Kazi S.M. Khasrul Alam Quddusi, Education Act: Challenges of Execution, Daily Sun, 12 April, 2016

Gustavsson, S demonstrates historical truth regarding misallocation of budget immediately after the independence. The Sheikh Mujib government after nationalizing primary education introduced First five year plan (1973-78) and proposed projects to reconstruct the schools, establishment of 5000 new schools, increase enrollment in the primary schools from 58% to 73%, reduction of dropout rate from 63% to 52%, development of PTIs, revision of curriculum, introduction of staggered system of existing schools etc. Under the FFYP, 18.8% of the education budget was allocated to primary education but less than one half of the total amount was actually utilized and funds were diverted to the higher levels.⁵⁷

Grieve, R discusses about the outcome of *Kudrat-e-Khuda Education Commission* and he expresses pessimism at the end that all these recommendations remained ‘no more than pious wishes’, and were largely frustrated in reality.⁵⁸

Sattar, E praises the role of the Zia government where the government took a notable initiative, the significant aspect of which was the establishment of NAPE and development and reconstruction of 52 PTIs. The government determined universal primary education as a goal of education and there was no drop out in the official records. The universal primary education along with eradication of illiteracy was included as the two basic goals of the government.⁵⁹ The Ershad government promised to reciprocate all these suggestions on a national scale during successive periods.

Compulsory Primary Education Implementation Monitoring Unit (CPEIMU) has been established by the successive government under the Ministry of Primary and Mass Education, Government of Bangladesh. This Unit was engaged in overall supervision of implementation of this program. It comprises forty four posts (Class I-11, Class II-2, Class III-22 and Class IV-19 posts). The main objective of this unit is

⁵⁷Gustavsson, S, *Primary education in Bangladesh for whom?* The University Press Limited, Dhaka, 1990 at 13.

⁵⁸Grieve, R. *Raising the achievement level of children in primary education*, UNESCO, Regional Office for Education in Asia and the Pacific, Bangkok, 1985 at 135.

⁵⁹Sattar, E. *Universal primary education policy in Bangladesh*, University Press Limited, Dhaka, 1982 at 117.

to monitor and evaluate the implementation of Compulsory Primary Education Program.

“The Rights-Based Approach to Education in Bangladesh”⁶⁰ is a seminal work in the field of right to education by **Mustafa K. Mujeri**. The author in this article has endeavored to illustrate Bangladesh’s record in implementing the right to education in terms of three dimensions of policy-making, e.g. the process of formulation, the contents, and monitoring of implementation. The paper also examines the overall record of progress in the education sector from a human rights perspective and with special focus on primary education and literacy.

The paper starts with a reminder that Bangladesh has agreed to the fact that the right to development is a fundamental human right of all citizens of the country. According to the author, education is a key fundamental right of all human beings because lack of education has a negative impact on people’s ability to exercise their other human rights. Chapter 2 of the paper dedicatedly discusses the issue of education from a human rights perspective and demonstrates Bangladesh’s human rights commitments in education and its implications for the education sector in the country. The author argues that the provision of free primary education for all is the immediate duty of the State of Bangladesh, but the State is also required to adopt and implement a national educational strategy which includes the provision of secondary, higher and basic education consistent with the requirement of the International Covenant on Economic, Social and Cultural Rights.⁶¹

According to the article, the minimum responsibility of the State is to ensure the most basic forms of education in the country and Bangladesh is duty-bound to take necessary steps, e.g. (a) Ensure the right of access to public educational institutions on a non-discriminatory basis (b) Ensure that education conforms to the human rights

⁶⁰ Mustafa K. Mujeri, “The Rights-Based Approach to Education in Bangladesh” *The Bangladesh Development Studies*, Vol. XXXIII, March-June 2010, Nos. 1 & 2, Page 139

⁶¹ *Ibid.* P 142

requirements (c) Provide compulsory primary education which is available free to all (d) Adopt and implement a national educational strategy which includes provisions for secondary, higher, and fundamental education; and (e) Ensure free choice of education, subject to conformity with minimum educational standards, without interference from the State or Third Parties.⁶² These being said, the authors shed light on primary education and enumerates the obligations of Bangladesh under its commitments to various international instruments. According to the paper, Bangladesh has the following obligations with regard to ensuring universal primary education:

“Primary education

- The State must ensure that primary education is compulsory, accessible, and available free to all
- The State must take measures to encourage improved enrolment and retention rates and regular attendance at schools, close the gap between school leaving age and the minimum age for employment, ensure quality education, eliminate gender discrimination and gender stereotypes in educational curricula, materials, and education process
- The State must ensure that the primary education, as the most important component of basic education, satisfies the basic learning needs of all”⁶³

Chapter 3 of his paper examines the status of Bangladesh in ensuring right to education. The author is of opinion that although Bangladesh has accorded considerable priority to education in its development strategy, the progress towards realising the goals has been slow and as a result, Bangladesh remains a poorly educated country. Chapter 4 of the paper provides an assessment of educational policies in Bangladesh from the human rights perspective and this chapter highlights the elements of the rights-based approach to education policy. The author argues that the basic requirement of the rights-based approach is that every person has a right to participate in the process of policy making in addition to enjoying the outcomes. According to the author, the process is as important as the outcomes and the right to participate is an integral part of the right to development.

⁶² Ibid

⁶³ Ibid. P 144

Although this paper presents important theoretical analysis with appropriate statistics, the author missed one significant distinction between fundamental right and fundamental principles of state policy. Although Article 17 of Bangladesh Constitution guarantees right to education, this guaranty is not judicially enforceable, i.e. if the state fails to fulfil this guaranty, no action can be taken through the intervention of courts. This is a limitation of economic and social rights. Moreover, the commitments that Bangladesh has made to the international community by signing and ratifying international conventions and treaties will not be judicially enforceable unless an enabling legislation is passed to that effect.

Jody Heymann, Amy Raub, Ade'le Cassola have authored one research paper entitled **“Constitutional rights to education and their relationship to national policy and school enrolment”**⁶⁴ which deals with the status and evolution of education rights in 191 constitutions and analyzes their relationship to educational policies and enrolment rates. The paper shows that as of 2011, 81 percent of the constitutions protected primary education universally and 53 percent designated it as free.⁶⁵The authors start with a proposition that education is internationally recognized as a fundamental right and constitutional commitment to education in national level matters both symbolically and practically. Because, according to the authors, constitutions delineate a country's fundamental values and commitments as well as its economic and political organization. The authors are aware that constitutional protections to education in different constitutions may vary – from general aspirations towards universalizing primary school to unequivocal guarantees of free and equal access to education at all levels. The authors also acknowledge the fact that the international community emphasizes on universal primary education.

⁶⁴ Jody Heymann, Amy Raub, Ade' le Cassola, “Constitutional rights to education and their relationship to national policy and school enrolment” *International Journal of Educational Development* 39 (2014), Pages 131–141

⁶⁵ *Ibid.* P 131

As the paper tends to show the relationship between the constitutional guarantee to education and enrolment rate of a given country, it presents statistics to substantiate the argument. For example, the reduction of public expenditure on education and the introduction of school fees in many low and middle-income countries as part of Structural Adjustment Programs corresponded with decreased rates of primary and secondary school participation, particularly among children from the poorest households. This shows that policy has significant impact on the outcome of any given project. This is why, the constitutional guarantee to right to education is important.

The paper provides meticulous statistics on constitutional guarantee to right to education and enrolment rates in school. For example, the article presents that as of June 2011, 81 percent of the constitutions guaranteed or aspired to protect the right to primary education, 14 percent guaranteed the right to education at this level without specifying that it was free or compulsory and 43 percent of the countries guaranteed free and compulsory primary education to all citizens in their constitutions. Additionally, 10 percent of the constitutions guaranteed free primary education without specifying that it was compulsory, and 6 percent provided for compulsory primary education but not free, and in 7 percent of the constitutions, the right to primary education was only mentioned as an aspiration.⁶⁶

Furthermore, the authors substantiate their argument that there is a positive correlation between constitutional protection on education and rate of school enrolment with necessary statistics. For example, the paper shows that countries with a constitutional guarantee of the right to education, free education, and/or compulsory education at the primary level had primary enrolment rates that were 4.8 percentage points higher on average than countries that did not have this protection. This statement is true in case of secondary education as well. In countries with a constitutional guarantee of secondary education, net enrolment rates at this level were

⁶⁶ Ibid. P 135

8.3 percentage points higher than in countries whose constitutions lacked this protection.⁶⁷

In another research papers entitled **“Primary education in Bangladesh: Streams, disparities and pathways for unified system”**⁶⁸, Shahorin Monzoor and Dewan Muhammad Humayun Kabir focused on the status of primary education in Bangladesh. The authors shed light on the issue of right to education from the constitutional and legal perspective. The authors start with the importance of education saying that education has been recognized as an investment not only for creating human capital, but also for inducing social change and promoting overall development.

While describing the goals and objectives of primary education, the authors are of opinion that education is a tool for societal construction and transformation for implementation of nation's aspiration. A brief history of primary education in Bangladesh is also presented in the paper. Then the authors discuss the existing legal regime on primary education in Bangladesh. The first ever legal instrument that provided for primary education in this part of the world was Woods Education Dispatch in 1854. The first formal legislation came in 1919 which was called “The Bengal Primary Education Act, 1919”. During the Pakistan period, Bengal Provincial Assembly passed the "Bengal (Rural) Primary Education Act" in 1951 to introduce compulsory primary education. After independence in 1971, a couple of laws have been enacted with a view to spreading primary education throughout the country including the Primary Schools (Taking Over) Act, 1974; the Primary Education Act, 1981; and the Compulsory Primary Education Act, 1990.

⁶⁷ Ibid. P 138

⁶⁸Shahorin Monzoor and Dewan Muhammad Humayun Kabir, “Primary education in Bangladesh: Streams, disparities and pathways for unified system,” 2008, Unnayan Onneshon, Dhaka, Bangladesh

The paper also deals with the constitutional provisions and education commission reports pertaining to the right to primary education. Articles 15 and 17 of the Constitution of Bangladesh and Qudrat-e-Khuda Education Commission Report stipulate that implementation of compulsory primary education is the responsibility of the government.

In another research paper on compulsory education in Bangladesh entitled “**Debating Diversity in Provision of Universal Primary Education in Bangladesh,**”⁶⁹ Zia-Us-Sabur and Manzoor Ahmed analyzed the constitutional provision related to compulsory primary education in Bangladesh. According to the authors, the constitutional provision regarding ‘free and compulsory education,’ is subject to interpretation. Fundamental principles must be honoured by the state in making laws and in interpretation of constitutional provisions, even though they are different from the obligatory provisions of the constitution.

This paper attempts to interpret Article 17 of the Constitution of Bangladesh that speaks of a “uniform, mass-oriented and universal system of education.” The authors are aware that there is an interpretation which says that this provision justifies a state-provided common type of primary school for all children. Sometimes, this provision has been used as a political and populist argument to ban one or other type of non-state provision, such as, NGO-run, private (especially English medium) and madrasa-based primary education. This paper examined the contribution of different provisions (Government school, Kindergarten, Madrasa, NGO School etc.) and concluded by highlighting the significance of multiple provisions in enhancing access to primary education with equity and quality.

⁶⁹ Zia-Us-Sabur and Manzoor Ahmed, “Debating Diversity in Provision of Universal Primary Education in Bangladesh” (2010) Research Monograph No 34, Institute of Education and Development, BRAC University, Dhaka, Bangladesh

As a signatory state to different international human rights law treaties, Bangladesh gave commitment to ensure compulsory primary education at the national level.

Article 25 of Bangladesh Constitution made its position clear regarding international law and international relations. It says,

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

- (a) Strive for the renunciation of the use of force in international relations and for general and complete disarmament;
- (b) Uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and
- (c) Support oppressed people throughout the world waging a just struggle against imperialism, colonialism or racialism.”⁷⁰

Since Bangladesh is a contracting party to all these above mentioned conventions, it has become legally binding to ensure free, compulsory and universal education of all children. Respecting international law is also part of the constitutional responsibility of the country.

Abul Hasnat examines the application of international law at the national legal system of Bangladesh and states that Bangladesh is constitutionally committed to respect international law. Moreover, Bangladesh ratified all the core international human rights instruments most of which, however, remained unincorporated within national laws leaving the country’s position unclear regarding domestic application of international law. In 2001, the Appellate Division pronounced that if no law is found on a disputed matter, the relevant principle of international law should be invoked in order to adjudicate the same. More recently, it has clearly declared the principle that the beneficial provisions and principles of international law can be resorted to and implemented in relevant cases unless they are contrary to the existing national laws. In fact, both divisions of the Supreme Court have already utilized in many cases the

⁷⁰ Article 25, The Constitution of The People’s Republic of Bangladesh

provisions and principles of international instruments mainly as an aid to the interpretation of the Constitution and the ordinary laws.⁷¹

Sheikh Hafizur Rahman Karzon and Abdullah-AI-Faruque are also of the same view that since Bangladesh is a dualist country, enactment of national legislation is pre-requisite to give effect to international law.⁷²

Article 26 (1) of Universal Declaration of Human Rights (UDHR) says,

1. "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children."

Article 22 says everyone's rights to social, economic and cultural rights are "indispensable" ... for the "free development of his personality". Article 29 repeats the holistic vision of human rights, saying:

"Everyone has duties to the community in which alone the free and full development of his personality is possible".

He emphasizes upon obligation at the international, national, local and personal levels to implement effective programs of human rights education and to employ methodologies that will ensure that the task is well done, consistent with the goals of world peace and respect for human rights everywhere.

⁷¹Abul Hasant, Using International Law In National Courts: Bangladesh Perspective, 13: 1 & 2 (2013) Bangladesh Journal of Law.

⁷²Sheikh Hafizur Rahman Karzon and Abdullah-AI-Faruque, Status Of International Law Under The Constitution Of Bangladesh: An Appraisal, 3:1 (1999) Bangladesh Journal of Law.

Richard Pierre Claude recapitulates debates regarding the right to primary education, centering on its primary purposes, followed by contemporary examples of programs, both in formal and informal (popular) education in line with UDHR.⁷³

The international community committed in 1990 to achieve universal primary education (UPE) for all children by the year 2000, giving birth to the Education for All (EFA) campaign.⁷⁴ This goal was not achieved, but was reaffirmed at another international conference on education in 2000⁷⁵ with a new target date set for the year 2015. These goals were then included in the Millennium Development Goals (MDGs) in 2000, with MDG-2 being “Achieve Universal Primary Education”. In the Sustainable Development Goals framework, education is addressed under Goal 4: “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”.

Article 28(1) of the CRC says,

“States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.”

In accordance with **Article 44** of the convention, States Parties must report regularly (initially two years after the convention comes into force in the country and thereafter every five years) to the Committee on the Rights of the Child, detailing the measures adopted to give effect to the rights enshrined in the convention and the progress made in the enjoyment of these rights. Included in these reports, which are to be made

⁷³Richard Pierre Claude, The right to education and human rights education, Sur - International Journal On Human Rights vol.2 no.2 São Paulo 2005

⁷⁴World Conference on Education for All (1990) in Jomtien, Thailand

⁷⁵ Dakar, Senegal, April 2000

widely available to the public in the country concerned, must be an indication of any factors and difficulties affecting the fulfillment of the State's obligations.

Sandra Prunella Mason focuses on the process of reporting by States to the Committee on the Rights of the Child, and the examination of reports, signals the only external accountability that States encounter for the way they treat their children. The committee is committed to making the process one that has a lasting impact on the quality of children's lives. Crucial to that process is the issue of practical implementation with regard to the obligations enshrined in the convention.⁷⁶

Article 13 (2) (a) of The Convention on Economic, Social and Cultural Rights (ICESCR) provides that, “Primary education shall be compulsory and available free to all.”

Article 14 of ICESCR also says,

“Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.”

Rajeev Malhotra and Nicolas Fasel stress that in giving meaning to the concept sought to be measured, the concept itself must be grounded in relevant human rights treaties.⁷⁷ To measure a state’s compliance with treaty obligations, we must first carefully analyze the language of the treaty as it pertains to the rights and duties in question. In addition to focusing on the specific treaty’s language, it is also important to analyze how that language has been interpreted by relevant authoritative

⁷⁶ Sandra Prunella Mason, *Children’s Right in Education*, UN Prospectus, Vol. XXIX, No. 2, June 1999.

⁷⁷Gauthier de Beco, *Human Rights Indicators for Assessing State Compliance with International Human Rights*, 77 no Rdi C J. int’l L. 23, 24, 2008.

bodies.⁷⁸This is similar to the first step suggested by **Todd Landman** who proposes that the background concept to be measured should be defined at the outset. They have interpreted the meaning of the right to education in the ICESCR in accordance with relevant language of the ICESCR and General Comments of the CESCR. The CESCR is the treaty body responsible for monitoring and evaluating states parties' compliance with the ICESCR, including the right to education.

Iriye, A. enumerates that the Human Rights-Based Approach to Education is paramount for ensuring that both poverty reduction and the focus on human rights go hand in hand. Its emergence accompanied the end of the Cold War – a period also examined for the unprecedented growth of non-governmental organizations.⁷⁹

Leah K. McMillan accepts capitalist understanding of right to primary education where children must be at the centre of future development. In this perspective, children are recognised for their role as future members of the workforce; education is necessary for ensuring that students are adequately trained to become effective jobholders in their adulthood.⁸⁰

Sen, A. considers that the idea of human rights and international development not being completely harmonious is not new. Both can be applauded for complementing one another, playing certain roles that bring out both the importance of social and legalistic indicators.⁸¹

Jonsson, U. argues in favour of placing education within a human rights framework which ensures that there is no discrimination. For example, the three groups most vulnerable to accessibility issues – the severely impoverished, girls and children with disabilities – are equally entitled to education. This pushes governments to work

⁷⁸See generally Todd Landman, *studying Human Rights* (2006).

⁷⁹Iriye, A. (2004). *The role of international institutions in the making of the contemporary world*. Berkeley: UC Press.

⁸⁰ Leah K. McMillan , “What’s in a right? Two variations for interpreting the right to education” *Int Rev Educ* (2010) 56:531–545 at 539.

⁸¹Sen, A. (1999). *Development as freedom*. New York: Anchor Books.

towards policies which effectively provide for all children, regardless of background.⁸²

2.3 Conclusion

It is very much auspicious from the above review of the literatures that very less work has been done that is related with the socio-legal aspects of primary education in Bangladesh. In fact there is huge scarcity of literature from legal perspective. No specific work has been done so far to the best of the knowledge of the researcher, which is directly linked to the constitutional responsibility of the government of Bangladesh to ensure primary education. For this specific reason, present work seems to be unique in this area. This research paper seeks to combine social and legal aspects together to uncover issues and challenges to ensure constitutional responsibility of the Government of Bangladesh.

⁸²Jonsson, U. (2008). A human rights-based approach to development: Experiences, issues and challenges. In RWI conference, 16 September, Lund, Sweden.

CHAPTER THREE

METHODOLOGY OF THE STUDY

3.1 Introduction

PhD researchers are expected to make an original knowledge contribution, and need to justify their research design to convince their readers that such contribution is reliable and trustworthy. This should be involved not only in the depiction of the technique in obtaining and analyzing data, but also in the understanding of knowledge and how it is generated or developed. The purpose of this study is to examine the constitutional responsibility of the Government of Bangladesh for implementing compulsory primary education as well as the issues and challenges of implementation. This chapter deals with the design of the research. The study has been conducted through a systematic process which is described below.

3.2 Nature of the Study

This study used a basic interpretive qualitative research approach as its methodology to determine the nature of the constitutional obligation of Bangladesh Government as to primary education with regard to the issues and challenges relating to it. Based on the objectives of this study, the qualitative research approach seemed to be an appropriate methodology for conducting the study. In order to attain the aim and objectives, the study pursued the following two techniques:

1. Document Reviews
2. In-depth Interviews (IDIs)

3.2.1 Document Reviews

The study reviewed the following documents and made the analysis:

1. The Articles of the Constitution of Bangladesh relating to education and primary education
2. Reports of all the Education Commissions/ Committees of Bangladesh

3. The Primary Education (Taking Over) Act, 1974
4. Primary Education (Compulsory) Act, 1990
5. National Education Policy, 2010
6. Draft Education Act, 2016 and other relevant laws
7. International instruments (documents) relating to primary education and education for all to which Bangladesh is a signatory country
8. Relevant policy documents of Bangladesh Government relating to ensuring primary education for all
9. Study reports, articles and books related to primary education and primary education laws
10. Reviewing online documents related to primary education in Bangladesh, legal frameworks of primary education and the initiatives of the Government of Bangladesh on primary education

The abovementioned documents were thoroughly read and analyzed by the researcher. The findings were methodically discussed in two chapters of this thesis: chapter four- The Nature of Constitutional Responsibility and Constitutional Obligation Relating to Primary Education and chapter five- National Legal Framework and Measures Taken for Implementing Primary Education.

3.2.2 In-depth Interviews (IDIs)

In qualitative research, interview is an important research tool to collect data, information and views through open ended questions. In this study, smaller but focused samples, rather than large random samples, were used. Purposive sampling procedure was followed to select the respondents. The respondents were Legal Experts, Educationists and Policy Administrators. Altogether, fifteen (15) respondents (i.e. 5 from each category) were interviewed through three (3) different questionnaires to get an in-depth understanding of the research topic. The open ended and semi-structured questionnaire was designed to get their views, analyses, and

recommendations. As the researcher had the academic background of both law and education, it was very helpful for her to understand the legal terms and language.

3.2.2 (a) Legal Experts as Respondents

Expert interviews are a standard method of qualitative research in the social sciences. An 'Expert' is a person who is responsible for the development, implementation or control of strategies or policies. He is a person who has privileged access to information about groups of persons or decision making processes. Experts have direct or indirect decisional power and can play a vital role in defining the problems.

For In-depth Interviews of experts, the following things are important for a researcher to keep in mind: i. Selection of experts, ii. Interviewing phase and iii. Interpretation of interview texts. Regarding selection of experts, researchers must be very careful and conscious since the background and knowledge of experts are very important for such kind of qualitative study. After the selection of experts, the process of interviewing phase starts. Interview phase includes fixing the date and venue, taking preparation and conducting the interview. The date and venue are fixed according to the expert's choice. During that time, the researcher should discuss the techniques and strategies of interactions that take place in such an interview. One very important thing is that the researcher must become a quasi-expert regarding the knowledge on the research topic before meeting the experts. Therefore, the preparation phase is very vital. The questionnaire must be prepared according to the aim and objectives of the research. Lastly, researchers will conduct the interview on the specific date.

All the above mentioned procedures were followed meticulously in this qualitative research. Among the respondents, five were Legal experts. They were selected purposively. The first respondent was the Chairman of the Constitution Drafting Committee of 1972, who is a living legend in the legal arena nationally and internationally. Fortunately, the researcher was able to take the interview of this resource person, who is a Constitution Expert. The interview was recorded with his permission. Moreover, the researcher was given written answers and topic related

written documents by this legal expert (LE1). The next legal expert (LE2), Barrister and Senior Advocate, Supreme Court of Bangladesh, was the member of the Constitution Drafting Committee of 1972. Moreover, he was the Chairman of the Legal Education Committee of “Lawasia”. After checking the questionnaire, he started giving his opinion in a story telling method. The researcher was amazed to find all the themes of the research in that story. The next legal expert (LE3) was selected since he had a sound and complete knowledge of the social condition of the country because of his past position (Chairman, National Human Rights Commission). Moreover, he was an eminent Law Professor of the Department of Law, University of Dhaka and was awarded the ‘Best Law Teacher in South Asia’. The next respondent (LE4), Senior Advocate, Supreme Court of Bangladesh was selected as he was a prominent Constitution expert. The fifth legal expert (LE5), Barrister and prominent Senior Advocate, Supreme Court of Bangladesh, was selected since he had the rare combination of being the honorable minister of Law and Education of the People’s Republic of Bangladesh. Moreover, his expertise in the legal field was very much praiseworthy. It was an immense opportunity for the researcher to gather information regarding law and education from him.

3.2.2 (b) Educationists as Respondents

In-depth interviews of five (5) educationists were taken to identify the Government initiatives (i.e. Government Responsibility, Legal Frameworks and Measures taken by the Government) and Issues and Challenges for implementing compulsory primary education in Bangladesh. Among the five educationists, four (4) were university professors and one (1) was the head of a school. The first respondent (ED1) was a member of the National Education Policy Committee, 2010. Moreover, he was an eminent Professor at the Institute of Education and Research (IER), University of Dhaka. The next respondent (ED2) was a Professor and Director at the Institute of Education and Research (IER), University of Dhaka. The third respondent (ED3) was the Chief Information Commissioner of the Information Commission of Bangladesh. Moreover, he was a former Professor at the Department of Journalism and Mass

Communication, University of Dhaka. The next respondent (ED4), a Senior Professor at Shahjalal University of Science and Technology, was a Member of National Education Policy Formulation Committee, 2010. The fifth respondent (ED5) was the Principal at a renowned higher secondary school in Dhaka city. Moreover, he had more than 30 years of teaching experience in primary schools. All the respected respondents gave adequate time and provided valuable information.

3.2.2 (c) Policy Administrators as Respondents

In-depth interviews of policy administrators were taken to understand the issues and challenges as well as Government initiatives for implementing compulsory primary education for all children. All five of the policy administrators were either involved in policy administration or engaged in policy-making of primary education. The first respondent (PA1) was the Former Secretary of Ministry of Education, Government of Bangladesh. He also worked as the Director General of Primary and Mass Education for the Government of Bangladesh. The next respondent (PA2) was selected since he worked as the Director General of Primary and Mass Education for the Government of Bangladesh. The third respondent (PA3) was the Secretary of Ministry of Primary and Mass Education, Government of the People's Republic of Bangladesh. The next respondent (PA4) worked as the Director General at the Bureau of Non-Formal Education, under the Ministry of Primary and Mass Education, Government of Bangladesh. The fifth Policy Administrator (PA5) was selected since he was the honorable Minister, Ministry of Primary and Mass Education, Government of Bangladesh. He was also a Member of the Bangladesh National Parliament.

Respondents for IDIs

Sl.	Type of Respondents	No. of Respondents
01	Legal Experts Framers of the Constitution, Senior Advocates of the Supreme Court, Law Professor & Legal Researchers	05
02	Educationists Professors of Education & Journalism, University of Dhaka, Principal/Head Teacher of School, Education Researcher, Members of National Education Policy Committee, 2010	05
03	Policy Makers and Government Officers MP & Honourable Minister, Ministry of Primary and Mass Education, Secretary and other Officials of the Ministry of Primary and Mass Education, DG of the Directorate of Primary Education	05
Total =		15

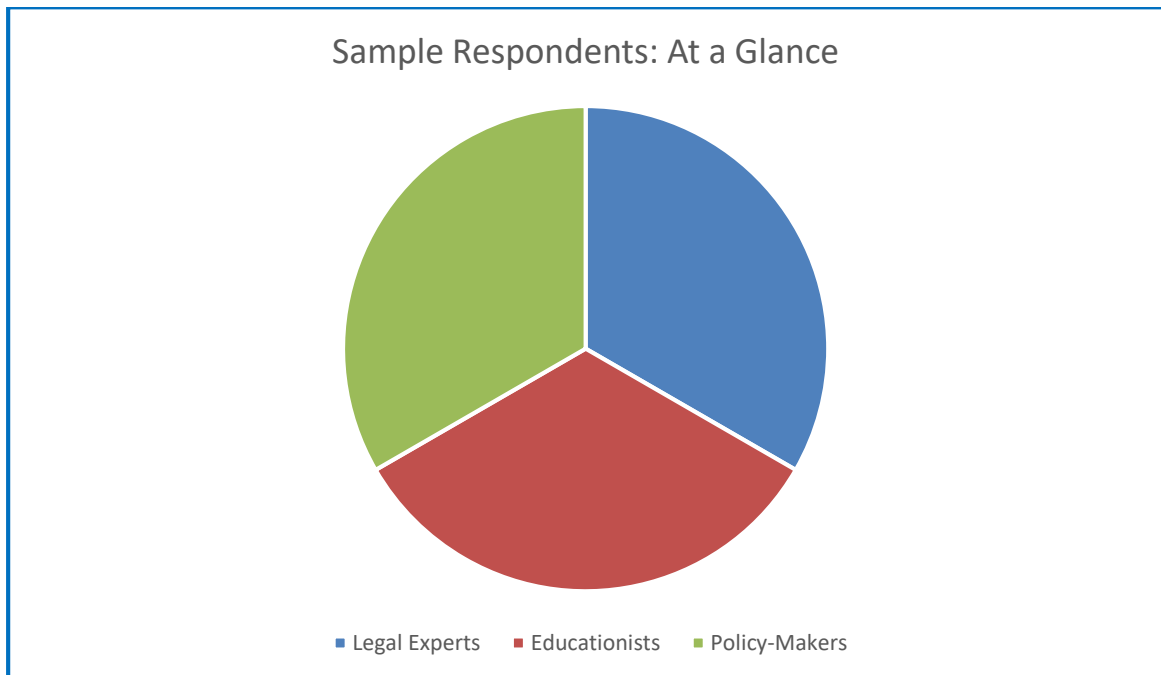


Figure 2: Sample Respondents, At a Glance

3.3 Data Collection Procedures

An important part of the In-depth Interviews (IDIs) is building up an understanding and rapport between the interviewer and the interviewees (i.e. respondents) which ensures that the experience and perspectives of the respondents are recognized as significantly valuable. The entire interview process of this study endorsed this understanding for effective data collection.

While collecting data, the following method was followed:

- i) Selecting the respondents
- ii) Preparing the Questionnaire for the respondents
- iii) Setting schedules for In-depth Interviews (IDIs)
- iv) Recording the interviews and discussions
- v) Taking notes of important points
- vi) Preparing the transcripts from the voice record and important notes

The following tools were used for data collection:

- i) Questionnaire for Legal Experts – containing eight (8) open-ended and semi-structured questions
- ii) Questionnaire for Educationists – containing ten (10) open-ended and semi-structured questions
- iii) Questionnaire for Policy-Makers – containing ten (10) open-ended and semi-structured questions

3.4 Triangulation for Trustworthiness

In qualitative research, researchers play the main role for collecting data, analysis of data, and interpretation. It is very important to ensure trustworthiness and credibility of the study. Triangulation is one of the processes for ensuring credibility. Triangulation means checking data and analysis from multiple perspectives across the data to ensure consistency and accuracy. In this research, in order to maintain the validity of data, a triangulation technique was employed for collecting evidence and information. This research applied data triangulation by collecting data through

individual face-to-face interviews. Relevant written documents were also checked and analyzed. Three qualified people (from law, education and policy backgrounds) audited the analyzed data and provided feedback.

3.5 Data Analysis Processes

In a qualitative research, data analysis is a mind-numbing, perplexing, and critical task. In this study, two types of data analysis processes were followed:

- 1) Content Analysis (CA) Process for Document Analyses
- 2) Thematic Analysis (TA) Process for In-depth Interview Analyses

3.5.1 Reasons for Selecting Content Analysis

Reviewed documents were analyzed through Content Analysis (CA) process which is a descriptive presentation of qualitative data. The reasons for selecting Content Analysis is, it is a readily-understood, inexpensive research method. Content Analysis (CA) is discreet, and it does not require contact with people. The purpose of Content Analysis is to describe, rather than to explain.

Steps of Content Analysis

The steps that were followed for the content analysis of the documents are:

- i) The documents were read thoroughly and brief notes were taken when relevant information was found
- ii) The researcher went through the notes taken and listed the different types of information found
- iii) The researcher read through the list and categorized each item in a way that offers a description of what it was about
- iv) The researcher identified whether or not the categories could be linked in any way and listed them as themes.

When the above was done with all the documents, the researcher collected all of the categories or themes and examined each of them in detail and considered its relevance.⁸³

3.5.2 Reasons for Selecting Thematic Analysis

Thematic analysis (TA) is a widely used qualitative data analysis method. Reasons for selecting Thematic Analysis is that it is theoretically-flexible. The purpose of Thematic analysis (TA) is to identify patterns of meaning across a dataset that provide an answer to the research question being addressed. It can be used within different frameworks, to answer different types of research questions. It suits questions related to people's experiences, or views and perceptions in understanding and representation.

Through its theoretical freedom, thematic analysis provides a flexible and useful research tool, which can potentially provide a rich and detailed work.

Steps of Thematic Analysis

The approach to TA involves a six-phase process which is very basic for any analysis. Although these phases are sequential and each builds on the previous step, analysis is typically a recursive process, with movement back and forth between different phases. So it is not rigid and with more experience, the analytic process can blur some of these phases together.⁸⁴

The approach to TA involves a six-phase process:

- 1) Familiarization with the data
- 2) Coding
- 3) Searching for themes
- 4) Reviewing themes
- 5) Defining and naming themes
- 6) Writing up

⁸³ Holsti, O. R. (1969) Content analysis for the social sciences and humanities. Reading, Mass., Addison Wesley Pub. Co.

⁸⁴ "Braun, Virginia and Clarke, Victoria (2006) Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3 (2). pp. 77, 101".

3.6 Ethical Consideration

Ethical issues in educational research are now, rightly, given a high profile. So in this study, ethical procedures were completely followed with due care at every stage of work. Necessary permission and approval were obtained from the concerned persons and authorities to collect the data. Clearly defined purposes of the study were informed to the respondents. All the data were collected in an authentic manner following the precise steps of data collection. Adequate permission was taken from respondents before recording conversations while collecting data. The researcher critically examined the data and evidence to make sure that they were accurate, representative and reliable. Throughout the study, the researcher was self-critical and scrutinized her own assumptions, methods of inquiry and analysis, and ways of presenting the findings. The responsibility for maintaining confidentiality was ensured fully in this study.

CHAPTER FOUR

NATURE OF THE CONSTITUTIONAL RESPONSIBILITY AND CONSTITUTIONAL OBLIGATION RELATING TO PRIMARY EDUCATION

4.1 Introduction

Constitution is the supreme law of the country that determines the powers and duties of the government and guarantee certain rights to the people in it. To understand the constitutional responsibility of the government relating to primary education, a researcher has to know first the nature of the constitutional responsibilities of any constitution. This study has reviewed the related documents, mentioned in Chapter Three, to understand the nature of the constitutional responsibility and constitutional obligation relating to primary education. This chapter explores how constitutional provisions can be utilized to create real and enforceable primary education rights in Bangladesh. Provisions of the Constitution of the People's Republic of Bangladesh offer broad and powerful tools for ensuring primary education in Bangladesh. According to Article 17 of the Constitution, the State is responsible for adopting effective measures to establish a uniform, mass-oriented universal system of education. Apart from this Article, there are a number of constitutional provisions relating to education. Moreover, the Preamble of the Bangladesh Constitution emphasizes education as an inevitable tool to establish an egalitarian and equitable society.

4.2 Constitutional Provisions Relating to Education

The combined reading of articles 7, 10, and 11 reveals that the Bangladesh Constitution is the solemn expression of the will of the people and thereby supreme law of the Republic and if any other statute is incompatible with the constitutional provision, that other law shall be void to the extent of inconsistency. The Constitution of Bangladesh has unequivocally declared the supremacy of the constitution and said that it is the majestic reflection of the will of the people. Why the constitution has

declared its supremacy and put special emphasis on the will of the common people? One has to delve into the twenty four years long struggle to liberate Bangladesh if s/he wants to realize the importance put on the supremacy of the constitution as well as the will of the common people. In Pakistan, the successive governments took long nine years to draft and adopt its first constitution. In the whole period of Pakistan regime, the military dictators and undemocratic governments did not pay proper attention to the rights of the people of the erstwhile East Pakistan, now Bangladesh; rather very often the people's demands and rightful entitlements were trampled by the Pakistani ruling elites. The great leaders of the liberation war and founders of the Bangladesh Constitution, therefore, drafted and adopted the Constitution of Bangladesh within one year of its independence and put due emphasis on its supremacy and will of the common people.

The preamble of the constitution has specified the attributes of the society dreamt to be established by the great leaders of the liberation war and thereby by the people of Bangladesh for their final deliverance. They firmly intended to establish a society 'in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens'.⁸⁵ The words – 'equality', 'human dignity', and 'social justice' – got clearer meaning and higher connotation in the preamble to the Constitution of Bangladesh.

Uniquely, the establishment of Bangladesh mirrors its long socio-economic and political struggle. It is not therefore, surprising that its constitution will bear the aspirations of the nation. The concepts of rule of law, fundamental human rights and social justice have been strongly embedded into our constitutional dispensation. The framers of the constitution also had some goals to be achieved through education. Therefore, they incorporated a number of Articles in the Constitution relating to education. **Article 17** of the Constitution says that,

“The state shall adopt effective measures for the purpose of—

⁸⁵ 3rd para of the Preamble of the Constitution of the People's Republic of Bangladesh 1972

- a) establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;
- b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs;
- c) removing illiteracy within such time as may be determined by law.”

In addition to Article 17, there are a number of constitutional provisions relating to education. **Article 15** says that,

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

- a. the provision of the basic necessities of life, including food, clothing, shelter, education and medical care...”

Article 16 provides that,

“The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution...and the improvement of education, communications and public health...to remove the disparity in the standards of living between the urban and the rural areas.”

Article 28 prohibits any discrimination on the ground of religion, race, caste, sex or place of birth of any citizen for admission into any educational institution. Any person, according to **Article 41**, attending any educational institution shall not be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his/her own.

These constitutional provisions were included to achieve the purposes for which Bangladesh had been established. When any researcher or conscious citizen reads the constitutional provisions relating to education and the preamble of the Bangladesh Constitution, s/he will understand that education is an inevitable tool to establish an egalitarian and equitable society. The preamble clearly states the purposes of establishing this state, which unequivocally declares that

“...It shall be a fundamental aim of the state to realize through the democratic process a socialist society, free from exploitation—a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens...”

4.3 Right to Primary Education as part of Fundamental Principles of State Policy (FPSP)

The right to education has not been enlisted as a fundamental right in the constitution of Bangladesh. It appears in Part II of the Constitution as a Fundamental Principle of State Policy (FPSP), which means that the state will formulate its laws and policies based upon these principles. As an FPSP, the Right to Education is not a justifiable right under the constitutional regime of Bangladesh. **Article 15** of the Constitution requires the state to secure to its citizens the provision of basic necessities of life, including food, clothing, shelter, education and medical care, whereas **Article 17** of the Constitution pledges that the state shall adopt effective measures for the purpose of: (a) Establishing a uniform, mass oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law; (b) Providing the appropriate type of education to the needs of society and producing properly trained and motivated citizens to serve those needs and (c) Removing illiteracy within such time as may be determined by law.

4.4 Nature of Constitutional Provisions and Progressive Judicial Interpretation

The constitutional provisions relating to education, needless to say, suit the state philosophy of Bangladesh. Social justice, far wider than legal justice, can only be ensured by educating all the citizens of Bangladesh. The purposes, which we want to achieve through education, require long-term and well-structured plan. The state must, as per the constitutional mandate, ensure education of all the citizens up to higher secondary level. After proper training and motivation, they will be employed in all the sectors like science, technology, arts, commerce, business, industry, agriculture, software business, governance, international trade and commerce etc. Vocational and technological education and training should be given to the prospective migrant workers as the remittance sent by the migrant workers has emerged as one of the largest sources of earning foreign currency.

The constitutional provisions relating to education are wider and flexible enough to suit the democratic-socialist policy followed by the Bangabandhu Sheikh Mujib government and liberal-democratic policy followed by Ziaur Rahman, H.M. Ershad, Begum Khaleda Zia and Sheikh Hasina led governments. The constitutional provisions remain unchanged because of this flexibility as the successive governments did not consider the provisions constituting any threat to them. Their weakness lies in the fact that all the education related constitutional provisions (Articles 15, 16 and 17) have been placed in Part II of the Constitution and this part “shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.”⁸⁶

Flexibility together with judicial unenforceability made the constitutional provisions unimportant as they cannot cast any binding obligation upon the incumbents to execute the education related provisions. Why did the founding fathers place the economic, social and cultural rights like right to food, education, employment, medical treatment etc. in part II of the constitution? It has become a crucial question as the provisions in this part are not judicially enforceable. Framers of the constitution and policy makers have practical reasons to do so and they put forward arguments to justify their position. The rationale put forward for placing the basic needs in part II is that the newly born country lacked financial ability to ensure all the basic rights. Only the civil and political rights which are incorporated into part III are judicially enforceable. The economic, social and cultural rights are placed in part II, the implementation of which is progressive. They will be implemented step by step by the successive governments upon the availability of financial resources.

Though the incumbents took administrative measures and enacted new laws for the promotion of primary education, the same policy makers placed right to education in

⁸⁶ Article 8 (2) of the Constitution of the People’s Republic of Bangladesh

part II of the constitution. The critics therefore have pointed to the weakness of the constitutional provisions as they are not enforceable by a court. But this constitutional weakness could be overcome by making the right to education as a judicially enforceable right through progressive interpretation. In case of the failure of direct amendment of the constitution, progressive judicial interpretation can establish right to education as a fundamental right. References of some judgments appear to be pertinent here. The right to life within the meaning of **Article 31** signifies the right to live consistently with human dignity and decency⁸⁷, right to the bare necessities of life such as adequate nutrition, clothing and shelter and the facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.⁸⁸ In a case in US jurisdiction, it was held that right to life means something more than mere animal existence.⁸⁹

Meaningful life means a condition where all the basic necessities of human beings are ensured. Healthy, decent and meaningful human life, needless to say, is a total impossibility without education. Right to life as enunciated in **Article 31** includes the right to education which is clear from progressive interpretation of the US and Indian courts. In his recent work, Amartya Sen has shown the relationship between economic capabilities and enforcement of fundamental rights. Economic sufficiency constructs people's ability to enjoy and enforce their fundamental rights. Legal arguments *vis-a-vis* economic arguments made it clear that education is an inevitable part of right to life.

Education, in the words of Amartya Sen, builds "human capabilities", which make the educated folks raise their voice in the society, make choices and enjoy a better life. Education is a very effective tool to develop human resources as educated people can contribute to the sustainable development of a country. Giving proper emphasis on

⁸⁷ Vikram v. Bihar, AIR 1988 SC 1782

⁸⁸ Francis Coralie v. Union Territory, AIR 1981 SC 746; Shantistar Builders v. Narayana, AIR 1990 SC 630; Bandhua Mukti Morcha v. India, AIR 1984 SC 802

⁸⁹ Munn v. People of Illinois, 94 US 113 (per Field J)

primary, secondary, and tertiary education, a country can accomplish its first task of developing efficient manpower. That country can attain high-profile achievements if it can ensure education for all, create opportunities for science and technology education, and world-class higher education for teachers and researchers. It will require a farsighted, progressive, and comprehensive education policy.

Articles 15, 16 and 17 of the Constitution indicate that the constitutional obligation of the state towards education is declaratory as these provisions are not judicially enforceable. But the progressive interpretation of right to life by the US and Indian Courts and economic arguments put forward by Amartya Sen made it clear that all the citizens of Bangladesh have inalienable right to education. Now, the state cannot evade their responsibility by saying that right to education does not cast any mandatory responsibility on them.

It is clear from the jurisprudence of the constitution of the Bangladesh that due to poor economic and social condition of the country, the right to primary education has been placed under part II of the constitution as a part of Economic, Social and Cultural (ESC) rights.

4.5 The Socio-Economic Scenario of Bangladesh

As mentioned, constitutional rights are composed of Civil and Political (CP) and Economic, Social and Cultural (ESC) rights. CP rights are seen to be individualistic and libertarian in character, whereas ESC rights seem to be collectivistic in dimension. The main object of ESC rights is to put the state under an obligation to utilize its available resources to progressively enforce these rights. These rights are indispensable for the development of a country. This part endeavors to look at the existing socio-economic scenario of Bangladesh in its capacity to enforce ESC rights.

Economic, Social and Cultural (ESC) rights constitute the essence of living; these rights make life better and worthy to live. Without full realization of these rights, it is

not possible to create a more humane, happy and free citizenry in any country. The three major dimensions of the socio-economic conditions are intricately related to basic education.

A. Demographic Perspectives

The decennial censuses conducted by the Bangladesh Bureau of Statistics (BBS) show that the population of Bangladesh has grown from 44.1 million in 1951 to 129.25 million in 2001. The inter-census growth between 1991 and 2001 was 1.48 percent against 2.18 percent between 1981 and 1991.⁹⁰The past trends in fertility and mortality have resulted in a bulge in the proportion of people in the prime reproductive age. Although Bangladesh is expected to achieve the replacement level fertility within 10 years, the growth will continue due to population momentum. Currently, 52 percent of female population is in the reproductive age. The two factors- the large size of reproductive age population and growth momentum, will affect the size and structure of pre-primary (3-5), primary (6-10), secondary (11-15), higher secondary (16-17), and higher education (18-22) age population, which will continue to change and so will the illiterate adult population (up to 45 years).

B. The Social Perspectives

The social fabric of the Bangladeshi society is under severe strain, due to erosion of ethical and moral values as well as transitional factors. Violence and crime are increasing rapidly putting a tremendous pressure on law and order situation and the law enforcing arms of the state. Counter-violence is also increasing as manifestation of frustration and stemming the tide of patronized and unhindered violence; seeking unearned income by using direct force or threat, kidnapping and ransom, rape and killing of the victims, snatching or preventing participation in tender etc. Good governance and avoiding dependence on muscle power for political gain can only mitigate the situation. Education is a major indicator of social progress. Quality education is of utmost importance for improving the current social milieu.

⁹⁰ Bangladesh Bureau of Statistics, 2001

Child labour is a major problem and a source of deprivation of a child's right to education. There are 1.3 million children in Bangladesh who are engaged in hazardous jobs or work 43 hours or more per week. Based on a survey for determining hazardous child labour sectors in Bangladesh conducted in 2005 by the Bangladesh Bureau of Statistics (BBS), 45 hazardous activities/sectors have been identified. These range from brick breaking to aluminum manufacturing, battery recharging to leather tanning. In its most extreme forms, child labour involves children being enslaved or trafficked, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities. In Bangladesh, 93 per cent of working children are employed in the informal sector which makes the monitoring of child labour more difficult.⁹¹

Trafficking of children and women is another major social problem. Various estimates suggest more than 400 children and women are trafficked every month to destinations in South and West Asia regions and even beyond.⁹² Employment situation remains precarious and is becoming more so with the worldwide recession. The demand is increasing for more literate and skilled labor. It calls for more quality literacy and skills training programs.⁹³

According to the national child labour survey in 2003, the most common reason for a child not to be enrolled in school is an inability to bear educational expenses. The second most commonly cited reason is the child's participation in household economic activities. In 2006, another survey revealed that the highest rates of child labour are found in slum areas where the lowest school attendance rate is also recorded.⁹⁴

⁹¹ UNICEF-Bangladesh Media Centre: "Urgent call to end the Worst Forms of Child Labour in Bangladesh by 2016" June, 12, 2010.

⁹² Education for All: National Plan of Action II 2003 – 2015, Ministry of Primary and Mass Education Government of the People's Republic of Bangladesh, May 2003.

⁹³ Ibid.

⁹⁴ UNICEF-Bangladesh Media Centre: "Urgent call to end the Worst Forms of Child Labour in Bangladesh by 2016" June, 12, 2010.

C. The Economic Perspectives

The economy of Bangladesh still remains rural. The urban/rural composition ratio of the population has changed from 15:85 in 1991 to 23.39:76.61 in 2001. But 63.20 percent of the labor force is still engaged in agriculture sector though contribution of agriculture to the economy has declined. The income distribution in urban areas went more to the affluent and in rural areas to the poor; the middle class in both cases got the least.⁹⁵

Some progress has been made in the economy of Bangladesh during last few years. Readymade garments made good progress and became the lead foreign exchange earner. Establishment of Export Processing Zones has also helped the economy. Export trade has been diversified to include non-traditional items. The worldwide recession following September 11, 2000 is already having an impact on exports from Bangladesh. Foreign Direct Investment (FDI) has increased significantly from a mere \$30 million to \$280million in 2000, though in absolute terms the growth is still insignificant. The country has a large gas reserve and explorations have struck significant recoverable and potential reserves.⁹⁶

Unfortunately, millions of people across Bangladesh are still living in dire poverty and sufferings from various forms of social and economic disadvantage and deprivation. It is a universal truth that fundamental human dignities are denied to those who do not have access to basic primary education.

Civil and Political (CP) rights are meaningless to the poor, downtrodden and economically backward class of people unless their basic rights are not realized. Affording Economic, Social and Cultural (ESC) rights enable poor people to enjoy other civil and political rights. Positive enforcement of these right is an urgent need to fulfill constitutional obligations of the country.

⁹⁵ Bangladesh Bureau of Statistics & Household Income and Expenditure Survey (BSS HIES), 2000

⁹⁶ Ibid.

4.6 Legal Status of Economic, Social and Cultural (ESC) Rights under the Constitution

It has already been examined that Articles 8(2) and 47(1) of the Constitution are key provisions to examine the status of right to primary education as part of Economic, Social and Cultural (ESC) rights. Article 47(1) is a clear pointer to the fact that the framers of the constitution discarded the doctrine of supremacy of rights over principles of state policy.⁹⁷ According to this Article any enactment relating to economic development of the country would not be held void on the ground of inconsistency with fundamental rights if parliament makes sure that these legislations are enacted to give effect to fundamental principles of state policy.⁹⁸

The Constitution gives space to the higher judiciary to extend the ambit of ESC rights and can give more emphasis on the realization of these goals. In India, there has been a dynamic interaction between Fundamental Rights (FRs) and Directive Principles of State Policy (DPSP). The Indian Supreme Court made the issue very much clear in many cases. Initially, the approach of the judges was in prioritizing CP rights over ESC rights.⁹⁹ This approach of conformity of DPSP with FRs has been shifted in recent years. In *Kesavananda Bharati vs. State of Kerala*¹⁰⁰, the Supreme Court did not see any conflict between these two sets of rights; in case of any conflict, the principle of harmonious interpretation was introduced. The Indian Supreme Court boldly pronounced that what is fundamental in the governance of the country cannot be less significant than what is fundamental in life of the individuals. Hence rights and principles supplement each other. The same view has been reflected in other subsequent cases of Indian Supreme Court.¹⁰¹

⁹⁷ Moha. Waheduzzaman, BILIA at 4.

⁹⁸ Ibid.

⁹⁹ See *State of Madras vs. Champkam Dorairjan* (1951) AIR (SC) 226; *MH Quareshi vs. State of Bihar* (1958) AIR (SC) 931.

¹⁰⁰ (1973) AIR (SC) 1461.

¹⁰¹ See *Unni Krisnan vs. AP* (1973) AIR (SC) 2178.

It is very much auspicious that the Indian Higher judiciary denied maintaining any demarcation line between Fundamental Rights (FRs) and Directive Principles of State Policy (DPSP). As the Constitution of Bangladesh reflects the same spirit relating to Fundamental Rights and Principles, the interpretation of constitutional provisions of both the countries should also be alike. Mahmudul Islam, a renowned Advocate expressed the same view.¹⁰² What will happen if any existing statutory laws are in conflict with the primary spirit of the constitution, more particularly if any law contradicts with FPSP? The sound interpretation of the Constitution mandates that these kinds of statutes should be discarded and should be brought in conformity with FPSP. This stand could be very much challenging due to the poor economic condition of the country.

The findings of Sahabuddin Ahmed CJ give probable answer for not enforcing ESC rights in Bangladesh. He said,

“The FPs are in the nature of people’s programme for socio-economic development of the Country in peaceful manner not overnight, but gradually and their implementation requires resources, technical know-how and many other things including mass education. Whether all these pre-requisites exist is for the State to decide. If the State does not or cannot implement these principles the court cannot the State to do so.”¹⁰³

Economic constraints is the reason for not enforcing these rights. This means that if the state thinks that it is in a position to enforce any of the ESC rights, it can give effect to that. It becomes the obligation of the state to take gradual steps for the effective enforcement of the ESC rights. The state can never ignore the importance of these rights or cannot enact any laws which are contrary to these principles.

4.7 Realization of Economic, Social and Cultural (ESC) Rights in Bangladesh

The constitution of Bangladesh places primary education as a part of Economic, Social and Cultural (ESC) Rights. These rights are known as fundamental principles of the state policy. The constitution itself qualifies these as principles, not laws.

¹⁰² Mahmudul Islam, *Constitutional Law of Bangladesh*, Mullick Brothers: Dhaka, 2002, at 56.

¹⁰³ *Kudrar-E-Elahi Panir vs. Bangladesh* 44(1992) DLR (HCD) 179 paras 64-68.

Besides, education has been declared as a part of the basic necessities of human beings. Those basic necessities are a part of the economic rights of the people.¹⁰⁴

The constitution has clearly kept a division between Civil and Political (CP) Rights and Economic, Social and Cultural (ESC) Rights. The reason is obvious; it was not possible for a newly born, independent country to guarantee ESC rights of every citizen. Bangladesh became hugely motivated from the ideology of socialism. Soviet Union was a persistent supporter of Bangladesh during the liberation war; their ideology has been integrated in the Preamble and second part of the Constitution. But in reality, it was extremely difficult for the war driven country to make those rights directly judicially enforceable.¹⁰⁵ Within the meaning of the provisions of the constitution, fundamental principles are not judicially enforceable whereas CP rights are enforceable before courts of law.¹⁰⁶

Thus, the object of having social and economic provisions in a constitution is quite evident and clear. The main object is simply to put the state under an obligation to utilize its available resources maximally in order to redress social and economic imbalances and inequalities and thereby creating equal opportunities for all. These rights are indispensable for an individual's dignity and the free development of his personality.¹⁰⁷

The issue of enforceability of ESC rights has been expatiated in different cases by both the divisions of the Supreme Court. In *Sheikh Abdus Sabur vs. Returning Officer, District Officer-in-Charge, Gopalganj and others*,¹⁰⁸ Justice Badrul Haider Chowdhury declared these principles as judicially unenforceable. He emphasized on

¹⁰⁴ Muhammad Ekramul Haque, "legal and constitutional status of the fundamental principles as embodied in the constitution of Bangladesh" The Dhaka University Studies, Part F, Vol.XVI, 2005, at 45.

¹⁰⁵ Md. Jobair Alam and Md Ataul Karim, *Realizing ESC Rights through Budgetary Allocation: A viable alternative for Bangladesh*, 13:1 & 2 (2013) Bangladesh Journal of Law at 134.

¹⁰⁶ Article 44 of the Constitution provides for:

¹⁰⁷ Moha. Waheduzzaman, "Economic, Social and Cultural Rights under the Constitution: Critical Evaluation of the Judicial Jurisprudence in Bangladesh" 14: 1 & 2 (2014) Bangladesh Journal of Law

¹⁰⁸ 41(1989) DLR (AD) 30, at 37.

the application of these principles in law making process and not to enforce these principles directly in courts and tribunals. He said:

“Parliament is a creation of the Constitution itself: the local elective bodies are created by their respective statutes in pursuance to the Constitution, which appear in the part two of the Constitution. These Principles, though they must be applied by the State in the making of Law, are not justiciable in court”.¹⁰⁹

In *Kudrat E-Elahi vs. Bangladesh*¹¹⁰ the issue had been discussed and there, the then Chief Justice Sahabuddin explained the reason for not making these principles judicially enforceable. He opines:

“The reason for not making these principles judicially enforceable is obvious. They are in the nature of people’s programme for socio-economic development of the country in peaceful manner, not overnight but gradually. Implementation of these programmes requires resources, technical know-how and many other things including mass education. Whether all these pre-requisites for a peaceful socio-economic revolution exist is for the state to decide.”¹¹¹

The finding of the Appellate body in *Salemullah vs. Bangladesh* is very much progressive in nature where the court affirmed the constitutional status but at the same time said that the decision was not contrary to the Fundamental Principles of the State Policy.¹¹²

In this regard, Justice Badrul Haider Chowdhury of the Appellate Division of the Supreme Court in *Anwar Hossain v Bangladesh*¹¹³ has stated that:

“Though the directive principles are not enforceable by any court, the principles therein laid down are nevertheless fundamental in the Governance of the country and it shall be the duty of the state to apply these principles in making laws. It is a protected Article (Article 8) in our Constitution and the legislature cannot amend this Article without referendum. This alone shows that the executive cannot flout the directive principles. The endeavour of the Government must be to realise these aims and not to whittle them down”.¹¹⁴

In *Mohiuddin Farooque vs. Bangladesh*, represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and others, the court held that though

¹⁰⁹ Ibid at 48.

¹¹⁰ 44 (1992) DLR (AD) 319.

¹¹¹ Ibid at 330-331.

¹¹² 47 DLR 218.

¹¹³ 1989 BLD

¹¹⁴ Ibid para 53 p 61.

ESC rights are not judicially enforceable, any act done in contrary to the FPSP can make the concerned person aggrieved.¹¹⁵

Though fundamental principles are not judicially enforceable, from the last few years, judicial activism contributed to the execution of some principles extending the scope of different rights under fundamental rights of the Constitution.

4.8 Progressive Realization of Economic, Social and Cultural (ESC) Rights in line with Constitutional Obligation

It is clear from the above mentioned observations that the judiciary of Bangladesh seems to be reluctant to enforce Economic, Social and Cultural (ESC) Rights except in very few circumstances where slight progressive realization pursued. Today, it is universally recognized that civil and political rights do not have any meaning unless they are accompanied by social, economic and cultural human rights.¹¹⁶

Presently, the demand for realization of ESC rights has received huge attention both at national and international level. There is a growing trend towards enforcing these rights by numerous domestic courts of Asian and African countries. Emerging trends of realization of ESC rights in international and national level is a positive sign to ensure basic necessity of poverty driven people.

In recent times, the jurisprudence of Bangladeshi judiciary hints that the previous concept of non-enforcement of ESC rights is shifting towards progressive realization. In *Ain O Salish Kendra (ASK) and others Vs. Government of Bangladesh and others*, the court has given the message of this kind of transformation.¹¹⁷ The court held that:

Fundamental Principles of State Policy (FPSP) direct its policy towards securing that the citizens have the right to life, living and livelihood. Thus our country is pledge bound within its economic capacity and in an attempt for development to make effective provision for securing the right to life, livelihood etc....any person who is deprived of his right to livelihood can challenge the deprivation as offending the right to live conferred by constitution.

¹¹⁵ 49 DLR (AD) 01.

¹¹⁶ Dr. H. O Agarwal, Human Rights, Central Law Publications, Allahabad, India, 2001, p 4.

¹¹⁷ Writ petition no. 3034 of 1999, 19 BLD HCD (1998) 488).

Very progressive decision has been rendered by the Supreme Court in the recent case of *Chairman, National Board of Revenue (NBR) Vs. Advocate Zulhas Uddin Ahmed and others*.¹¹⁸ The court declared the imposition of VAT on health services illegal.

The court said that:

“The intent and spirit is to provide minimum health care/medical services to the citizens in order to maintain and improve public health being the primary duty and obligation of the state. In view of that matter, the imposition of VAT on the impugned medical services is not warranted and contrary to the fundamental principles of state policy. Moreover, Article 32 of the Constitution provides for the protection providing not to deprive a citizen’s right and personal dignity except in accordance with law. Providing thereby that a citizen is to be allowed to maintain a smooth health care and peaceful life and assist maintenance thereof providing all the amenities including health and medical services in the society. Thus the imposition of VAT on hospitals, clinics, doctors’ chamber and pathological laboratory is definitely contrary to the provision of the constitution.”¹¹⁹

The present day jurisprudence of the judiciary hints that the country is inclining towards direct realization of ESC rights.

4.9 Testing the Aims and Objectives with the Constitutional Responsibility and Right to Primary Education

The plain reading of **Article 17** obliges the Government of Bangladesh to take effective measures to ensure right to primary education for all. The preamble of the Constitution envisions of creating a country ensuring legal, social, political and economic equality among all the citizens of the country. Ironically, **Article 8** of the Constitution provides that Economic, Social and Cultural (ESC) Rights are not enforceable before a court of law. It raises significant legal question whether non-enforcement of ESC rights contradicts with the aims and objectives of the constitution. It is a general principle of interpretation that any law, statute should be read as a whole. One part of the constitution cannot be interpreted to change the spirit of another part. The interpretation that makes both parts operative should be adopted.

¹¹⁸ 15 MLR (AD) 457 (2010)

¹¹⁹ Ibid. para 5.

It is to be mentioned that poor economic condition of the country was the primary reason for including right to primary education as a part of Fundamental Principles of State Policy (FPSP) rather than Fundamental Rights (FRs). Ensuring right to primary education requires huge amount of financial expenditure and other resources. Does this argument hold true even today in 2017? All sets of human rights require some degree or level of resources for their realization and impose both positive and negative obligations upon state. For instance, to enforce right to vote, right to fair trial and right of prisoners require huge amount of money. Even afterwards, a state is bound in good faith to respect, protect, promote and fulfill the constitutional rights of its citizens. Violation of these rights gives birth to receive legal redress.

Now the question is whether the government has become able to fulfill the constitutional responsibility in line with aims and objectives of the constitution. Could the government evade responsibility simply because of the 'poor economic condition' logic? Is that logic valid anymore? Is it not a high time for the judiciary to come forward and be ready to enforce ESC rights? Can Supreme Court of Bangladesh direct the government to adopt reasonable legislative and other measures within its available resources to achieve their realization?

Surely, neither the government nor the Supreme Court can evade the constitutional responsibility to enforce right to primary education by saying that they are expensive or their enforcement has been barred by Article 8(2) as part of ESC rights.

However, ESC rights indeed constitute the essence of living because they provide the material support that makes life worth living. In general, these rights concern the conditions that people live, educate and work. They stress upon the quality of life and give people a claim to adequate standard of living. So, without full realization of ESC rights it is never possible to create a more humane, happy and free citizenry in a particular country.¹²⁰ Therefore, enforcing fundamental right has no mentionable outcomes unless ESC rights are not positively enforced in Bangladesh.

¹²⁰ Waheduzzaman at 33.

4.10 Present State of Realizing Right to Primary Education in Line with Constitutional Obligation

Since the framers of the constitution inserted right to primary education in part II, it has not conferred any direct entitlement which an individual can enforce against the state. If this right was included in part III, then one could move to the superior court claiming enforcement of this right or seeking direction compelling the state to take actions or adopt measures to ensure their realization. Being aware of this implication, framers of the constitution deliberately placed the right to primary education as a part of the objective principles or policy goals of the state, not as subjective rights.¹²¹ The constitution imposes obligations upon the government to adopt reasonable legislative and other measures within its available resources to ensure right to primary education.

The distinction between ESC and CP rights seems to create mockery in some cases. When the judges tend to interpret ESC rights as an integral part of FRs, they absolutely negate the differences between two sets of rights. African countries could be a role model for us in giving force to ESC rights.

It is extremely difficult to enforce one set of rights without giving effect to another set of rights. The Supreme Court of Bangladesh has given extended meaning of fundamental rights as to include some ESC rights which are internationally recognized human rights. The enforcement of ESC rights is the indication that the country is thriving towards development. An active bar with powerful advocacy and lawyering skills, vibrant bench, the media, human rights organizations, strong political will on the part of the government is essential to translate the social welfare promises of the constitution into performance.

Ensuring universal primary education is a fundamental principle of the State which is not judicially enforceable. Primary education has to be a fundamental right, not fundamental principle. The demand for inclusion of education as a fundamental right in the constitution has recently risen in our country. A little amendment making

¹²¹ Ibid at 35.

education a fundamental right in the constitution will not cost a penny to anyone, whereas it can arm children of our country with a constitutional weapon to fight against injustice in their life.

Such were also the words on education in the constitution of India, which said,

'The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years.'

In the following five decades it has remained as elusive as ever to a large number of children of India. Then, following a Supreme Court decision in the case *Unnikrishnan vs. State of Andhra Pradesh, 1993*, the inclusion of education as a fundamental right was passed during the 86th amendment of the constitution of India in 2002. Now, since the amendment, every child between 6 to 14 years in that country has the right to get education as a fundamental right. If a child of that age group is denied facilities for primary education, the court can be asked for an order directing the concerned authorities to take appropriate measures. The law also stipulates a duty for parents or guardians to send their children to school; otherwise, they have to face punishment.

CHAPTER FIVE

NATIONAL LEGAL FRAMEWORK AND MEASURES TAKEN FOR IMPLEMENTING PRIMARY EDUCATION

5.1 Introduction

In the nineteenth century, European countries began to lay down the provision of compulsory primary education in domestic laws.¹²²After the Second World War, the right to education became a part of International Human Rights Law. It was included in the Universal Declaration of Human Rights, the First Optional Protocol to the European Convention on Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in a number of other international instruments.¹²³Today, many countries have incorporated the right to education in their constitutions.¹²⁴Bangladesh adopted the same policy. Although Bangladesh has already achieved significant progress in primary education in terms of enrolment of the students and free distribution of books across the country, the present scenario of primary education is not up to constitutional expectation. If it comes to ensuring quality basic education for all at primary level which has been reflected in our constitution, as discussed in the previous chapter, the country is still lagging behind. Even though there have been seven Education Commissions and Committees formed till date, the first and the last reports have nearly similar objectives and all the other reports have a huge variety in their objectives. As a result, the people of Bangladesh have not been able to receive a sound, secular, modern, adoptable, realistic, flexible and farsighted education policy yet. This chapter takes effort to outline the existing legal framework of the country and measures taken by the government to fulfill the constitutional responsibility. This chapter explores the

¹²²K. Tomasevski, *Education Denied* (2003) at 44-48.

¹²³K. Beiter, *The Protection of the Right to Education by International Law* (2006).

¹²⁴ Right to Education, The Right to Education Initiative (RTE) is a global human rights organization focusing on the right to education. Established in 2000 by the first UN Special Rapporteur on the right to education.

legal frameworks of Bangladesh as well as India and Pakistan.¹²⁵ Moreover, it explores different measures taken by the Government of Bangladesh for implementing primary education.

5.2 National Legal Framework of Bangladesh

Bangladesh has enacted couple of laws to ensure Right to Primary Education after independence. Primary Schools (Taking Over) Act, 1974 and the Primary Education (Compulsory) Act, 1990 are the two most important legislations to ensure primary education for every child in Bangladesh. The Education Act, 2016 is about to be enacted by the parliament. The Government nationalized and took over 36,165 primary schools in 1973 and regularized it under the Primary Schools (Taking Over) Act of 1974, and declared 157,724 primary school teachers as government employees. Primary education was free and made compulsory under the Primary Education (Compulsory) Act, 1990, implemented initially in 68 upazillas (sub-districts) in 1992 and extended to the rest of the country from 1993.¹²⁶ The review of these two Acts related to compulsory primary education in Bangladesh along with brief history of primary laws of the country are given below.

5.2.1 Historical Background of Laws Related to Compulsory Primary Education in Bangladesh

Historically, education had been the exclusive preserve of the elite and mostly the male. The Wood's Educational Dispatch of 1854, resulting from an inquiry about education in India by the Select Committee of the British House of Commons, provided the legal foundation for modern public education in Bengal. A provincial department of education was established and thus began the process of developing an organization and management structure for education. The first substantive effort was the enactment of Bengal Primary Education Act, 1919. The enactment of the Bengal Education Code in 1930 was another landmark legislation that extended primary

¹²⁵ India-Pakistan-Bangladesh; the southern region of Asia, formerly known as Subcontinent

¹²⁶ Website of Ministry of Primary and Mass Education, Government of People's Republic of Bangladesh

education to the rural areas and created the District School Board as the administrative body for primary education. This Act also intended to introduce compulsory, universal primary education, but the implementation of this goal had to wait another six decades.

After the creation of Pakistan in 1947, it had been repeatedly mentioned to establish a universal primary education for all. But it failed to attract the attention of the ruling regime. What happened was that the Bengal Provincial Assembly passed the "Bengal (Rural) Primary Education Act" in 1951 to introduce compulsory primary education. Within 2 years, this initiative expired. 'Compulsory Primary Education for All' was one of 21 demands of Juktafront (United Front) upon which they boarded on power. Under the leadership of Juktafront Government, District Education Board was dissolved and primary education was brought under the direct control of the government. The schools that were in the compulsory education program were named as 'model school' whereas the other schools were called 'non-model' schools.¹²⁷ The discriminatory societal and state character of Pakistan gave birth to the independence movement and created a new nation – Bangladesh.

Since the origin of Bangladesh as independent nation-state in 1971, various laws have been passed regarding primary education including Primary Schools (Taking Over) Act, 1974; the Primary Education Act, 1981 and the Compulsory Primary Education Act, 1990. The Act of 1974 provided for free primary education all over the country and teachers of primary schools became government servants. The Act placed upon the government the onus of bringing the primary school system under a centralized administration from the previous district based management. The Act of 1981 made provisions for the establishment of Local Education Authorities at the subdivisions (present districts). The Act also provided for school based management and the formation of the School Management Committee. The Act of 1981, however, was not

¹²⁷ Primary education in Bangladesh, streams, disparities and pathways for unified system, Shahorin Monzoor and Dewan Muhammad Humayun Kabir, Unnayan Onneshon, Dhaka, page 14

implemented. It was promulgated as a decree by the then military ruler, but was not followed up with necessary administrative steps for implementation.¹²⁸

It is very remarkable that although India and Bangladesh have inherited the same education system, in present days India is a superpower in the 'knowledge economy' that has taken center stage in today's global information-driven dynamics whereas the quality of education in Bangladesh is deteriorating. Indians may have had a two decade head start, but their present state was not attained in one stride of a decade. A knowledge-based economy needs professionals with a solid grounding on the basic sciences, on the lingua franca of the world i.e. English and a plan (that a nation sticks to).¹²⁹

5.2.2 Primary Schools (Taking Over) Act, 1974

The dawn of independence saw the recognition of primary education as a national responsibility of the government, and as the fundamental rights of the people. The first Constitution introduced by the Sheikh Mujib government in 1972 specified that the State should adopt effective measures for the purpose of establishing a uniform and universal mass education by extending free and compulsory education to all children to such stage as may be determined by law.¹³⁰ On 26 October 1973, the Sheikh Mujib government passed an Ordinance for nationalizing a large number of primary schools. Later the *Jatiya Sangsad* introduced the *Primary Schools (Taking Over) Bill, 1974* that imposed upon the government the responsibility of bringing the primary school system under a centralized administration from the previous district based management. Instead of providing good results, the policy had some setbacks in the overall management of the primary education system.¹³¹ The Primary Schools (Taking Over) Act of 1974 nationalized primary education, made it free, placed it

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ A F M Fazle Rabbi, Primary Education in Bangladesh: Viability of Achieving Millennium Development Goals at 12 working paper

¹³¹ Ibid.

under a centralized administration and made the teachers state employees/public servants.¹³²

The preamble of the 1974 Act says that it was expedient to make provision for taking over of certain primary schools in Bangladesh by the government and therefore, the law was enacted. The Act was passed in 4th February 1974 but it was given retrospective effect and was deemed to have come into force on 31st October 1973.¹³³

The post-liberation Bangladeshi government repealed earlier colonial era Acts by ordinance in 1973 and later enacted as a permanent law- Primary Schools (Taking Over) Act, 1974. Under this law, all primary schools were taken over by the government and all employees became government employees. It abolished primary school management committees, giving government management responsibility for the nationalized primary schools. The purpose of nationalization was to improve management of schools and thereby accelerate access.¹³⁴

Primary Schools (Taking Over) Act, 1974 removed the role of district and local government bodies and the involvement of communities in school management. In this regard, it could be argued, a century-old culture of community involvement running primary schools was effectively curbed. By implication, the law discouraged non-government providers, such as institutions run by NGOs, community organizations or private providers. As a result of centralizing the management, the system became non-responsive to the varied circumstances and needs in primary education delivery.¹³⁵Section 3 of the Primary Schools (Taking Over) Act of 1974

¹³²Bangladesh Education Sector Overview, UNESCO

¹³³ Article 1 of Primary Education (taking over) Act, 1974

¹³⁴ Zia-Us-Sabur and Manzoor Ahmed, "Debating Diversity in Provision of Universal Primary Education in Bangladesh" Research Monograph No 34, Institute of Education and Development, BRAC University, Dhaka, Bangladesh May 2013, page 11

¹³⁵ Ahmed et al, "Access to Education in Bangladesh: Country Analytic Review of Primary and Secondary School" (2007) in Zia-Us-Sabur and Manzoor Ahmed, "Debating Diversity in Provision of Universal

deals with the procedure of taking over of primary schools by the government. It says that the government of Bangladesh may by notification of official gazette, take over any primary school on such date prescribed in the notification.

The effect of the notification will be as follows:

- The primary schools, with all its assets and property, including land, building and funds and all other rights and interest in or rising out of such property, and all records and other documents of whatever nature relating thereto, shall stand transferred to, and vest in the government¹³⁶
- All teachers of the primary school shall become employees of the government¹³⁷
- All committees and authorities managing or administering the affairs of the primary school shall cease to function¹³⁸

According to section 4 of the Primary Schools (Taking Over) Act of 1974, the government shall administer and manage the affairs of primary schools after being taken over under section 3 of the Act.¹³⁹ Section 5 of the Act allows the government to issue necessary orders to remove any difficulty that may arise in connection to the taking over of any primary school.¹⁴⁰ Section 6 of the Act empowers the government to make rules for carrying out the purposes of the law.¹⁴¹ Section 7 of the Act provides for repeal and savings. The 1974 Act repealed the 1973 Ordinance i.e. Primary Schools (Taking Over) Ordinance but validates the actions taken and things done including orders and notifications issued under the said ordinance and would be considered to be done under the present Act.¹⁴²

Primary Education in Bangladesh” Research Monograph No 34, Institute of Education and Development, BRAC University, Dhaka, Bangladesh May 2013, page 11

¹³⁶ Section 3 (1) (a) of Primary Education (Taking Over) Act, 1974.

¹³⁷ Section 3 (1) (b) of Primary Education (Taking Over) Act, 1974.

¹³⁸ Section 3 (1) (c) of Primary Education (Taking Over) Act, 1974

¹³⁹ Ibid. Section 4

¹⁴⁰ Ibid. Section 5

¹⁴¹ Ibid. Section 7

¹⁴² Ibid. Section 7

5.2.3 Primary Education (Compulsory) Act, 1990

Compulsory Education Act does not always ensure 100% participation rate especially in developing countries where poverty is severe.¹⁴³ Two Primary Education Acts had been introduced in Bangladesh. In 1981, Primary Education Act, 1981 was passed. Under this act, Local Education Authority was established in the Mahakuma level and the supervision, regulation, administration and management of primary education was vested in them. But unfortunately this Act was abolished before implementation.¹⁴⁴

Primary education was given high priority in the Fourth Five year Plan (1990-95). In 1990, 'Compulsory Primary Education Act' was approved by the National Parliament and was introduced in 68 thanas around the country. Compulsory Primary Education Implementation Monitoring Unit (CPEIM) was formed in 1990.¹⁴⁵

The salient features of the Primary Education (Compulsory) Act, 1990 are given below. In the preamble of the law, it is mentioned that the aim of the Act is to provide for the obligation to primary education. In other words, the Act was passed to make primary education compulsory for every child of the country.¹⁴⁶ Section 3 sets out the obligation to primary education and it says that the Government may, by notification in the official Gazette, declare primary education obligatory in whatever area from whenever onwards.¹⁴⁷

Under this section, the guardian of any child dwelling permanently in an area where primary education is obligatory, is obliged to get his child admitted for the purpose of receiving primary education in a primary education institute of the said area in the

¹⁴³ Abstract, Compulsory Primary Education Act –1990 in Bangladesh, Md. Masum Emran, Department of Economics, University of Birmingham, June 7, 2010

¹⁴⁴ Primary Education, Banglapedia, National Encyclopedia of Bangladesh, Second Edition, 2012

¹⁴⁵ Ibid

¹⁴⁶ Primary Education (Compulsory) Act, 1990, Preamble

¹⁴⁷ Ibid. Section 3

vicinity of his place of residence if there is no justified reasons for not doing so. Section 3 also provides the justified reasons as follows¹⁴⁸:

- The impossibility of admitting a child in a primary education institute for illness or any other unavoidable reason;
- The non-availability of a primary education institute within 2 kilometers of the dwelling place of the child;
- The impossibility of admitting a child in a primary education institute even if applied for;
- The decision of a primary education officer that the education a child is receiving at the time being is equivalent to a primary education;
- The decision of a primary education officer that it is not desirable to enter a child in a primary education institute because the child is mentally retarded.

The Act also prohibits any person to keep children of an area where primary education has been declared obligatory engaged in any occupation that prevents them from attending schools.¹⁴⁹

Section 4 of the Primary Education (Compulsory) Act provides that, every ward of the union or municipal areas where primary education is declared obligatory shall have a committee called Obligatory Primary Education Committee to ensure that every child of the designated area enroll in and regularly attend the primary education institutes of such area.¹⁵⁰ There will be two kinds of committees, i.e. union ward committees and municipal committees. Union ward committees shall consist of a member of the ward nominated by the Chairman of the Upazila Council who will head the committee, along with the following members¹⁵¹:

- Two patronizers of learning nominated by the Chairman of the Upazila Council after taking the advice of the Chairman of the Union Council.

¹⁴⁸ Ibid. Section 3(3) (a), (b), (c), (d), (e)

¹⁴⁹ Ibid. Section 3 (4)

¹⁵⁰ Ibid. Section 4 and 5

¹⁵¹ Ibid. Section 4 (2) (b), (c), (d)

- Two lady patronizers of learning nominated by the Chairman of the Upazila Council after taking the advice of the Chairman of the union Council.
- The headmaster or lady principal of a primary education institute, who shall be its secretary too.

The Committee for any municipal area ward shall be headed by a ward commissioner nominated by the Mayor of the municipal corporation or the Chairman of the municipal meeting, who shall be its Chairman too and along with the following members:

- Two patronizers of learning nominated by the said Mayor or Chairman after taking the advice of the ward commissioner.
- Two lady patronizers of learning nominated by the said Mayor or Chairman after taking the advice of the ward commissioner.
- The headmaster or lady principal of the primary education institute, who shall be the secretary too.¹⁵²

In case of there being more than one primary education institute in a ward, the headmaster or lady principal of any of these shall be member of the Committee and the Chairman of the Upazila respectively the Mayor of the municipal corporation, or the Chairman of the municipal council shall decide who among them shall be the secretary of the Committee.¹⁵³

Section 5 of the Act enumerates the duties and responsibilities of these committees. According to this section, the committees are primarily responsible to ensure that all children dwelling permanently in its area be entered in and regularly present at the primary education institute. For this purpose, the committees shall also take all measures it deems necessary or which are prescribed by the Government.¹⁵⁴ Another

¹⁵² Ibid. Section 4 (3) (b), (c), (d)

¹⁵³ Ibid. Section 4 (4)

¹⁵⁴ Ibid. Section 5 (1)

important responsibility of the committees is to prepare a list of children dwelling permanently in their respective areas including the name of the guardian and age of every such child. The list prepared by the committee shall be rectified every year in the last week of December.¹⁵⁵

Moreover, a copy of such list and the rectified list shall be sent to all primary education institutes situated within two kilometers of the primary education officer and the concerned ward. Every year in the last week of January, the headmaster or lady principal of any primary education institute shall send a list containing the names of all children entered in their institute to the concerned Committee and primary education officer. The headmaster or lady principal of any primary education institute shall send, in the first week of any month, a list containing the names of all children who had been absent for at least 7 days during the foregoing month to the concerned Committee and primary education officer.¹⁵⁶

Where the Committee is satisfied that a child entered in its list has, without justified reasons, not been entered in a primary education institute or been absent for at least 7 days within a month without the approval of the headmaster or lady principal of the education institute, it may after hearing the statement of the guardian or, if necessary, investigating the case, give order that the guardian of the child, in case of the child's not having been admitted, admit the child within the term determined by the Committee in a primary education institute, or that, in case of the child's having been absent, ensures that the child be present regularly at the education institute concerned.¹⁵⁷

¹⁵⁵ Ibid. Section 5 (1) (2) (3)

¹⁵⁶ Ibid. Section 5 (4) (5) (6)

¹⁵⁷ Ibid. Section 5 (7)

Section 6 provides for punishment if any committee or guardian fails to accomplish its obligation provided under the Act. According to this section, a fine of not more than 200 Taka shall be imposed:

- On members of a committee if it fails to accomplish its duties under this Act
- On a guardian, if he/she fails three times in a row to comply with an order given under the Act¹⁵⁸

However, no Court shall take cognizance of any offence under this Act without a complaint in written form by the Chairman of the Committee.¹⁵⁹

Finally, section 8 of the Act provides that the Government may make rules for the purpose of this Act by notification in the official Gazette.¹⁶⁰

5.2.4 National Education Policy, 2010

Bangladesh has a complex and multiple system of education having composition of general, Madrasahs, technical and some others fields of education. Every system has their respective curriculum with nominal similarities among all systems. National Education Policy was announced by the government in June 2010. It had the potential of initiating a process of much needed reform in the educational system of the country.

The government of Bangladesh led by Awami League took an initiative to prepare an Education Policy to adjust with the need of the modern times for building the future generation as a human resource such as efficient in knowledge and technology and inspired with moral values, national traditions and the spirit of liberation war. The first Education Commission was constituted to prepare an Education Policy under the leadership of Dr. Quadrat-e-Khuda in 1974. Secondly, in 1996, after Awami League came to power, they again took steps to prepare an education policy- ‘Education Policy-2000’. Furthermore in 2008, The Awami League government took the

¹⁵⁸ Ibid. Section 6

¹⁵⁹ Ibid. Section 7

¹⁶⁰ Ibid. Section 8

responsibility of updating the education policy prepared earlier with some fixed objectives, which recognized the importance of public views and reactions. Taking the motives of the Election Manifesto 2008 of building up Bangladesh as a poverty free, non-communal, liberal and democratic state, Ministry of Education formulated this education policy.¹⁶¹

Finally a new education commission was formed headed by National Professor Kabir Chowdhury with 16 members in 2009. It included in total 24 goals and objectives emphasizing on morality, creativity and production oriented education, technical and vocational education, inequity regarding gender, religion and ethnicity, ICT (Information and Communication Technology) and math-science, and the same curriculum and syllabus for all streams. The policy sought to bring all students of the country, irrespective of their religion, gender, and physical limitation, socio-economic and geographic location under one system. One-year pre-primary education for children over five years of age would be introduced. Compulsory primary education extended up to class-VIII from class-V and secondary education to class-XII with uniform curriculum and syllabus would be followed in general, Madrasa and vocational levels. Free education was promised up to class-VIII from the previous class-V in phases at government and government-funded institutions. The policy was non-communal. There would be compulsory subjects on religion and ethics for students up to class-VIII, Information and Communication Technology (ICT) and Bangladesh Studies were introduced to primary and secondary levels. On higher education, the policy advised turning all three-year graduation courses into four-years honors courses in phases. A student completing a four-year honors course would be entitled to all professions in his/her field. The committee proposed decentralization of the National University with centers in all divisions. These centers would later turn into universities and colleges in its jurisdiction would be affiliated to it. The policy said that technical education institutions would be established in every upazila and the number of educational institutions on polytechnic, textile and leather would be

¹⁶¹ National Education Policy (NEP), 2010

increased. Teachers would be given more facilities alongside more and modern training, the policy said. It said steps would be taken to frame an integrated education law and form a permanent education commission.¹⁶²

The 18-member National Education Policy Formulation Committee comprising distinguished educationists presented their report in a short time, after extensive consultation with professional and stakeholder groups. The policy was approved by the Cabinet of Ministers in June 2010, and was then endorsed in December, 2010 by the National Parliament. One-year pre-primary education, and primary education extended to grade 8, would become universal within the next decade. It was agreed that the diversity of provisions in primary and secondary education, government, government-assisted NGO and private sector schools, and the Madrashas would continue, but all institutions would have to follow a common core curriculum and adopt minimum common standards regarding learning content and provisions. There would be multiple delivery modes with a common core curriculum and common standards. The common core curriculum for all types of secondary level institutions (including Madrasha) would include Bangla, English, Mathematics, Science, Bangladesh Studies, and IT. These subjects were to be complemented by additional subjects pertinent for each major stream general, vocational, and madrasha. In addition to the vocational stream in schools, there would be various forms of skill training activities according to graded national skill standards designed to meet skill needs in domestic and overseas employment markets. Instruction in Science and IT would be given special attention.

¹⁶² N. M. Sajjadul Hoque, Reviewing Education Policy of Bangladesh: Is the Present Education Policy Adequate for Countering Terrorism, Religious and Ethnic Intolerance? South Asia Youth for Peace and Prosperity Society (SAYPPS) www.saypp.org

5.2.5 The Draft Education Law, 2016

The government has recently publicized the proposed draft of Education Law, 2016 through the Ministry of Education's website. The process started in 2011 immediately after circulating the policy. The first draft of the law was formulated in 2012 and second draft was given on website in 2013. But, both the drafts were withdrawn for further modifications on the basis of public opinion. Then after two years of silence, the third draft of the law was published on October 19, 2015, but within a week, the draft was also withdrawn. Later, another draft had been published on the website of Ministry, reinstating the previous penalty. In the draft, four tiers of education system have been proposed. They are: pre-primary (4 to 6 years); primary (pre-primary to class 8); secondary (class 9 to class 12) and higher education (post-class 12 to higher education including Honours and Master's).¹⁶³

In the proposed Act, pre-primary to primary education of children has been treated as free and compulsory as well as rights of the children and the Act also provides for imposing fine and imprisonment for fixing fees without the permission of the government.¹⁶⁴ These levels will be regarded as the children's right. Anyone giving private tuition or coaching will have to face punishment, as the draft of a new law stipulates that the government can take necessary measures to stop private tuition and coaching. The charge of violating the law carries jail term of up to six months and a fine of up to Tk. 2 lakh, according to the draft Education Act, 2016. The draft act slaps a ban on publishing guidebooks for primary or secondary levels. Publishing notes and guidebooks will be regarded as a punishable offence and the violators will face similar punishment like the ones giving private tuitions. It says students will not be subjected to any form of corporal punishment at the educational institutions. People breaching this provision will be fined Tk. 10,000 or awarded three months' imprisonment or both. However, the penalty for indulging in corporal punishment at

¹⁶³ Section 4 of the Draft Act 2016.

¹⁶⁴ Section 5 of the Act.

primary level will be a fine of Tk. 50,000 or three months' jail or both. The subjects that students at primary level will study include Bangla, English, Mathematics, Religious and Moral Education, Bangladesh Studies, Introduction to World, Information Technology and Science and Paribesh Parichiti by the National Curriculum and Textbook Board (NCTB). Students from class-III to class-VIII will have to sit for a half-yearly and a terminal exam. The government through its executive order or rules will decide the number and methods of public exams at primary level. However, there will be a public exam at the end of class-VIII, according to the draft act. Except the textbooks fixed by the NCTB, the schools will not include any other book in the syllabus. For violating this provision, the head of the schools or the publisher of the book will face six months in jail or Tk. 2 lakh in fine or both, says the draft act.

However, what is the reality in our context? In fact, gross and sheer discrimination starts at this very tier of education in Bangladesh. It is indeed an irony that children of well-off families hardly go to government primary schools these days. They are rather sent to kindergartens and English medium schools, many of which are just misnomers of such schools given their quality of English. However, the charges the schools and institutions take or impose upon the guardians are cutthroat.¹⁶⁵

This new draft has brought in many significant changes in the education sector such as introduction of pre-primary education in all the government primary schools, banning of admission exam in class one, penalty for applying corporal punishment, punitive measures against producing or selling notebooks and guidebooks, running private tuition and coaching centers and so on. It has also stated that all the educational institutions at primary and secondary level will maintain a core curriculum. The Act obligated all private stakeholders for providing primary

¹⁶⁵Dr. Kazi S.M. Khasrul Alam Quddusi, Education Act: Challenges of Execution, Daily Sun.

education in the country to register all redundant on a mandatory basis. Punishment for such non-registration has also been prescribed- Any person who violates this provision shall be punished with six years imprisonment.¹⁶⁶

However the Draft Act has not yet been placed before the Parliament. Certainly, in near future it will be enacted by the legislative body. The newly approved draft Act has high prospective to ensure primary education in line with constitutional responsibility of the Government.

5.3 National Legal Frameworks of Neighboring Countries (India & Pakistan) for Right to Education

5.3.1 Right to Education in India

The Indian government lays emphasis on primary education, also referred to as elementary education, to children aged 6 to 14 years old. The 86th amendment of the constitution in India in 2002 got inserted Article 21-A which is, free and compulsory education for all the children between 6 to 14 years old. This article made education a fundamental right for every child.

5.3.1.1 Constitutional Provisions on Right to Education (RTE) in India

Article 21A of the Indian Constitution provides for the right to education with the same legal status as the right to life. According to this provision, every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighbourhood.

Article 21A of the Constitution of India says,

“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

¹⁶⁶ Section 10 of the Draft Education Act 2016.

This Article was included in the Indian Constitution through Section 2 of the Indian Constitution (Eighty-sixth Amendment) Act, 2002. Prior to that, right to free and compulsory education was governed by Article 41, 45 and 51A.¹⁶⁷

Article 41 of the Constitution of India enumerates that,

“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

Original Article 45 was substituted by a new provision through the same Constitution (Eighty-sixth Amendment) Act, 2002 because the original Article 45 was almost similar to the newly included Article 21A.¹⁶⁸

Original Article 45 of Indian Constitution says,

“The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

The substituted Article 45 introduces a new issue of early childhood care. The amended Article 45 maintains that, “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”¹⁶⁹

Article 46 of the Indian Constitution also deals with right to education especially for the children who belong to any weaker section of the society. It says,

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”¹⁷⁰

¹⁶⁷ P.M. Bakshi, The Constitution of India, 11th Edn. (Pocket Size Edition) Universal Law Publishing Co., New Delhi, 2011.

¹⁶⁸ Ibid, page 106

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

Article 51A sets out a couple of duties to be performed by the citizens of India under the heading of “Fundamental Duties.” Duty to ensure education for the children by a guardian is one of those fundamental duties. Article 51A (k) says,

“Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”¹⁷¹

Judicial Decisions

The case that successfully shaped “right to education” from a directive principle to a fundamental right is *Unni Krishnan, J.P. and others v. State of Andhra Pradesh and Others*.¹⁷²

The case dealt with a gamut of issues, e.g. constitutional challenge querying whether the “right to life” in Article 21 of the Constitution of India guarantees a fundamental right to education to citizens of India, role of economic resources in limiting right to education, interplay between Directive Principles and State Policy in the Constitution and Fundamental Rights, and whether the right to education includes adult professional education.¹⁷³

The case involved a challenge by certain private professional educational facilities to the constitutionality of state laws regulating capitation fees charged by such institutions.

The Supreme Court of India held that the right to basic education is implied by the fundamental right to life (Article 21) when read in conjunction with the directive principle on education (Article 41). The Court held that the parameters of the right must be understood in the context of the Directive Principles of State Policy, including Article 45 which provides that the state is to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and

¹⁷¹ Ibid, 109

¹⁷² 1993 AIR 217, 1993 SCR (1) 594, 1993 SCC (1) 645, JT 1993 (1) 474, 1993 SCALE (1)290

¹⁷³ ESCR-Net, Case law Database: A database on domestic, regional and international decisions regarding Economic, Social and Cultural Rights.

compulsory education for all children under the age of 14. The Court ruled that there is no fundamental right to education for a professional degree that flows from Article 21. It held, however, that the passage of 44 years since the enactment of the Constitution had effectively converted the non-justiciable right to education of children under 14 into one enforceable under the law. After reaching the age of fourteen, their right to education is subject to the limits of economic capacity and development of the state (as per Article 41). Quoting Article 13 of the International Covenant on Economic, Social and Cultural Rights, the Court stated that the state's obligation to provide higher education requires it to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the right of education by all appropriate means.¹⁷⁴

The state responded to this declaration nine years later by inserting, through the Eighty-sixth amendment to Constitution, Article 21-A, which provides for the fundamental right to education for children between the ages of six and fourteen.

The Court in Unni Krishnan case expressed its disagreement with the finding in the earlier case of Mohini Jain v State of Karnataka¹⁷⁵ that the right to education at all levels is guaranteed by the Constitution. In the subsequent case of M.C. Mehta v State of Tamil Nadu and Others¹⁷⁶ the Supreme Court stated that Article 45 had acquired the status of a fundamental right following the Constitutional Bench's decision in Unni Krishnan.¹⁷⁷

5.3.1.2 The Right of Children to Free and Compulsory Education (RTE) Act, 2009

The passing of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 marks a historic moment for the children of India.

¹⁷⁴ Ibid

¹⁷⁵ 1992 AIR 1858

¹⁷⁶ (1996) 6 SCC 756; AIR 1997 SC 699

¹⁷⁷ Supra note 9

The Right of children to Free and Compulsory Education Act, 2009 was passed by the Indian Parliament in August 2009, and after receiving Presidential assent immediately thereafter, it was notified for implementation on April 1, 2010. The 86th Amendment that provides children of India, in the age group 6 to 14 years, a fundamental right to free and compulsory education was simultaneously notified on the same day. These were momentous events, even though the inclusion of the critical age group 0-6 years, and 14-18 years remains an unfulfilled agenda.

This Act serves as a building block to ensure that every child has his or her right (as an entitlement) to get a quality elementary education, and that the State, with the help of families and communities, fulfils this obligation.

According to the Act, there is no direct (school fees) or indirect cost (uniforms, textbooks, mid-day meals, transportation) to be borne by the child or the parents to obtain elementary education. The government will provide schooling free-of-cost until a child's elementary education is completed.

RTE also mandates the inclusion of 50% women and parents of children from disadvantaged groups in SMCs. Such community participation will be crucial to ensure a child friendly "whole school" environment through separate toilet facilities for girls and boys and adequate attention to health, water, sanitation and hygiene issues.

Regarding the expenses to implement the RTE Act, both central and state governments shall share financial responsibility for RTE. The central government shall prepare estimates of expenditures. State governments will provide a percentage of these costs.

The central government may request the Finance Commission to consider providing additional resources to a state in order to carry out the provisions of RTE.

The state government shall be responsible for providing the remaining funds needed to implement this Act. There will be a funding gap which needs to be supported by

partners from civil society, development agencies, corporate organisations and citizens of the country.

With its justiciable clauses that make it compulsory for the state to provide a neighbourhood school of a prescribed minimum quality to each child within three years, a designated Pupil-Teacher Ratio (PTR) that has to be maintained in each school, all teachers to attain nationally designated qualifications within five years, education that is inclusive, non-discriminatory and of equitable quality for all children, including those with disabilities, mandatory School Management Committees consisting mostly of parents, the designation of local authorities, and the task of implementing the Act within its stipulated time frame is daunting.¹⁷⁸

5.3.1.3 Salient features of Right To Education (RTE) Act

The RTE Act,¹⁷⁹ according to the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India,

- Provides for the right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
- It clarifies that ‘compulsory education’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen years age group. ‘Free’ means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- It makes provisions for a non-admitted child to be admitted to an age appropriate class.

¹⁷⁸ Frequently Asked Question (FAQ) on Right of Children to Free and Compulsory Education (2009), UNICEF, India.

¹⁷⁹ Department of School Education and Literacy, Ministry of Human Resource Development, Government of India.

- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating inter alia to Pupil-Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil-teacher ratio is maintained for each school, rather than just as an average for the state or district or block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
- It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,
- It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning.

5.3.2 Right to Education in Pakistan

Education has been considered an important social and cultural element in Pakistan since the independence of the country. The first ever step taken to recognize the importance of education was an All Pakistan Education Conference convened in 1947 recognizing "Universal Primary Education" as imperative. Subsequently, a Commission was formulated on National Education in 1959 which suggested that the

educational system in Pakistan should pursue quality as an essential objective. The Commission also recommended that education should be compulsory for children till the elementary stage. National Policies on Education were adopted in 1969, 1972-1980, 1992-2002 and in 2009 to implement right to education in Pakistan.¹⁸⁰

Before 2010, “right to education” was a part of “Principles of policy” of the Constitution of Islamic Republic of Pakistan and Article 37 (b) and Article 38 (b) dealt with right to education. They were:

Article 37(b) – Promotion of social justice and eradication of social evils

“The State shall remove illiteracy and provide free and compulsory secondary education within minimum possible period.”¹⁸¹

Article 38(d) – Promotion of social and economic well-being of the people

“The State shall provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.”¹⁸²

5.3.2.1 Right to Education as a Fundamental Right in Pakistan

In 2010, the status of right to education was elevated to Fundamental Right from Principles of Policy through a constitutional amendment and a new Article on Right to Education was inserted in the Pakistan Constitution. Section 9 of the Constitution (Eighteenth Amendment) Act, 2010 deals with “Right to Education”. Section 9 of the Constitution (Eighteenth Amendment) Act, 2010 says:

“In the Constitution, after Article 25, the following new Article shall be inserted, namely- "25A. Right to education: The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.”¹⁸³

To materialize the “Right to Education” which was inserted in the Constitution through Constitution (Eighteenth Amendment) Act, 2010, Pakistan’s National

¹⁸⁰<http://rtepakistan.org/about-rte-pakistan/> Accessed July 20, 2015

¹⁸¹ Constitution of Islamic Republic of Pakistan, Article 37(b)

¹⁸² Ibid, Article 38(b)

¹⁸³ Constitution (Eighteenth Amendment) Act, 2010, Section 9

Assembly passed the “Right to Free and Compulsory Education Bill, 2012”, guaranteeing free education for all children between the ages of 5 and 16. Under the bill, every child, regardless of sex, nationality or race, shall have a fundamental right to free and compulsory education in a neighborhood school. Moreover, parents who refuse to send their children to school can be fined and imprisoned for three months, and employers who hire school-age children face fines and up to six months in prison.¹⁸⁴

This transformation in the status of right to education was a result of a longstanding movement undertaken by various quarters of Pakistani civil society. Idara-e-Taleem-o-Aagahi (ITA) is an organization that has played an instrumental role in establishment of right to education as a fundamental right.¹⁸⁵

Idara-e-Taleem-o-Aagahi (ITA) has three major components, e.g. programs on assessing learning levels which is known as Annual Status of Education Report (ASER) 2009-2015, Right to Education, 2011, and Children’s Literature Festivals 2011-2013. Together the campaigns are placed under the umbrella of Citizens’ Movement for Quality Education (CMQE). Of these three components, the journey of ASER has very much been the journey of the Right to Education- Article 25 A. To promote the implementation of Article 25 A, ASER spurred the One Million Signature Campaign, which was undertaken in two rounds with two million signatures collected from both in and out of school children in a record time of 13 months. As a result, various levels of government have begun to recognize education as the highest priority.¹⁸⁶

Education enjoyed the status of a “right” in the eyes of Pakistani Courts even prior to its recognition as a Fundamental Right in the Constitution. However, in a number of

¹⁸⁴ Right to Free and Compulsory Education Bill, Pakistan

¹⁸⁵Right to Education.Org Pakistan website

¹⁸⁶ THE Right to Learn, Save the Children, Pakistan

cases, Pakistani Courts enforced “right to education” as an entitlement already provided by the State. For instance, a decision to demolish school buildings for the construction of a shopping mall was set aside by a Court declaring the decision as contrary to the right to education.¹⁸⁷

In another case, the petitioner applied for admission in the University of Engineering and Technology, Lahore, on open merit basis as a resident of province of Punjab but the University refused his admission on the ground that he did not produce his father's domicile certificate to prove that the petitioner belonged to Punjab.¹⁸⁸ It was held that the right to receive education was the “basic” right of every citizen and any lapse on part of parents in providing a domicile certificate should not prevent the child from enjoying this right, especially since the petitioner’s origin could be determined through other means. Therefore, rejection of admission on this basis was held unconstitutional.

5.4 The Measures Taken by Government of Bangladesh for Primary Education

Bangladesh has made remarkable gains over the past two decades by ensuring access to education, especially at the primary level and for girls. The country’s net enrollment rate at the primary school level increased from 80 percent in 2000 to 98 percent in 2015. Furthermore, the percentage of children completing primary school is close to 80 percent.¹⁸⁹ This remarkable achievement is the result of the will of the people of Bangladesh and for the positive steps of its democratic government.

Different measures have been taken at different phases to ensure primary education in Bangladesh. Just immediately after the independence, Sheikh Mujib government apart from nationalizing primary education, adopted various programs and these were

¹⁸⁷Abdur Rehman vs. Municipal Committee 2000 MLD Lahore 906.

¹⁸⁸Umar Asif Raza vs. University of Engineering & Technology 1997 PLD 594 Lahore

¹⁸⁹ World Bank “Bangladesh: Ensuring Education for All Bangladeshis”

addressed in the first five year plan. The first five year plan (1973-78) proposed projects to reconstruct the schools, establishment of 5000 new schools, increase enrollment in the primary schools from 58% to 73%, reduction of dropout rate from 63% to 52%, development of PTIs, revision of curriculum, introduction of staggered system of existing schools etc. (First Five Year Plan, 1973:451). Under the FFYP, 18.8% of the education budget was allocated to primary education, but less than one half of the total amount was actually utilized and funds were diverted to the higher levels.¹⁹⁰ Consequently, physical targets of the FFYP were not achieved, dropout rate was not reduced, and only 50% of the primary schools to be constructed were completed.

To fulfill the constitutional obligation of Universal Primary Education, the Government at the very first level promulgated the Primary Education (Compulsory) Act, 1990. To implement this act and to co-ordinate, monitor and observe the progress of implementation of this act at the field level, Compulsory Primary Education Implementation Cell was created under the Ministry of Education in 1990. Subsequently the word "Cell" was replaced by the word "Unit". Officials were posted in the financial year 1990-91 with the approval of the Ministry of Establishment and Finance; the Unit started Preparatory Activities for implementation of Compulsory Primary Education from January 1991 as a wing of the Ministry of Education.

5.4.1 Formation of Kudrat-e-Khuda Education Commission

As soon as the Country Bangladesh was born, the Mujib government in 1972 had formed *Kudrat-e-Khuda Education Commission* to recommend objectives, strategies and action plans for creating a modern education system suited to the needs of an independent nation and compatible with the systems of the neighboring countries. The

¹⁹⁰Gustavsson, S, Primary education in Bangladesh for whom? The University Press Limited, Dhaka, 1990 at 13.

report of the commission was published in 1974 and it outlined the objectives of primary education as follows:

To develop and nurture the child's moral, mental and social personality; to bring up the child as a patriotic, responsible, inquiring and law-abiding citizen, and develop in him/her love for justice, dignity, labor, proper conduct and uprightness; to learn to read and write in the mother tongue, and to be able to count and calculate; to be able to acquire the fundamental knowledge and skills needed for a future citizen; to prepare for next stage of higher education.¹⁹¹

In view of the above objectives, the Commission placed before the government different recommendations for the development of primary education e.g. introduction of universal primary education up to class VIII. To attract a greater number of female students, it recommended for the appointment of female teachers at the primary level, and if required to build girls school.¹⁹² The report stressed the need for implementation of compulsory primary education by 1980 and extension of primary education up to class VIII by 1983. It further stated the adoption of effective measures for prevention of dropouts, introduction of an attractive curriculum, and development of appropriate textbooks and creation of proper environment in schools. The report suggested introduction of a uniform system of education that would be scientific, realistic, and compatible with social conditions and environmental needs. Recommendations also lined up for introduction of pre-primary education; setting up of primary education academy and a national primary education board. At the end, these recommendations remained 'no more than pious wishes', and were largely frustrated in reality.¹⁹³ Despite the merits of these recommendations, neither the concurrent Sheikh Mujibur Rahman regime nor the successive governments implemented them later on.

¹⁹¹(Bangladesh Education Commission Report, 1974:23)

¹⁹²Bangladesh Education Commission Report, 1974 at 24.

¹⁹³Grieve, R. Raising the achievement level of children in primary education, UNESCO, Regional Office for Education in Asia and the Pacific, Bangkok, 1985 at 135.

5.4.2 First Two Years Plan (FTYP) 1978-1980 and Second Five Years Plan (SFYP) 1980-1985

After coming to power, General Zia eventually adopted some major policy reforms in primary education. Under Two Year Plan (1978-80), the Zia government took a notable initiative, the significant aspect of which was the establishment of NAPE and development and reconstruction of 52 PTIs.¹⁹⁴ The government decided universal primary education as a goal of education and there was no drop out in the official records.¹⁹⁵ The universal primary education along with eradication of illiteracy was included as the two basic goals of the government. It was emphasized that every child who got enrolled in class-I pass through all classes and complete class-V. The *Second Five-Year Plan* (SFYP) (1980-85) marked the beginning of prospective plan for Universal Primary Education (UPE) with a goal of enrolling 91% of the primary age group by 2000. The target required a compulsion of about 75% of the primary school age population enrollment by 1990, and subsequently increasing it to 91% by 2000.¹⁹⁶ These targets also raised the government obligation of hiring an additional 49,000 teachers, 1,28,000 classrooms were constructed and about 45 million textbooks were produced and distributed by 1990. With financial and technical assistance from IDA, UNDP, UNESCO etc. the government cautiously went ahead with the UPE project. The important achievements under SFYP were establishment of Directorate of Primary Education (DPE) in 1981, creation of 1834 posts of Assistant Upazilla Education Officer (AUEO) to strengthen field level supervision, free supply of text books in phases and free distribution of textbooks among students by 1985, creation of 500 posts of female teachers, creation of infrastructural facilities for schools.¹⁹⁷ The development outlays for primary education under the SFYP were not

¹⁹⁴The two year plan 1978-1980, March, 1978, Government of the People's Republic of Bangladesh at 193.

¹⁹⁵Sattar, E. Universal primary education policy in Bangladesh, University Press Limited, Dhaka, 1982 at 117.

¹⁹⁶Primary education in Bangladesh, 2003, Directorate of Primary Education, Ministry of Primary and Mass Education, Government of the People's Republic of Bangladesh at 17.

¹⁹⁷Second Five Year Plan, 1983:291

seen as feasible. The government therefore scaled down the ambitious program to fit more closely with resource availability and absorptive capacity.

The Second Five Year Plan acknowledged the need to decentralize the administration of education, especially for primary education. In one of the major policy drives, the government intended to decentralize the primary education structure with control and management of schools to vest almost entirely in local management committees, which were to be formed at the village level.¹⁹⁸The Zia government also passed the *Primary Education Act, 1981* and made provisions for the establishment of local education authorities at the subdivisions (present district). In 1981, a separate Directorate of Primary Education was created with structures spread at Thana (sub-district) level. The Act also provided for school based management and the formation of the School Management Committee (SMC). The Primary Education Act, 1981 however, was promulgated as a decree by the then military ruler, but was not followed up with necessary administrative steps for implementation.¹⁹⁹

5.4.3 Universal Primary Education Strategy 1982-1990

Under Hossain Mohammed Ershad regime, the government's strategy for achieving UPE remained essentially the same, but emphasis was given upon strengthening institutional capacities, increased community participation and low cost solutions to provide education opportunities. These policies were largely influenced by the Ninth Regional Consultation Meeting of Asia and the Pacific Program of Educational Innovation for Development (APEID) in 1984. UNESCO prepared the report for achieving equity of educational opportunity and proposed the development of specific programs to promote the education of girls in countries whereby low female enrolment is perceived to be major obstacles to universal education. A panel selected by UNESCO, visited different countries of the Asia Pacific region including Bangladesh and discussed with different key persons on problems relating to the girls

¹⁹⁸Sattar, 1982:89

¹⁹⁹ Fazle Rabbi at 14.

and on national policies and programs.²⁰⁰ They emphasized resource allocation based on demand and supply, utilization of education facilities, provision of incentives, separate schools for girls, feeder schools, non-formal education, support and training of female teachers, curriculum development, distant learning, early childhood education, community participation, use of mass media and the role of women's organizations. The Ershad government promised to reciprocate all these suggestions on a national scale during the third five year plan period.

The Third Five Year Plan (TFYP) (1985-90) is the second five year investment program of the prospective plan period. The aims of TFYP included raising student enrollment from 60% to 70%, ensuring retention of the enrolled students, reconstruction of 9285 schools, repair of 16257 schools, supplying limited quantity of furniture and educational materials, reviewing, restructuring and revising curricula and syllabuses and establishing management information system.²⁰¹ In this plan, emphasis has been laid upon strengthening institutional capacities, increased community participation and evolving low cost solutions to provide educational opportunities.²⁰² The objectives and targets of this plan were only partially achieved. Nevertheless, before its ouster, the Ershad government passed the Compulsory Primary Education Act, 1990. Subsequently, a high priority had been accorded by the government in the 1990s to the goal of achieving universal primary education. The Fourth Five Year Plan (1990-95) gave importance to the primary and mass education and education was identified as a vehicle for the development of human resources. A significant policy undertaken in the fourth plan was to make primary education compulsory. The other important goals were as follows: ensuring efficient use of existing facilities and safeguarding regional parity while creating new opportunities in primary education, increasing participation of girls in primary education, ensuring

²⁰⁰UNESCO, Towards equity of educational opportunity: UNESCO Regional Office for Education in Asia and the Pacific, Bangkok, 1985 at 37-38.

²⁰¹The third five year plan 1985-1990, December, 1985, Government of the People's Republic of Bangladesh at 366.

²⁰²SAARC countries workshop on contemporary problems of primary education, 1986. National Academy for Primary Education, Mymensingh at 20.

improved in-service training for primary school teachers, reforming primary education curriculum, introducing academic supervision and administrative inspection, filling up 60% vacant teacher's position from among women and relaxation of qualification for women candidates.²⁰³ To improve the quality of primary education, three major projects were undertaken that included- Development of primary education in Dhaka, Rajshahi and Khulna divisions and ADB funded Development of primary education in Chittagong, Barisal, and Sylhet divisions. Under the General Education Project (GEP) and other projects taken up in the fourth Five Year Plan, 1134 low-cost schools were constructed, 7675 government primary schools were reconstructed, and 9,335 government primary schools were repaired, 7812 registered non-government primary schools were developed and 77290000 text books were distributed free of cost to the students.²⁰⁴ Especially, in the construction of low cost schools, emphasis was given on community participation and in areas without a school. The measure continued till date followed by the Khaleda Zia and Sheikh Hasina regimes.

5.4.4 Compulsory Primary Education Implementation Monitoring Unit (CPEIMU)

CPEIMU is a unit under the Ministry of Primary and Mass Education, Government of Bangladesh. Compulsory Primary Education Program started initially in 64 Thanas on January 1, 1992 and subsequently all over the country on January 1, 1993. This Unit was engaged in overall supervision of implementation of this program. It comprises forty four posts (Class I-11, Class II-2, Class III-22 and Class IV-19 posts). The main objective of this unit was to monitor and evaluate the implementation of Compulsory Primary Education Program.²⁰⁵

²⁰³The fourth five year plan 1990-1995, June, 1990. Government of the People's Republic of Bangladesh at 12.

²⁰⁴Primary Education in Bangladesh, 2003:12

²⁰⁵ Compulsory Primary Education Implementation Monitoring Unit, Ministry of Primary and Mass Education.

Bangladesh is a mono-linguistic country, where nearly 98 percent of the population speaks Bangla. It is a rich language, but the large majority of people did not have the skills to read and write in their mother tongue. After liberation in December 1971, the literacy rate was only 16.8 percent, and has been quite slow to grow, taking 20 years to rise to only 24.8 percent in 1991. However, focused initiatives taken during the decade of 1990s, following the World Declaration on Education for All, have resulted in remarkable progress in basic education, both in formal primary education (PE) and non-formal education (NFE).

5.4.5 National Commitments and Obligations

Education is a fundamental right of every human being. Bangladesh Constitution recognized this right and enjoins on the State “to adopt effective measures for ... establishing universal system of education and extending free and compulsory education to all children ... and removing illiteracy.”[Bangladesh Constitution, Fundamental Principles of State Policy, Part II, Article 17].The international instruments such as UDHR, UNCEDAW, UNCRC, WDEFA, and DFA [Universal Declaration of Human Rights (1948), UN Convention on Elimination of All Forms of Discrimination against Women (1979), UN Convention on the Rights of the Child (1990), the World Declaration on Education for All (1990) and Dakar Framework for Action (2000)] re-affirm and enshrine this right. Illiteracy and poverty, and absence of democratic values, institutions and norms are known to cause hindrances to participatory development and progress. The national resolve to achieving the EFA goals by ensuring quality basic education for all is reinforced by the constitutional obligation, human rights considerations, people’s aspirations to build a democratic polity, empirical requirements of speedy national development through poverty reduction and as a signatory to the above and other related international declarations and instruments.

5.4.6 Increasing Allocation for Basic Education

The national commitment to basic education is reflected in increasing financial allocation and expenditure as well as enhancing the share of basic education in GDP. Education received 11.13 percent of the national budget in 1990-91; primary and mass education got 49.32 percent of it or 0.88 percent of GDP. The allocation for education was raised by 235.7 percent by 1995-96 from an absolute amount of Taka 14.94 billion to Tk. 35.92 billion, correspondingly primary and mass education allocation rose from Tk. 7.37 billion to Tk. 17.78 billion (240%) the same year, 50.3 percent of education budget and a GDP share of 1.36 percent. In 2000, the figures rose to Tk.52.38 billion, 14.99 percent of total, with primary and mass education share at Tk. 24.40 billion or 46.46 percent of education budget and 1.29 percent of GDP. In 2002-03, the primary and mass education share of Education budget had gone up to 55 percent (45.5 percent for primary education).²⁰⁶

The education sector budget has been one of the top priorities of the Government of Bangladesh for many years. Education gets the second largest allocation. Primary education budget witnessed ranged from around 42 to 46 percent of total education budget from 2009-10 to 2012-13 with 11.16 percent of total budget in 2012-13.²⁰⁷ It is a good sign that budget allocation has gone up in Primary and Mass Education Ministry by 19.72% over last year.²⁰⁸

5.4.7 Education for All: National Plan of Action I

The World Conference on Education for All (WCEFA), meeting in Jomtien, Thailand in March 1990, in the backdrop of more than 100 million children having no access to primary schooling and 960 million illiterate adults in the world, adopted the World

²⁰⁶ Bangladesh Bureau of Educational Information and Statistics (BANBEIS) (2004). Educational Institution Survey 2003.

²⁰⁷ Education Budget Paper 2012

²⁰⁸ The Bangladesh Accountant: January-March 2016, quarterly journal of the Institute of Chartered Accountants of Bangladesh

Declaration on Education for All: Meeting Basic Learning Needs, with an “expanded vision” of basic education that went beyond the conventional structure and approaches to education in light of “convergence of the increase in information and the unprecedented capacity to communicate”,²⁰⁹ covering five areas of action or goals, to be achieved by the year 2000.

The EFA goals were quite in line with Bangladesh aspirations. The country had already introduced the Universal Primary Education (UPE) program on a limited scale and a Mass Education Program (MEP) earlier in 1981 to enhance access to primary education and spread of literacy. Following Jomtien, Bangladesh prepared its first **EFA: National Plan of Action (NPA I)**,²¹⁰ covering the period 1991- 2000. Using 1991, as the base-year and keeping in view the limitation of resources, the NPA set its own goals for primary education, non-formal basic education and adult literacy to be achieved by 2000, which were, however, somewhat modest compared to the World Declaration goals.

In line with EFA goals, NPA I covered five major basic education program areas, namely Early Childhood Education and Development (ECED), Universalization of (Formal) Primary Education (UPE), Non-formal Basic Education (NFBE), Adult Education (AE) and Continuing Education (CE). Running through all the five was the Female Education and Gender Equity, described in a separate chapter. The Year 2000 Assessment²¹¹ made a detailed appraisal of the EFA goals and achievements of NPA I as part of the global Assessment.

The NPA I was “prepared as a follow-up of the World Conference on Education for All (1990) and expression of the firm determination of the country to make a serious effort to improve the situation” of basic education. It was prepared under a national

²⁰⁹ (WCEFA, 1990)

²¹⁰ (PMED, 1995)

²¹¹ (PMED, 1999)

committee assisted by a steering committee and the draft was finalized, taking the inputs from the conclusions of the high level Task Force on Primary and Mass Education, set up by the Government in October 1992, and consultations with and recommendations from workshops and seminars at various levels. The NPA I, covering the period 1991-2000, was published in 1995.

The NPA I was prepared in the backdrop of a number of actions already initiated by the Government “towards realizing the EFA goals of universalization of access and increasing completion rates at the primary level as well as reducing adult illiteracy”.²¹² The aim of the NPA I was “to enhance both their quantitative and qualitative dimensions and also take up other feasible supportive programs to attain the EFA 2000 targets” successfully. The actions proposed in the NPA I would “be dealt with under two broad program categories, (a) Primary Education and (b) Mass Education”.²¹³ The major program components under each were as follows:

(a) Primary Education (for children of 6-10 years of age) would include: (a) Formal Primary Education and (b) Non-Formal Basic Education

(b) Mass Education (for illiterate persons of 4-45 years of age) would include: (a) Early Childhood Education and Development (4-5 years), (b) Non-Formal Basic Education for the Adolescent (6-14 years), (c) Adult Education (15-45 years) and (d) Lifelong Continuing Education (All ages)”.

NPA I was to be implemented in two phases, covering FY 1991-92 to 1994-95 (Phase I) and 1995-1996 to 1999-2000 (Phase II). It came to its end in June 2000. Some NFE projects started during NPA I have been rescheduled to continue beyond, even beyond Fifth Plan, 1997-2002. The NPA I proposed a total outlay of Tk. 191,122.6 million (US \$ 4,778.0 million) for basic education. Allocation for development program was Tk. 104, 781.6 million (US\$ 2, 619.5 million) and revenue, Tk. 86, 341 million (US\$ 2, 158.5 m). The percentage share of total allocation was: ECED – 12.2

²¹² (PMED 1995, Preface)

²¹³ (PMED, 1995, p58)

(US \$ 11.9/child/year), Primary education – 79.6 (\$12.3/child/year), Non-Formal (basic) education – 3.3 (\$12.5/child/year) and Adult and Continuing Education – 4.9 (\$12.5/learner/year). The Plan proposed a community contribution of an equivalent of US \$5.0 per learner for the Non-Formal (Basic) Education and \$ 6.0 for Adult and Continuing Education.²¹⁴

5.4.8 Education for All: National Plan of Action II (2003-2015)

Framework and process of developing the NPA II

The DFA goals and strategies, achievements of NPA I and basic education needs of the country in 2001 provided the framework for NPA II. DFA stipulated that national plans on EFA be developed by member countries by 2002. The government (PMED) started work on developing the NPA II early in 2001 in the context of the aforesaid framework by using the UNESCO guidelines on preparation of national plans. PMED established an EFA Technical Committee (TC) comprising representatives of the government, academia, education specialists and civil society, headed by the EFA National Coordinator²¹⁵. The TC selected seven thematic papers in light of DFA objectives and assigned seven individual experts (from academia, practitioners, NGOs, and civil society) to write the papers. The outlines were reviewed in a workshop with participation of stakeholder representatives and finalized on the basis of recommendations of a second workshop. The outputs served as background papers to preparation of the NPA II.

A designated outstanding statistical expert and a principal writer prepared and presented the first draft of the NPA II in a workshop on 23 January 2002. PMED had also circulated it to different stakeholders and on the basis of recommendations from the workshop and comments received from interested individuals, development partners and civil society groups, a second draft was prepared and circulated. A small core committee, comprising government and civil society representatives reviewed

²¹⁴ Ibid.

²¹⁵ [Joint Secretary (Development), PMED]

the third draft, incorporating the comments and suggestions received on the second draft. The substance of the fourth draft was presented in two regional workshops and a final national level one at Dhaka.²¹⁶ The fifth draft was prepared taking in the views and recommendations from all workshops. The EFA Forum constituted by the government, with representatives of relevant ministries and departments of the government, civil society, NGOs, and other interested stakeholders reviewed the fifth draft and provided guidance on finalization of the NPA II for final approval of the Honorable Prime Minister.

Implementation phases of NPA II

The NPA II will be implemented in three phases: FY 2003-2005, 2006-2010, and 2011-2015, covering a total period of 12.5 years. The program features and proposals made in this plan will be included as integral parts of the national rolling and/or five-year development plans as and when they come. The on-going programs and projects undertaken as part of EFA: NPA I and/or Fifth Five Year Plan (1997-2002) would continue until completion. Revised and new projects would be undertaken under NPA II, as necessary, to fully achieve the EFA goals by 2015 in line with DFA and UN Millennium Development Goals (MDG). Majority of the program areas identified and project activities suggested in this plan would be initiated in order of priority and implemented during the first and, in light of formative evaluation (in 2006), the second phase. The third phase would be devoted to consolidating the gains and achievements made and undertaking any needed residual projects or activities, to further refine the contents and program operations, based on findings of a mid-term evaluation in 2010, and set up necessary mechanisms for sustaining the gains achieved. A terminal evaluation would be made in early 2015 to assess the achievement of the NPA II goals and to identify the future and set the directions.

²¹⁶ The field level workshops were held at Bangladesh Academy for Rural Development at Comilla on 18 December 2002, and at Rural Academy for Development at Bogra on 01 January 2003 and the national level one on 19 January 2003 at Dhaka.

Structure of the NPA II

NPA II is divided into 12 chapters: Chapter I provides an introduction, covering the country and NPA context, duration and implementation phases of the NPA, preparation processes and structure of the plan; Chapter II discusses the socio-economic scenario; chapter III provides an overview of education; Chapter IV provides a vision of basic education in 2015 and beyond and challenges facing it; Chapter V states the guiding principles and Overarching strategies of NPA II and provides a strategic framework and targets for achieving EFA by 2015; Chapters VI – VIII makes a review of the progress of NPA I, of the prevailing situation and presents the NPA II program proposals by components: ECCE, FPE and NFE, each starting with quoting the relevant DFA goal and incorporating the features of the DFA goal relating to quality of education; Chapter IX gives a resume of progress in female education in light of DFA goal 5; Chapter X deals with broad implementation strategies, and monitoring and evaluation procedures; Chapter XI gives an estimate of the program cost and list of program activities to be undertaken; and Chapter XII deals with financial requirements and financing of the NPA II.

5.4.9 Education Policy Commissions and Committees

After the independence of Bangladesh in 1971 till date, seven (7) education commissions/ committees were formulated to examine policy issues which discussed the state's obligation to provide basic education and offered recommendations on how this obligation should be fulfilled.

National Education Commission (1972): The first National Education Commission in Bangladesh was formed in 1972 headed by eminent educationist and scientist Dr. Qudrat-e-Khuda which was also known as Qudrat-e-Khuda Education Commission. The Commission submitted its report to the government on 30 May 1974.

The Commission report emphasized on secular education at all-level, future work relevant technical and vocational education. It suggested some major changes in the

primary, secondary and higher secondary stages of education. According to the Commission report, primary education was to be of 8 years duration consisting of class I to class VIII and secondary education would be of 4 years duration consisting of class IX to class XII. The Commission suggested for universal and tuition fee free compulsory education in primary level, to make the existing tuition fee free primary education (class I to V) compulsory by 1980 and to make education up to class VIII free and compulsory by 1983. In consideration of the financial condition of the dropouts at primary level, night schools were to be established providing education to the students up to the age of fifteen.

Regarding curriculum, syllabus and textbooks, the Commission suggested a uniform curriculum for primary level based on competence. The Commission suggested the establishment of Educational Research Board for the development of primary education. The Commission gave special emphasis on improved assessment system and suggested letter grading in the assessment of student performance at all stages of education.

Commission for Developing National Curricula and Syllabi (1976): In the light of the recommendations of the Qudrat-e-Khuda Education Commission (1974), a committee for developing national curricula and syllabi was formed by the government in 1975 headed by Professor Shamsul Hoque. The Commission developed a detailed procedure and mechanism for developing national curricula and syllabi. The Commission specifically suggested a single-track and uniform secondary education system to be introduced at class IX level preferably from the 1980 school session.

National Education Advisory Committee (1978): In 1978, the government felt the necessity of reviewing the report of the Qudrat-e-Khuda Education Commission and appointed an advisory committee to have a fresh look at the issues related to problems of education. This committee submitted a report which put emphasis on increased literacy so that the people could take part in the development of the country.

Regarding madrasah education, the report stipulated that it should be recognized to ensure its equivalence to general education.

Mazid Khan Education Commission(1983): The report of the Mazid Khan Commission 1983 on education was not widely disseminated and was not formally adopted for implementation.

Bangladesh National Education Commission (1987): The Government of Bangladesh appointed an education commission in 1987 headed by Mafizuddin Ahmed, the former Vice Chancellor of Dhaka University, to suggest measures for educational reforms and development of education in the country.

Shamsul Haque Education Commission (1997): The Government of Bangladesh constituted a 56-member commission headed by Professor M Shamsul Haque, the former Vice Chancellor of Dhaka University, by an official order issued on 14 January 1997. The Commission suggested for ensuring equal rights to education on the basis of merit and aptitude with an object of the development of discrimination-free society. The Commission suggested for three stages of education, viz primary level, secondary level and higher education. The length of primary education was suggested to be of 8 years duration instead of 5 years.

MA Bari Education Commission (2001): An expert committee headed by Dr. M. Abdul Bari was formed in 2001 to identify immediate implementable reforms of education sector. The Committee submitted its report in 2002 and suggested several interventions in the sector which were considered later by the Education Commission of 2003 headed by Mohammad Moniruzzaman Miah.

Bangladesh Education Commission (2003): In order to improve the quality of education and initiate a set of reforms to develop the sector, the government undertook several actions of which the formation of an education commission in January 2003 was one of the major initiatives. The Commission was headed by

Professor Mohammad Moniruzzaman Miah, former Vice Chancellor of Dhaka University. The Commission suggested for nationalization of all the primary schools.

Professor Kabir Chowdhury Education Commission/National Education Policy (2010): The government formed a 16 member committee in 2009 headed by National Professor Kabir Chowdhury to formulate a National Education Policy. The committee formulated the new education policy in the light of the Qudrat-e-Khuda Commission Report of 1974 and Shamsul Haque Education Commission Report of 1997. The salient features of the recommendations of the Commission include extension of compulsory primary schooling to eight years and final primary level examinations to be held at the end of class VIII. Some fundamental subjects including Bangla, Moral Education, Bangladesh Studies, Mathematics, Paribesh Parichiti, Social Studies, ICT and Science would be made compulsory in different streams of primary and secondary level curriculum. The madrasah education would be restructured by including information technology and vocational training among compulsory subjects.²¹⁷

5.4.10 National Curriculum and Textbook Board

After the independence, there was an immediate need for developing new textbooks keeping with the demand of the new generation of students. During 1971-77 the School Textbook Board was engaged in the assessment, revision and rewriting of textbooks for classes of the primary and the secondary levels. The National Curriculum and Syllabus Committee (NCSC) was constituted in 1976. The Committee prepared its report in the light of the recommendations of the Qudrat-e-Khuda Education Commission Report of 1974. The government entrusted the Textbook Board with the responsibility of implementing the country's new curricula and syllabi and the Board did it between 1978 and 1983.

²¹⁷Education Commission, *Banglapedia - the National Encyclopedia of Bangladesh*, Second Edition, 2012

National Curriculum Development Centre (NCDC) was created in 1981 as a department under the Ministry of Education to consolidate the country's education system covering the pre-primary to pre-university levels (general, technical and vocational education, teachers training and madrasah education). Its task was to scientifically revise, renew, develop and evaluate the curricula. It started the implementation of curricula and syllabi from the pre-primary to the higher secondary level. The Centre also provided the Textbook Board with technical and professional assistance in the implementation process. In 1983, the National Curriculum Development Centre and the Bangladesh School Textbook Board were merged together and renamed as the Bangladesh National Textbook Board. Later this became known as the National Curriculum and Textbook Board (NCTB).²¹⁸

5.4.11 Primary Education Development Program (PEDP I, II & III)

PEDP supports the Government's commitment to Education for All. **Primary Education Development Program I (PEDP I)** is the organizing framework for development of the primary sector for 1997 – 2002. Its goal is to increase equitable access to quality education, by interventions to increase facilities, enrolment, and quality and improve management at all levels. PEDP's successes in increasing enrolment, and the participation of girls have been a noteworthy success. There remain groups of children who are poorly served or not served, including the most poor, working children, disabled children and minorities. PEDP addresses only the Government sector. It has worked to reduce the differential between the sub-systems within that sector but has not addressed the NGO Basic Education centres. PEDP has provided substantial quality interventions to support teacher training curriculum, revision and provision of free textbooks.

In the First Primary Education Development Programme (PEDP-I) led by the Government of Bangladesh, UNICEF supported the Intensive District Approach to Education for All (IDEAL) project covering 38 districts. The project's main goal was

²¹⁸ National Curriculum and Textbook Board, BANGLAPEDIA - the National Encyclopedia of Bangladesh, Second Edition, 2012

to improve the quality of primary education. This was achieved by enhancing teaching-learning methods; improving the school environment and facilitating children's learning achievement. The other main theme of the project was the decentralization of school planning, management and monitoring, to make these processes more responsive to local needs and to restore the traditional school-community link. An important objective of the project was the creation of a 'child-friendly' school environment - focusing more on girls, which allowed girls to achieve the same levels of enrolment, completion and achievement as boys. One of the innovations to meet the challenge was introducing the Multiple Way of Teaching and Learning (MWTL) approach, used to promote more interactive and child-centered teaching in the classroom. For instance, this included training the teachers to encourage children to ask questions or to make learning fun through games or songs. Making the schools child-friendly also looked at the school's physical environment, removing chairs and tables so children could sit on the floor in a semi-circle for combined activities, putting up pictures and children's work on the wall. The project used a wide range of innovative activities, including teacher training on MWTL and subject-based teaching techniques. It also trained head teachers on school management and academic supervision, and School Management Committees (SMCs) on school level planning.

Child survey and school catchment area mapping were introduced while local level planning was promoted at district, upazila (sub-district) and school levels. Upazila Resource Centres were established for decentralizing in-service teacher training focusing on their needs. There was also a national communication campaign promoting quality primary education and girls' education.

The project was closed in December 2004 with outstanding coverage and achievement. It covered nearly 40,000 schools in 38 districts. More than 150,000 teachers were trained in interactive teaching methods. A total of 10.3 million children benefited from the project; more than half of the primary schools and primary students in Bangladesh.

The Second Primary Education Development Programme (PEDP-II) (2004-2009) Following the completion of all the PEDP-I projects, including IDEAL, the Second Primary Education Development Programme (PEDP-II) was launched in September 2004 by the Government of Bangladesh, for 2004-2009. PEDP-II is a coordinated and integrated sub-sector-wide programme with technical and financial assistance from a consortium of 11 donors, led by the Asian Development Bank. Successes from the IDEAL project have been incorporated for adaptation and expansion.

PEDP-II aims to ensure the quality of primary education for ALL children in the country through increasing primary school access, participation and completion. It also aims to improve the quality of students' learning achievements while ensuring the Primary School Quality Level standard. PEDP-II will be implemented in all the 64 districts covering approximately 17.7 million children and 280,000 teachers in 61,000 schools. Government education officials at different levels, SMC members and local communities will also be involved in PEDP-II activities.

UNICEF has been taking an active role in the development and implementation of PEDP-II as a parallel funder.

The Third Primary Education Development Programme (PEDP III) is a five year, sector wide program covering Grades I through V and one year of pre-primary education. The objective is to establish an efficient, inclusive, and equitable primary education system delivering effective and relevant child-friendly learning to all Bangladesh's children from pre-primary through Grade V primary.²¹⁹

The success rate of PEDP III is remarkable. Primary education enrolment and completion rates have reached 97.9 percent and 79.6 percent, respectively. Around 127,000 schools received more than 110 million textbooks within the first month of the school year in 2016. More than 90 percent of the schools have received textbooks

²¹⁹ Ministry of Primary and Mass Education, Government of People's Republic of Bangladesh

within the first month of the said academic year. 22,444 additional classrooms have been constructed in remote and underprivileged areas to reduce overcrowding in schools.²²⁰

5.5 Global Commitment of the Government for Ensuring Primary Education

Right to Primary Education is both a human right in itself and an indispensable method of realizing other human rights. The right to education can be characterized as an empowerment right, because of its links with other rights:

"The key to social action in defense of rights, (...) is an educated citizenry, able to spread its ideas and to organize in defense of its rights."²²¹

It has a vital role in empowering women, safeguarding children from exploitative and hazardous labor and sexual exploitation, promoting human rights and democracy, protecting the environment and controlling the population growth.²²² Civil and political rights such as freedom of expression, freedom of association or right to political participation, only take substance and meaning when a person is educated. Education enhances social mobility and helps to escape from discrimination based on social status. Furthermore, it promotes the realization of other social and economic rights such as right against child labor, right to work, right to food and right to health. In general, the right to education guarantees people's access to the skills and knowledge needed for an adequate standard of living. In principle, it contributes in an important way to the essence of promoting human rights, i.e. living with dignity.²²³

²²⁰ Bangladesh: Ensuring Primary Education for all, World Bank 2016

²²¹J. Donnelly and R.E. Howard, *Assessing national human rights performance: a theoretical framework*, Human Rights Quarterly, Vol. 10, 1988, pp. 234-235

²²²UNESCO, General Comment 13 on the right to education (Art. 13 of the International Covenant on Economic, Social and Cultural Rights), (ED-2003/WS/73)

²²³Fons Commans, *Clarifying the core elements of right to education* at <http://www.uu.nl/faculty/leg/nl/organisatie/departementen/departementrechtsgeleerdheid/organisatie/onderdelen/studieenformatie/ntrummensenrechten/publicaties/simspicals/18/Documents/18-03.pdf>

The World Education Report, 2000 on the right to education, correctly recognizes "its fundamental importance for the humanity".²²⁴

The right to primary education is extremely significant in the development perspective. This is because as an empowerment right, education is a primary vehicle for capacity building of both the individuals and the community. It is, without a doubt, an essential instrument for development of human personality and realization of an individual's potential.

Bangladesh emerged as an independent country in 1971 through a nine month long liberation movement. Since then, Bangladesh has been a member of the international legal community. Bangladesh has become a member of the United Nations in 17 September 1974. Bangladesh is also a member of UNESCO, UNICEF, UNDP, UNFPA, WHO, ILO, WTO and many other international organizations. The successive governments of Bangladesh have also signed many international treaties and conventions. At the regional level, Bangladesh has been the member of BIMSTEC, SAARC, and SACEP etc. and has signed many regional treaties and conventions. As a result, Bangladesh has become duty bound to fulfill her obligation under those international, regional, multinational and bilateral agreements that she has signed and ratified. Bangladesh had also given its commitment to implement the eight goals set out at the Millennium Summit of the UN in 2000 which is popularly known as Millennium Development Goals (MDGs). The second goal among the eight goals set at the Millennium Summit was to achieve universal primary education. In this chapter, the position of government of Bangladesh under various international instruments in respect of implementing compulsory primary education will be examined. Before discussing the commitments of governments of Bangladesh under international instruments, the status of international instruments in municipal legal system needs to be analyzed.

²²⁴Foreword to the "World Education Report 2000 - the right to education: towards education for all throughout life", UNESCO Publishing 2002.

5.5.1 Status of International Law in the Municipal Legal System of Bangladesh

The status of International Law within a municipal legal system is generally determined by the Constitution of a State or Municipal Law. Hence, the Status of International Law within the legal system of Bangladesh will be decided by the Constitution of Bangladesh. Unlike France, United States, Germany and some modern Constitutions that provide relatively clear provisions for the Domestic Application of International Treaty Law or Customary Law, the Constitution of Bangladesh does not make specific, emphatic reference to the status of International Law in its domestic legal system, nor does it specifically obligate or authorize the judiciary to draw on International Law. Bangladesh's legal system follows common law with a dualist view regarding international treaties and conventions. The general practice of the country is that the international treaties do not automatically become a part of the domestic law of Bangladesh unless and until it is incorporated into domestic legislation. Article 145A of Bangladesh Constitution says, “All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament.” Therefore, according to the Constitution, any international treaty or convention that Bangladesh has signed has to be laid before the parliament. The treaty or convention will then be discussed and debated in the open sessions of the parliament, except any treaty that is connected with national security²²⁵. If parliament passes any particular international treaty or convention, it is called ratification²²⁶ or accession²²⁷. But to be legally binding and enforceable through courts, the Bangladesh Parliament has to pass an enabling legislation to give effect to the international treaty

²²⁵ The Proviso of Article 145A of Bangladesh Constitution says that “Provided that any such treaty connected with national security shall be laid in a secret session of Parliament”.

²²⁶ Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act

²²⁷ Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification

and convention. In the case of *BNWLA v. Government of Bangladesh and others*²²⁸ the Supreme Court of Bangladesh declared that,

“Our courts will not enforce those Covenants as Treaties and Conventions even if ratified by the State, as they are not part of the Corpus Juris of the State unless those are incorporated in the municipal legislation.”

However, the High Court Division of the Supreme Court has given a liberal view in a subsequent case. It was held that the courts may take account of the international treaty or convention which has been ratified by a state but the enacting legislation is yet to be enacted. The Court held,

“It has now been settled by several decisions of this subcontinent that when there is a gap in the municipal law in addressing any issue, the courts may take recourse to international conventions and protocols on that issue for the purpose of formulating effective directives and guidelines to be followed by all concerned until the national legislature enacts laws in this regard.”²²⁹

5.5.2 Constitutional Provision Regarding Obligations of Bangladesh under International Law

In the Proclamation of Independence which is also termed as the interim constitution of Bangladesh issued on April 10, 1971, the interim government had declared its solidarity with the international community saying that, “We further resolve that we undertake to observe and give effect to all duties and obligations that devolve upon us as a member of the family of nations and under the Charter of United Nations.”²³⁰

Article 25 of Bangladesh Constitution made its position clear regarding international law and international relations. It says, “The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes,

²²⁸ 14 BLC (2009) 703

²²⁹ *BNWLA vs. Government of Bangladesh and others*, 2001, 40 CLC (HCD), para 20

²³⁰ *The Bangladesh Reader: History, Culture, Politics*, Meghna Guhathakurta, Willem van Schendel, eds, Dhaka University Press, 22013

and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall:

- a. strive for the renunciation of the use of force in international relations and for general and complete disarmament;
- b. Uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and
- c. Support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.”²³¹

Therefore, it is clear that Bangladesh intends to be a compliant member of the international legal community.

5.5.3 Commitments of the Government to Ensure Compulsory Primary Education under International Instruments

Bangladesh is a signatory state to a number of international instruments that have a bearing on ensuring compulsory primary education for her citizens belonging to a particular age group. Some of these instruments are binding in nature and some are non-binding soft-laws. Bangladesh has undertaken numerous obligations through signing international instruments on compulsory primary education, namely-

a. Universal Declaration of Human Rights (UDHR), 1948

The UDHR was adopted on December 10, 1948 by the UN General Assembly as a general assembly resolution.

Article 26 (1) of Universal Declaration of Human Rights (UDHR) says,

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

Now, the question arises whether the government of Bangladesh is under legal obligation to implement this provision of UDHR after becoming a party to the United Nations. While it may seem that UDHR is a GA resolution and does not create legally binding obligation on the state parties, the UDHR is a blatant exception. The UDHR

²³¹ Article 25, The Constitution of The People’s Republic of Bangladesh

was adopted by the UN General Assembly without any vote against the resolution. In other words, UDHR is one of those GA resolutions which have been passed unanimously without any dissent.

The Universal Declaration has served directly and indirectly as a model for many domestic constitutions, laws, regulations, and policies that protect fundamental human rights. These domestic manifestations include direct constitutional reference to the Universal Declaration or incorporation of its provisions; reflection of the substantive articles of the Universal Declaration in national legislation; and judicial interpretation of domestic laws (and applicable international law) with reference to the Universal Declaration.

The most authoritative place UDHR took is section 10.2 of the Constitution of Spain which provides, “Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and other instruments”. Thus arguments of scholars triggers UDHR as not only a part of customary international law but it has also achieved a status of Jus Cogens.²³²

This view has been reiterated by many legal scholars and was supported by others. The very large and increasing number of ratifications of the two human rights Covenants,²³³ i.e. ICCPR and ICESCR and the fact that the rights stated in the UDHR are commonly recognized as well founded in moral and good practice terms, denote that there are now virtually unchallengeable grounds for asserting that the UDHR rights have become a part of customary international law. That means, unlike treaties which only bind a country once it has accepted the treaty obligations, all the countries

²³² Md Mostafa Hossain, “Application of UDHR by Supreme Court of Bangladesh: Analysis of Judgments”, Chancery Law Chronicles (CLC) Journal.

²³³ There are 30 Articles in the Universal Declaration of Human Rights, of which 17 could be regarded as civil and political rights and they were included in the ICCPR and 8 to economic and social rights which were included in the ICESCR. These two are legally binding documents and Bangladesh has signed and acceded to both the instruments.

in the world are now bound, whatever their particular views may be on UDHR. Although a country can repudiate a treaty obligation, it cannot repudiate international customary law.²³⁴

Application of UDHR in the Supreme Court of Bangladesh

The provisions of UDHR have been brought before the Supreme Court in many cases. Sometimes, parties referred provisions of UDHR with the intent to enforce the same and in some other cases, the Court itself referred to the provisions of UDHR for ensuring and complying with international standards.

In the case of *Ershad v Bangladesh and others*,²³⁵ the Court asserted that there was full application of Article 13 of the UDHR to the facts of the present case. Article 13(1) of the UDHR entails the right to freedom of movement and residence within the borders of a state. Article 13(2) reads:

“Everyone has the right to leave any country, including his own, and to return to his country.”

The judgment reaffirmed that the right to leave a country is a fundamental human right and consistent with the freedom of movement of a citizen guaranteed under the Constitution and international human rights law.²³⁶

The approach of the Court further strengthened in the case of *BNWLA v. Government of Bangladesh and others*,²³⁷ where it was held that the Court can look into UDHR, ICCPR, ICESCR and other conventions as an aid to interpretation of provisions of Part II, particularly to determine the rights implicit in the rights like the right to life and the right to liberty but not enumerated in the Constitution. The Court found non-compliance with the provisions of UDHR as a violation of the obligation of the international obligation of member states.²³⁸

²³⁴Universal Rights.Net Organizations

²³⁵ Appeal, 21 BLD (AD)2001, 69; ILDC 476 (BD 2000), 16 August 2000

²³⁶ Supra note 8

²³⁷ 14 BLC (2009), (HCD) 703 at paragraph 45

²³⁸ Supra note 12

b. Convention on the Rights of the Child (CRC)

Traditionally, children have not been perceived as the subjects of rights but rather as the objects of legal protection. Adoption of the Convention on the Rights of the Child by the United Nations General Assembly has effectively and appropriately moved the child, and the concept of his/her rights, from the periphery of national and international thinking to center stage, resulting in a change of attitude and perception of who a child really is. The convention has been considered innovative. It envisages the rights of the child not as being in conflict with the rights of the adult, nor as an alternative to or an abrogation of the rights of parents, but as an integral part of human rights. It recognizes the child as an individual with needs that evolve with age and maturity. Accordingly, it goes beyond existing treaties by seeking to balance the rights of the child with the duties of parents and others responsible for the child's survival, development and protection, by giving the child the right to participate in decisions affecting the child's life.²³⁹ The Convention on the Rights of the Child is not, and was not meant to be a mere grouping of articles embodying divergent or independent principles. In fact, the strength of the convention lies in the concept of the indivisibility and interdependence of all the rights enshrined therein; rights that are inherent to the human dignity of the child and are necessary for the full and harmonious development of the child's personality, including the child's civil and political rights and cultural, social and economic rights. In other words, by ratifying the convention, States have committed themselves to providing a better life for all children under their jurisdiction by taking the necessary measures (legislative, administrative and other measures) for its implementation.²⁴⁰

The Convention on the Rights of the Child (CRC) recognizes education as a means of reducing poverty and improving the quality of life for children. Article 28(1) of the CRC says,

“States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they

²³⁹ Sandra Prunella Mason, Children's Rights in Education. *Prospects*, vol. XXIX, no. 2, June 1999, at 181.

²⁴⁰ *Ibid* at 183.

shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.”

Bangladesh ratified the Convention on the Rights of the Child (CRC) in August 1990. However, the parliament of Bangladesh has recently passed the enabling legislation i.e. The Children Act, 2013 to give effect to the CRC convention.²⁴¹ The previous Children Act, 1974 has been repealed.

The Supreme Court of Bangladesh in various judgments has recognized that the government of Bangladesh is obliged to implement the provisions of CRC within its jurisdiction. One such case is *BLAST v. Secretary of the Ministry of Education and others*²⁴² where the issue was protection of children from corporal punishment in educational institutions.

In the judgment, the judges of the Supreme Court explicitly recognized that protection from corporal punishment is related to the right to education and hence Bangladesh has obligation to prohibit corporal punishment in all educational institutions as well as in other settings. The judges said:

“Article 28 of the Convention is relevant to the issue before us and we have no hesitation to hold that in the light of the Convention corporal punishment upon the children must be prohibited in all settings including schools, homes and work places. Children who are subjected to corporal punishment or indeed psychological and emotional abuse cannot be expected to develop freely and properly and will not be able to give their best to this society. We cannot ignore the effects of physical and mental torture on the proper development of children which will lead to inadequate achievement resulting in lack of education and poor prospects of better living standards which in turn will stoke the poverty cycle.”

In 2009, Committee on the Rights of the Child in its 51st session evaluated Bangladesh’s performance in establishing the rights of children as enshrined in the

²⁴¹ Preamble, The Children Act 2013

²⁴² Bangladesh Writ Petition No. 5684 of 2010, Judgment on 13 January 2011, page 31

convention based on the reports submitted by state parties under Article 44 of the convention.²⁴³

The Committee regrets that investment in children, especially regarding health, education and social protection, continues to be too low to ensure the full exercise of all rights by all children and that the budget does not clearly identify investment in children at all levels. Therefore, it is clear that Bangladesh government has absolute obligation to implement the right to free and compulsory education for every children under the CRC convention. Although the enabling legislation i.e. the Children Act, 2013 is silent about right to education for children, the Constitution of Bangladesh, the Primary Schools (Taking Over) Act, 1974 and Primary Education (Compulsory) Act, 1990 have provided provisions for free and compulsory primary education for every children without any form of discrimination.

c. Convention on Economic, Social and Cultural Rights

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labor and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments states can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.²⁴⁴

²⁴³ CRC/C/BGD/CO/4 para 9, page 5

²⁴⁴General Comment No. 13: The right to education (article 13) (1999)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education; articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law. The Committee has already adopted General Comment 11 on article 14 (plans of action for primary education); General Comment 11 and the present general comment are complementary and should be considered together. The Committee is aware of the fact that for millions of people throughout the world, the enjoyment of the right to education remains a distant goal. Moreover, in many cases, this goal is becoming increasingly remote. The Committee is also conscious of the formidable structural and other obstacles impeding the full implementation of article 13 in many States parties.²⁴⁵

The provisions on right to education in the ICESCR derive from both the socialist and liberal theoretical traditions- 1) as the primary responsibility of the state to provide educational services and 2) as the duty of the state to respect the rights of parents to establish and direct private schools and to ensure that their children receive an education that is in accordance with their own religious and moral beliefs.²⁴⁶ Thus, the ICESCR enumerates a combination of both negative and positive obligations of state parties to provide education to their citizens. To measure a state's compliance with treaty obligations, we must first carefully analyze the treaty language as it pertains to the rights and duties in question. Rajeev Malhotra and Nicolas Fasel stress that in giving meaning to the concept sought to be measured, the concept itself must be grounded in relevant human rights treaties.²⁴⁷ In addition to focusing on the specific treaty language, it is also important to analyze how that language has been interpreted

²⁴⁵ Ibid.

²⁴⁶ Klaus dieter Beiter, *The Protection of the Right to education by international Law* (2006) at 34.

²⁴⁷ Gauthier de Beco, *Human Rights Indicators for Assessing State Compliance with International Human Rights*, 77 no Rdi CJ. int'l L. 23, 24 (2008).

by relevant authoritative bodies.²⁴⁸ To interpret the meaning of the right to education in the ICESCR, for example, we have to look to the relevant language of the ICESCR and General Comments of the CESCR. The CESCR is the treaty body responsible for monitoring and evaluating states parties' compliance with the ICESCR, including the right to education.²⁴⁹

Article 13 (2) (a) of The Convention on Economic, Social and Cultural Rights (ICESCR) provides that,

“Primary education shall be compulsory and available free to all.”

Article 14 of ICESCR also says,

“Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.”

The educational objectives stated in the ICESCR have reflected the fundamental purposes and principles of the United Nations as enshrined in Articles 1 and 2 of the Charter. For the most part, they are also found in article 26 of the Universal Declaration of Human Rights, articles 28 and 29 of the CRC.

The Committee on Economic, Social and Cultural Rights in the General Comments No. 13 of 1999 on Article 13 (2) of ICESCR (right to education), maintained that right to education has the following essential features²⁵⁰:

(a)Availability: It means that educational institutions and programs have to be available in sufficient quantity. All institutions and programs are likely to require buildings or other protection, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and

²⁴⁸This is similar to the first step suggested by Todd Landman who suggests that the background concept to be measured should be defined at the outset. *See generally* Todd Landman, *studying Human Rights* (2006).

²⁴⁹Committee on Economic, Social and Cultural Rights, *Monitoring the Economic, Social and Cultural Rights*, available at <http://www2.ohchr.org/english/bodies/cescr/index.htm>.

²⁵⁰ Committee on Economic, Social and Cultural Rights, *General Comment 13, The right to education* (Twenty-first session, 1999)

so on; while some will also require facilities such as a library, computer facilities and information technology.

(b) Accessibility: Educational institutions and programs have to be accessible to everyone, without discrimination. Accessibility has three overlapping dimensions:

- **Non-discrimination:** Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;
- **Physical accessibility:** Education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighborhood school) or via modern technology (e.g. access to a "distance learning" program);
- **Economic accessibility:** Education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", state parties are required to progressively introduce free secondary and higher education.

(c) Acceptability: The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the state. It is pertinent to mention here that, Article 18(4) of International Covenant on Civil and Political Right (ICCPR) also talks about this acceptability issue. According to General Comment No. 22 of 1993, the Committee on Civil and Political Rights notes that public school instructions should be provided in such a manner so as to teach subjects such as the general history of religions and ethics in a neutral and objective way. It is the liberty of parents or legal

guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18(4).²⁵¹

(d) Adaptability: Education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

To sum up, Articles 13 and 14 articulate the ICESCR's specific guarantees of the right to education. These articles impose differing obligations for each level—primary, secondary, and tertiary of education. Article 13 recognizes that “primary education shall be compulsory and available free to all.” State parties that have not secured compulsory, free primary education at the time of treaty ratification must develop a plan within two years and must implement it within a reasonable number of years after ratification. Unlike other progressive obligations, the ICESCR specifically provides time periods for the realization of free and compulsory primary education. States parties must adopt a plan within two years, and this plan must call for the implementation of free and compulsory primary education within a reasonable number of years. The Committee appears to agree that the requirement that states provide for compulsory and free education is subject to a stronger requirement than progressive realization. The Committee notes that, when read together, Articles 13(2) and 14 require states parties to “prioritize the introduction of compulsory, free primary education.” The Committee further points out that the requirement that primary education be free of charge is “unequivocal” and “[the] right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians.” Thus, the requirement to provide free and compulsory education is not subject to progressive realization; rather, immediate action must be taken.²⁵²

²⁵¹ CCPR General Comment 22: 30/07/93 on ICCPR Article 18

²⁵² Sital Kalantry, Jocelyn E. Getgen and Steven Arrigg Koh, *Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR*, Human Rights

d. The Convention against Discrimination in Education (CADE) 1960

The Convention against Discrimination in Education (CADE), 1960 is the first instrument in the field of the right to education. This Convention is of prime importance among the other standard-setting instruments in the field of education, which developed the right to education in its various dimensions.

The main contribution of CADE is that it defines the term “discrimination” in education. According to CADE:

“For the purposes of this Convention, the term ‘discrimination’ includes any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) Of depriving any person or group of persons of access to education of any type or at any level;
- (b) Of limiting any person or group of persons to education of an inferior standard;
- (c) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
- (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this Convention, the term ‘education’ refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.”²⁵³

²⁵³ Convention against Discrimination in Education, 1960, Article 1.

The CADE and the ICESCR lay down the international legal obligations for the right to education and serve the same end i.e. the promotion and development of the right of every person to education, without discrimination or exclusion. These instruments bear evidence to the great importance that Member States attach to normative action for realizing this right. Unfortunately, Bangladesh is not yet a party to this Convention.

5.5.4 Education for All (EFA)

Besides international human rights laws and national laws, there are other important political commitments in the field of education as well. Among them, MDG and Education for All (EFA) were two important instruments that aimed at ensuring education, especially primary education for all people around the globe. World Declaration on Education for All (1990), adopted at the World Conference on Education for All, assembled in Jomtien, Thailand, from 5 to 9 March, 1990. Later, in April 2000, the international community adopted the Dakar Framework for Action (DFA) on Education for All and identified the following six goals to be met by 2015 which were popularly known as EFA goals.²⁵⁴

Goal 1: Expand early childhood care and education

Goal 2: Provide free and compulsory primary education for all

Goal 3: Promote learning and life skills for young people and adults

Goal 4: Increase adult literacy

Goal 5: Achieve gender parity

Goal 6: Improve the quality of education

EFA was an international commitment to bring the benefits of education to “every citizen in every society.” Many developing countries, including Bangladesh, made the commitment to achieve the EFA targets by 2015.²⁵⁵ EFA goals did not create legal

²⁵⁴ EFA and the MDGs are political commitments to education and development, Right to Education Project

²⁵⁵ Education for all in Bangladesh: Where does Bangladesh stand in terms of achieving the EFA goals by 2015? Human Development Unit, South Asia Region, The World Bank

obligations for states; they were only political commitments and if a state did not achieve EFA, they could not be held legally accountable.

However, “National Plan of Action (NPA) for Education for All” of Bangladesh Government drafted by Ministry of Primary and Mass Education, Government of the People’s Republic of Bangladesh in May 2003 acknowledged that the EFA and DFA goals were a part of national commitments and obligations.²⁵⁶

Moreover, the Dhaka declaration of the South Asia EFA Ministerial Meeting held on December 13, 2009 decided to ‘enforce the right to education for all effectively, if needed through amendment or fresh legislation to make it justifiable’.²⁵⁷ Bangladesh has already achieved some of the EFA goals, like gross enrollment in primary education and adult literacy as set in the Education for All: National Plan of Action- I by 2000. There were other goals, most importantly that of quality education, to be achieved and all sustained, by 2015 in light of DFA.²⁵⁸ Bangladesh has been sincere in ensuring the DFA and EFA goals in terms of budget allocation for basic education (beginning with 4% of GDP from 2003-2004, and raising it to at least 8% by 2015) to cover the cost of required physical facilities, secure environment, books and educational accessories to guarantee minimum agreed quality as enshrined in the EFA goals.²⁵⁹

5.5.5 Millennium Development Goals (MDGs)

In 1998, the General Assembly adopted resolution 53/202 by which it decided to convene in September 2000 the United Nations Millennium Summit. In 2000, at the millennium summit of United Nations, 189 nations made a promise to free people

²⁵⁶ Supra Note 26

²⁵⁷ UPR Stakeholders Report Situation of Child Rights in Bangladesh, Ain o Salish Kendra (ASK), 2012, page 19

²⁵⁸ Education For All: National Plan of Action II (2003-2015), Ministry of Primary and Mass Education Government of the People’s Republic of Bangladesh, Chapter IV, Part A, Paragraph 4.3

²⁵⁹ Ibid, Chapter 5, part A, Paragraph 5A.6

from extreme poverty, illiteracy and other multiple deprivations. The outcome of this Summit was unanimously adopted in September 2000 in UNGA Resolution 55/2, the Millennium Declaration. The goals that were included in this Declaration became known as the United Nations Millennium Development Goals. Set out in 2000, these goals were to be achieved by 2015. In September 2010, the world leaders reaffirmed their commitment to accelerate progress towards these goals.²⁶⁰

Achieving universal primary education was the second of the eight MDGs²⁶¹. This goal had one specific target to be achieved by 2015 i.e. children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.²⁶²

Right to education is a basic human right and to narrow down, a part of economic and social rights. States have obligations to progressively realize these economic and social rights of all human being. Normatively, human rights and MDGs had many things in common. They shared guiding principles such as participation, empowerment, and national ownership. They served as tools for reporting processes that could hold governments accountable. Moreover, they shared the ultimate objective of promoting human well-being and honoring the inherent dignity of all people.²⁶³ However, despite several commonalities, HR and MDGs had certain differences. Human rights are legally binding and formal – they are enshrined in the Universal Declaration of Human Rights and subsequent, binding, international conventions. By contrast, the MDGs were a recommended set of development

²⁶⁰Bangladesh's progress on the MDGs, UNDP

²⁶¹ Other MDGs are to eradicate extreme poverty and hunger, to promote gender equality and empower women, to reduce child mortality, to improve maternal health, to combat HIV/AIDS, malaria, and other diseases, to ensure environmental sustainability, to develop a global partnership for development. For more about MDGs

²⁶² See MDG indicators

²⁶³ Human Rights and the Millennium Development Goals: Making the Link, United Nations Development Programme, Oslo Governance Centre, page 10,

objectives with non-mandatory targets and indicators; while adopted by a large number of countries, they had no legal status.²⁶⁴

However, “National Plan of Action – II for Education for All” of Bangladesh Government drafted by Ministry of Primary and Mass Education, Government of the People’s Republic of Bangladesh in May 2003 acknowledged that MDGs were a part of national commitments and obligations.²⁶⁵

5.5.6 Sustainable Development Goals (SDGs)

In September 2015, the Sustainable Development Goals (SDGs) for 2030 with a pledge to “transform our world” was adopted by world leaders at the United Nations. The 17 SDGs, otherwise known as the Global Goals, were built on the successes of the Millennium Development Goals (MDGs), and are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. Earlier in May 2015, the World Education Forum 2015 in Incheon, Korea, set the ambitious Education 2030 agenda, replacing EFA 2015, to ensure “inclusive and equitable quality education and promote lifelong learning opportunities for all”, UN 2015. The Education 2030 agenda is reflected in SDG for education (SDG-4), one of the 17 SDGs. Achieving inclusive and quality education for all reaffirms the belief that education is one of the most powerful and proven vehicles for sustainable development. This goal ensures that all girls and boys complete free primary and secondary schooling by 2030. It also aims to provide equal access to affordable vocational training, and to eliminate gender and wealth disparities with the aim of achieving universal access to a quality higher education.²⁶⁶

²⁶⁴ Ibid, page 12

²⁶⁵ Education For All: National Plan of Action II (2003-2015), Ministry of Primary and Mass Education Government of the People’s Republic of Bangladesh, Chapter I, Part B, Paragraph 1.4.

²⁶⁶ Sustainable Development Goals, UNDP-Bangladesh.

The 7 specific targets of Goal-4 (Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all) include- ensuring completion of primary and secondary education for all boys and girls as well as access to early childhood development and pre-primary education; equal access to affordable and quality technical, vocational and tertiary education; and ensuring literacy for all youths and adults. The ministries of education, as well as primary and mass education are relevant for implementation of these targets. Bangladesh prepared its own post-2015 Development Agenda and contributed to the international discourse through UN. Led by the General Economics Division (GED) of the Planning Commission and based on a consultative process initiated in 2013, the goals and targets were developed in the context of Bangladesh. Through this process, 11 goals along with 58 targets with corresponding 241 measurable indicators were proposed.²⁶⁷

At the same time, the Seventh Five Year Plan of Bangladesh (SFYP), “Accelerating Growth, Empowering Every Citizen” produced by the Planning Commission is the blueprint for the early critical phase of SDG implementation. So there is an alignment between SDG and SFYP. Apart from the SFYP, two major sectorial policies- National Education Policy 2010 and the National Skill Development Policy 2011, were consulted for this exercise.

5.5.7 The Human Rights Perspective: Education for Human Capital

Human rights in and of themselves do not promote any particular agenda for education. Indeed, the right to education is itself quite basic – it simply ensures that all primary school-aged children are enrolled in school. The push for this universalism, however, has been met with the tendency towards universal policies which work towards the achievement of UPE. Though human rights declarations and

²⁶⁷ “Post-2015 Development Agenda: Bangladesh Proposal to UN,” General Economics Division, Planning Commission, June 2013

conventions on their own do not promote a particular definition of education, international policies and programs which claim to promote human rights principles have a particular agenda of universalism. These universal policies follow the capitalist understanding of education as central to promoting neo-liberal ideals by viewing the teaching of children as essential to creating future human capital. In this perspective, children are recognized for their role as future members of the workforce; education is necessary for ensuring that students are adequately trained to become effective jobholders in their adulthood.²⁶⁸

The Human Rights-Based Approach to Development (HRBAD) is paramount for ensuring that both poverty reduction and the focus on human rights go hand in hand. The emergence of HRBAD accompanied the end of the Cold War – a period also examined for the unprecedented growth of non-governmental organizations.²⁶⁹ Cognizant of the similar goals and mandates central to both international development practitioners and human rights scholars and activists, HRBAD was popularized in the mid-1990s and continues to illustrate mainstream development policy at present. Dominant international development organizations have streamlined their activities with human rights accordingly, as reflected in this 2003 admonishment by the UNDP:

All programs of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.²⁷⁰

The idea that human rights and international development are not completely harmonious is not new. Both can be applauded for complementing one another, playing certain roles that bring out both the importance of social and legalistic indicators.

²⁶⁸ Leah K. McMillan, “What’s in a right? Two variations for interpreting the right to education” *Int Rev Educ* (2010) 56:531–545 at 539.

²⁶⁹ Iriye, A. (2004). *The role of international institutions in the making of the contemporary world*. Berkeley: UC Press.

²⁷⁰ UNDP. (2006). *Human rights and millennium development goals: Making the link*. New York: UNDP, at 13.

What is perhaps the most important milestone of HRBAD is the dignity it gives to its beneficiaries by shifting the focus from so-called “charity” development to the language of entitlements – an idea popularized in Sen’s 1999 work, *Development as Freedom*²⁷¹. In the education sector, the human rights-based approach maintains that education is a fundamental and inalienable human right to which all human beings are entitled. Seen from this perspective, the ability for a child to attend school becomes more than simply a beneficial opportunity – it becomes a legal requirement that all children can, and should, demand²⁷². The ability for children to demand their right to education also places onus on governments to provide the service to these citizens. At the same time it creates an environment in which the international community bears some responsibility for ensuring rights fulfilment, particularly in instances where governments themselves are not able to act effectively.

At the same time, placing education within a human rights framework ensures that there is no discrimination. For example, the three groups most vulnerable to accessibility issues – the severely impoverished, girls and children with disabilities, are equally entitled to education. This pushes governments to work towards policies which effectively provide for all children, regardless of their background.²⁷³ And while development initiatives of the past have often been regarded as simply a “charity” or “do-gooder” agenda coming from philanthropic western aid agencies, placing education within a human rights agenda gives obligation to donor actions.²⁷⁴ With the UDHR and the CRC both stipulating the need for the international community to ensure that all children receive an education, any work in the realm of education maintenance is necessary, not voluntary.

The human rights approach to education could risk numbers at the expense of values intrinsic to the social development understanding of education. With donor funding

²⁷¹Sen, A. (1999). *Development as freedom*. New York: Anchor Books.

²⁷²Jonsson, U. (2008). A human rights-based approach to development: Experiences, issues and challenges. In RWI conference, 16 September, Lund, Sweden.

²⁷³UNESCO. (2007). *A human rights-based approach to development*. Paris: UNESCO. Accessed February 15, 2008, from www.unesco.org.

²⁷⁴ Ibid.

being spent on infrastructure and other policies which ensure that more children are inside classrooms, it is the human capital approach to education which is conceived. This is in part due to the fact that the emphasis on enrolment makes a formalized, structured school system the most effective for educating mass numbers of students at once. This was, after all, the goal of the post-enlightenment creators of this form of human capital schooling.

Indeed the importance of both viewing education as essential for development and as a human right is necessary for ensuring that quality is maintained while the achievement of universal enrolment is prioritized. One of the predominant reasons cited for incorporating human rights into development frameworks is the human-center approach that a human rights focus offers; while development initiatives mandate poverty eradication for improving life for the collective, human rights ensure that the process is mindful of the individual. That being said, working towards a common ground in which human rights and development initiatives can operate in tandem is a task that cannot be taken lightly. In the wake of the MDGs, Alston suggested that it is “often assumed that the MDGs and human rights are not just significantly overlapping and mutually reinforcing, but fully compatible and complementary”.²⁷⁵ To make this assumption can however be problematic. Given the two very differing viewpoints from which social development and human rights have traditionally understood education, it is imperative to recognize that the two varying approaches to education exist.

On the one hand, international development has long stressed upon the social dimension of education – values of citizens and the objectives within. On the other hand, the human rights framework is devoted first and foremost to ensuring that students are enrolled in school. The importance of measuring what happens following the achievement of that enrolment becomes minimized. Although quality is written in human rights conventions (i.e. the UN CRC) as a dimension of the right to education,

²⁷⁵Alston, P., & Robinson, M. (Eds.). (2005). Human rights and development: Towards mutual reinforcement. New York: Oxford University Press 759-760.

policies such as the MDGs and EFA show that HRBAD policies are first and foremost concerned with addressing enrolment levels.

5.5.8 The Future of Education in Global Education Policy

World polity theorists argue that a global conception of education could exist based on global values and norms.²⁷⁶ In contrast, cultural relativists view education as a culturally defined idea which, consequently, cannot be universally conceived.²⁷⁷ Human rights are conceivably universal, yet what it means to fulfil each right is open to interpretation. Siegel demonstrates that Andrew Hurrell, Tony Evans, David Forsythe and Michael Ignatieff have each explained that human rights interpretations are conceived along the lines of “power, national interests and polarity”.²⁷⁸ Given the fact that rights are interpreted differently in varying contexts, it follows that the right to education is interpreted differently in varying nation-states. In particular, while some view education predominantly as a means for socialization, the assumption that education is primarily for human capital has become the dominant understanding in the post-enlightenment world.

Education and Social Policy

Education is one of the key factors for social inclusion and human capital formation. In addition to its social and economic effects, education is perceived as a question of basic children's rights²⁷⁹. Studies such as Colclough or Lloyd and Blanc have identified the enormous benefits to families when all children receive primary education. According to Psacharopoulos education is widely regarded as the route to economic prosperity, the foundation of social equality, and the spearhead of cultural vitality. In the present contribution, education is considered as a tool of social policy

²⁷⁶Boli, J., & Thomas, G. M. (1999). *Constructing world culture: International non-governmental organizations since 1875*. Stanford:

²⁷⁷Billet, B. L. (2007). *Cultural relativism in the face of the west*. New York: Palgrave Macmillan.

²⁷⁸Siegel, R. L. (2004). Universalism and cultural relativism: Lessons for transitional states. In S. Horowitz & A. Schnabel (Eds.), *Human rights and societies in transition: Causes, consequences, responses*. New York: United Nations University Press, 54.

²⁷⁹ Universal Declaration of Human Rights 1948, Article 26

and social justice in two dimensions: (1) as a form of human-resource development; and (2) as a social policy for economic and social development affecting livelihood activities and citizenship needs. Thus, it can be said that "education is the single most vital factor for the realization of fundamental human rights, and promotes a civil society committed to transparency, good governance, and social inclusion"²⁸⁰. Education in this new vision does not lose any of its transforming and human-rights potential. Within this all-encompassing view, education is a key lever of sustained long-term productivity and social stability, as well as a key facilitator for breaking down barriers that exclude marginalized households from economic and political participation. Similarly, education is an indispensable instrument for nation-building and social justice, affecting households' lifetime asset accumulation Duflo; hence the interest in the impact of fiscal decentralization on primary education. We refer to basic education as learning for life needs, permitting citizens to live and work with dignity and fully empowering them to participate in the development and improvement of society's quality of life. Such progress cannot be measured by economic figures but rather by improvements in basic social indicators such as literacy and social inclusion.²⁸¹

5.5.9 Conclusion

So it is auspicious from the above mentioned discussion that the government of Bangladesh has enacted different laws at different times to ensure right to primary education. Simultaneously, the government has also taken numerous measures to comply with its national and international obligations. The government has also obligations under international law to ensure universal primary education in line with international human rights law instruments.

²⁸⁰ UNICEF 1999: 13

²⁸¹ Macleans A. Geo-Jaja "Educational Decentralization, Public Spending, and Social Justice in Nigeria" Review of Education (2006) 52:125-148 at 129.

CHAPTER SIX

DATA INTERPRETATION AND ANALYSIS

6.1 Introduction

This chapter deals with the interpretation and analysis of the data that was gathered from the respondents through in-depth interviews. In order to fulfil the objectives of the study, the data had been collected by the researcher with the help of the research tools, i.e. through an open ended and semi-structured questionnaire. Altogether, fifteen (15) respondents were selected through purposive sampling procedure. The respondents were Legal Experts, Educationists and Policy Administrators, five (5) from each category. Most of the respondents chose to speak in English, while a few talked in Bengali or a mixture of both. The interviews were rich with information related to the research topic. During the interviews, the respondents were authentic, straight, spontaneous, and enthusiastic in their conversations. Apart from the individual interviews, the researcher also had discussions with the respondents related to the Constitution and Education System of Bangladesh.

Chapter Six presents thematic analysis of the data in details.

6.2 Principal Themes

The researcher conducted fifteen (15) audio recordings of the individual face-to-face interviews. The recordings were transcribed, and these transcriptions served as the main raw data source. The transcribed data was organized and grouped according to the sequences of research objectives. The data collection was based on and in relation to the purpose of the study, and the four main research objectives posed in this study; to examine the constitutional responsibility of the Government of Bangladesh for implementing compulsory primary education as well as the issues and challenges of implementation. As part of the analysis, data was organized and read, coded, and compared across the interviews. Then, patterns and themes were explored and afterwards, themes were identified, labeled and named.

The following four principal themes emerged from the data:

- I. *Core spirit of the Constitution* (relating to primary education)
- II. *Nature of Constitutional responsibility* (of the Government for the implementation of primary education)
- III. *Government's Initiatives* (Legal Frameworks and Measures taken by the Government for implementing primary education)
- IV. *Major Issues & Implementation Challenges/ Major issues and challenges* (for implementation of primary education)

A description of each theme, excerpts from the respondents' interviews and analyses are given in the following sections.

6.2.1 Theme I

Core Spirit of the Constitution Relating to Primary Education

The Respondents talked about the core spirit of the Constitution relating to primary education.

Regarding the core spirit of the Constitution the Respondent **LE1** said:

The basic goals of the Constitution are set out in the preamble: the commitment to realize through democratic process a society, free from exploitation – in which rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.

Article 7 which aimed to ensure that people are made conscious that they are source of all power in the republic.

Respondent **LE2** mentioned:

Proclamation of independence is the guiding force of the Constitution and Preamble is the mirror of the Constitution of Bangladesh.

True spirit of the Constitution lies in part 2 & part 3.

According to Respondent **LE3**:

Right to education is not merely going to school for achieving certificate. It is very much related to the content of education. It is rather related to how one should be treated in a non-discriminatory nature and manner. Everyone is equal to the eye of law – this violated in primary education.

Respondent **LE5** clearly said:

The true spirit of the Constitution of the People's Republic of Bangladesh as to primary education is an education imparted to all the children of the country and to make them people-oriented and educated citizens of Bangladesh.

The respondents also talked about the Articles and Parts of the Constitution of the People's Republic of Bangladesh that are relevant to the primary education in Bangladesh.

According to the Respondent **LE1**, Articles 10, 15 in particular (a), 16, 17 and 19 are relevant with the primary education in Bangladesh.

Respondent **LE2** claimed:

Each of the Articles of the Constitution is related to education. However, particularly Article-17 is directly related to education. But to understand 'Article-17' we have to understand the philosophy behind our Constitution. Every word of Constitution has value back from the preamble.

He also mentioned:

There are three value-oriented words in our proclamation of independence. One is equality; the other one is human dignity and the third one is social justice. Article 7- supremacy of the Constitution & Article 11 – dignity & worth of the human person that means education. Article 12-secularism, Article 19-equality of opportunity, Article 20-work as a right and duty

Respondent **LE5** said:

So far as the Constitution is concerned, it specifically does not talk about the primary education. We see the preamble; it talks about political, economic and social justice which should be secured. In Article-15, there are provisions for basic necessities of life, including food, clothing, shelter, education and medical care. Here 'education' has been placed in the fourth category – not the top priority. Article-16 is quite vague – talks about the improvement of education. But, what type of improvement and how far should it stretch – it does not say anything regarding that.

Article-17 talks about the free and compulsory education and talks about establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all citizen but it does not indicate primary education exclusively. But, from the very nature of the Article-17,

we can extract primary education as the basic education for all the children of our country, to develop the country and to make perfect citizens.

Therefore, my answer to this question is the 'Preamble', 'Article-15&16' – ancillary Articles relating to education, in particular primary education. The real Article is 17 which talks about free and compulsory education, though it specifically does not talk about primary education, primary education is the starting point. So it is embedded in Article-17, and this is the Article which gives guarantee of education to all the citizens.

He also said:

Experience shows that the constitutional provisions as enunciated in Preamble and Articles-15, 16 & 17; these are at the moment, good enough to produce properly trained and motivated citizens to serve the needs of the society. It is mandatory in nature.

Analysis of the Opinions of the Respondents (Legal Experts)

Proclamation of Independence is the official announcement declaring independence of Bangladesh by the Bangladesh government-in-exile on April, 17, 1971. The Proclamation so announced in effect provided the fundamental instrument of law as well as an interim Constitution of the mujibnagar government during the war of liberation, including that of the government in liberated Bangladesh until the adoption of the Constitution, made effective from 16 December 1972.²⁸²The Proclamation of Independence has truly reflected the goals of the freedom fighters and aspirations of the people of Bangladesh. The members of the Constituent Assembly declare in the Proclamation of Independence that the objective of establishing the sovereign People's Republic of Bangladesh is to ensure equality, human dignity, and social justice for the people of Bangladesh. The preamble to the Constitution of Bangladesh is the opening statement that sets out the principles and guiding purposes or functions of government as envisioned by the framers.

After analyzing the opinions of the legal experts, the researcher strongly argues that the core spirit of the Constitution is set out in the Proclamation of Independence and in the Preamble of the Constitution of the People's Republic of Bangladesh. The

²⁸² Proclamation of Independence from Banglapedia - the National Encyclopedia of Bangladesh

Legal Experts are of the opinion that the core spirit is to be seen from economic and nationalistic point of view. Although right to education has been placed in the group of economic, social & cultural rights as unenforceable in courts, their significance as enforceability cannot be ignored. This is why it has been pledged in the constitution that these rights would be realized gradually through economic progress. Moreover, they talked about the following Articles of the Constitution which are directly or indirectly related to the primary education of Bangladesh: Article 7- Supremacy of the Constitution, Article 10- Socialism and freedom from exploitation, Article 11- Democracy and human rights, Article 12- Secularism and freedom of religion, Article 15- Provision of basic necessities, Article 16- Rural development and agricultural revolution, Article 17- Free and compulsory education, Article 19- Equality of opportunity, Article 20- Work as a right and duty.

Therefore, the researcher concludes that the core spirit of the Constitution relating to primary education can be found in the Proclamation of Independence of Bangladesh, together with the Bangladesh Constitution's Preamble; and in the Articles of the Constitution related to the primary education of Bangladesh.

This researcher strongly argues that the Proclamation of Independence of Bangladesh, together with the Bangladesh Constitution's preamble, constitutes a complete guideline to understand the nature of the State of Bangladesh as well as the core spirit of the constitution.

6.2.2 Theme II

Nature of Constitutional Responsibility of the Government for the Implementation of Primary Education

The Respondents gave their opinions about the nature of the constitutional obligation that has been cast upon the Governments in Bangladesh as primary-education related Articles are placed in the Fundamental Principles of State Policy of the Constitution.

Regarding this, Respondent **LE1** mentioned one of his Articles, entitled, “*Economic and Social Justice under the Constitution of Bangladesh*”. In that paper he wrote about judicial interpretation of Fundamental Principles of State Policy. In an Appellate Division judgment in 1992, in a public interest petition, it was noted that –

(a) “[the] Principles of State Policy are, as Article 8(2) says, fundamental to the governance of the country, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable”.

Respondent **LE2** mentioned:

Our right to education has been kept in part II of the constitution which means that this right is one of the Economic, Social and Cultural Rights (ESCR).

According to the Respondent **LE5**:

The constitutional obligation has been imposed upon the Government of Bangladesh by adding Article-17 and having placed it in the fundamental policy/ fundamental principles of state policy. This is a corollary which is mandatory in nature and therefore, the constitutional obligation is present there. The government policy should be formulated regarding Articles which are ancillaries and which are fundamental so far as to the expansion of education.

Analysis of the Opinions of the Respondents (Legal Experts) Regarding the Nature of the Constitutional Responsibility

The Fundamental Principles of State Policy embodied in Part II of the Constitution of the People’s Republic of Bangladesh plays an ideal role before the legislator of Bangladesh while they frame any policies and laws. They are fundamentally a code of conduct for the legislature and administrators of the country. According to the legal experts, the respondents of this research, the nature of the Constitutional obligation regarding primary education is directives, not mandatory as it has been placed in Part II of the Constitution. The right to education has not been enlisted as a fundamental right in the constitution of Bangladesh. It appears in Part II of the Constitution as a Fundamental Principle of State Policy (FPSP), which means that the state will

formulate its laws and policies based upon these principles but these principles are not judicially enforceable. According to the legal experts, ‘Fundamental Principles of State Policy’ of Bangladesh Constitution have persuasive value, how higher they may be, and they will impose obligations on the State accordingly, but not as stronger as they would be if they would be judicially enforceable.

Articles 8(2) and 47(1) of the Constitution are key provisions to examine the status of right to primary education as a part of Economic, Social and Cultural (ESC) Rights. The constitution has clearly kept a division between Civil and Political (CP) Rights & Economic, Social and Cultural (ESC) Rights. The constitution itself qualifies Right to Primary Education as a principle, not a right. It has become a crucial question as provisions of this part are not judicially enforceable. Framers of the constitution have practical reasons to do so and two of them put forward arguments to justify their position in the in-depth interview of this research. The Fundamental Principles of State Policy are directions given to the state to guide the establishment of an economic and social democracy. Nevertheless, Part II of the Constitution has importance since it shows the path to the leaders and administrators of the country to achieve the ideal of the Constitution embodied in the Preamble.

6.2.3 Theme III

Government Initiatives (Government Responsibilities, Legal Frameworks & Measures)

All the Respondents (Legal Experts-LEs, Educationists-EDs and Policy Administrators-PAs) gave their opinions on Theme 3, i.e. Government Initiatives which includes Government Responsibilities, Legal Frameworks and different measures taken by the Government for implementing primary education.

According to the Respondent **LE1**:

Laws enacted and policies adopted and the measures taken by the successive governments for primary education did not result in obligations imposed by the Constitution being fulfilled. The laws need to be reviewed and amendments need to be made.

He also added:

So, we should take the issue to the National Parliament – not only during 1/2 months during budget, but also during the whole year.

The Respondent **LE2** did not say anything specific about government initiatives to implement compulsory primary education.

Regarding government initiatives for implementation of compulsory primary education, the Respondent **LE3** opined:

45 years have passed and no government said- “now it’s time for making right to education a fundamental right. It is a right of every citizen of this country.

The Respondent **LE4** stated his perception:

Laws enacted, policies adopted & measures taken are enough for primary education. However, truly speaking, Constitution was the last thing in their (i.e. Government’s) mind while formulating education policies and principles. Overall, laws have not been important to the governments.

The Respondent **LE5** clearly explained his opinion:

Having regard to the territory/size of Bangladesh and population, I think it is not necessary to include the right to education under the fundamental rights of the Constitution. Because, if we include it as a fundamental right, legal problems will be there – there will be burden upon the judges and courts.

Moreover he added that more number of judges means more cost to work as a watchdog or for implementation. That will be very complicated and will reduce the efficiency of judges, as well as divert the concentration of the court towards primary education, which is not the function of the court. It should not be made compulsory bringing it to Chapter-3 of Constitution. In Chapter-2, it is quite all right. It depends upon the mindset of the policy-makers: if they feel that they can implement it, then Article-17 is good enough to implement the policy of free primary education.

Regarding the Legal Frameworks and Policies of Bangladesh he said:

From the period of 1974 to 1990, Primary Schools (Taking Over) Act, 1974 was okay, because it was the case of taking over. But after 1990, we are talking about ensuring education for all. Law is there – it is necessary to

implement the law. Moreover, the implementation is there, according to me; Primary Education (Compulsory) Act, 1990 is good enough to ensure the education policy of the Government.

He also said that the laws enacted and policies adopted are undoubtedly in line with the obligations imposed by the Constitution. But it is not speedy and adequate. With this saying he explained the reality. He remarked that for this matter, more number of teachers have to be appointed, more infrastructures have to be constructed and the teachers must be trained. The students should be properly looked after and the books must be uniform – whether a student reads in English version or Bengali version or Madrassa education, the uniformity must be maintained. If that is done, it will be in line with the obligations imposed by the Constitution.

The Respondent **ED1** explained the government initiatives elaborately. Regarding ‘government responsibilities to implement compulsory primary education’, he said:

Primary education is basically elementary or fundamental education. So, primary education is the sole responsibility of the government. It should be compulsory and free. Now primary education is up to VIII, and is compulsory on paper.²⁸³ Actually, many children are out of the vicinity of primary education and that should be addressed. They need a second chance to complete their primary education. All the materials should be supplied for these children. The government and the community should ensure participation of all children to quality primary education.

Regarding the ‘Measures taken by the Government’ **ED1** mentioned:

If the government takes firm commitment then anything can be achieved. Primary education is the obligation of the government. But those who do not come to school, no actions can be taken – the compulsory act is not implemented.

Afterwards, he positively talked about gender parity in primary education and free distribution of text books. But regarding the success of the government he said,

I will say partly successful, not fully successful. Actually, according to the Education Policy, 2010, in primary education from Grade I to VIII, the same curriculum, and the same textbooks for core subjects will be followed. There

²⁸³ During the above mentioned interview, primary education from class one to eight was just about to start but later the plan was changed. Now it is in old form, from class one to five.

should be no diversified subjects. By core subjects, I mean Bengali, English, Math, Science, Bangladesh & Global Studies, and ICT. These six subjects will be taught in all lines of primary education – General, English & Madrassa. This is the government policy and this policy has been partly implemented.

Regarding the ‘Legal Frameworks’, respondent **ED1** said,

It is clearly stated in the 2010 National Education Policy that all schools should follow the same curriculum. Some schools are not following the same curriculum as this is a policy not an ‘Act’. The government has been working for an education act/ law for the last 3 years and we are waiting for that Education Law. Many of the recommendations of the committee or the policy have not been implemented. If we have an education law, then they are bound to follow. The Government can also take actions then.

Regarding The Primary Education (Compulsory) Act 1990 he said:

The Primary Education (Compulsory) Act was adopted in 1990. The government has taken some measures to implement the Act, but no administrative actions have been taken against those who do not follow that Act. The Act of 1990 says that if a child is not sent to school, parents will be penalized. But hundreds of millions of children are not in schools, and no action is being taken. So, how can we say that the government is implementing the Act?

The Respondent **ED2** talked about Government Initiatives:

We have five basic human rights recognized by UN and education is one of them. Our Constitution has also recognized that basic education should be provided for all irrespective of caste, creed, gender, religion etc. Constitution has guaranteed that illiteracy should be removed within a certain period and to ensure compulsory primary education. It has to be approved by the Parliament like India. It is true that the government has recognized education as a fundamental right, but it is not enacted as a law. So there is still a gap between state principles and implementation.

She further added that it is a good sign that it is recognized as a basic principle but lots of things need to be done to make it happen, i.e. bringing all the children into the mainstream of education. If it is not made a law, we cannot enforce it. There is child labor too. In terms of gender equity and equality, we are still lagging behind. Government has taken lots of steps, but there are still gaps in implementation process.

ED2 also stated her perception:

I think the governments are successful in making infrastructural development, recruiting teachers, giving curriculum and everything; but far behind in establishing uniform, mass-oriented, universal system of compulsory primary education. It is in the policy documents, policy process – but the governments are far behind.

Regarding the government's initiatives for Education Commissions, she said that in our country, after Independence, we have got 7 education commissions and before that during Pakistan period there were three or four commissions. These commissions act as the foundation of education policies. She added,

To me, Qudrat-e-Khuda commission is a milestone – a very pragmatic education commission for a new nation. If we go through this report, we will see that it is very comprehensive in terms of aims and objectives of education as well as in terms of each sub-sector of education – pre-primary, primary, secondary. Additionally, the recommendations are very pro-active, dynamic and constructive to create a new education system for a newly independent country. When governments change, they usually make a committee according to their own political ideology; they try to develop new curriculum, new contents, and new textbooks. I think Qudrat-e-Khuda commission is above all these. Qudrat-e-Khuda commission acted as a foundation for the present 2010 Education Policy.

According to her, the first education policy is dynamic, but it has shortcomings also – there are no clear guidelines on how this can be implemented. There are gaps in the policy and implementation frameworks.

Regarding the legal framework she opined:

The government cannot go beyond or surpass the Constitution – they have to abide by the Constitution. I think the Primary Schools (Taking Over) Act, 1974 was challenging as well as a milestone. After independence, it was a very bold step of the government to take the responsibility of primary education. Again, the Primary Education (Compulsory) Act, 1990 was a very good step.

Then, she explained that if we consider the socio-cultural and economic context of our country, we are lagging behind in implementing the Act of 1990. Child labor is a problem and in our socio-economic context, the ILO Convention may not be implemented as legally binding for us. We are at the end of achieving universal primary education, but in achieving the compulsory status, there lies a huge difference. But the government is trying hard – recruiting teachers, giving stipends,

initiating school feeding programs, and special provision for the girls, giving free textbooks, making tuition free; that is from the supply side. These are also positive interventions by the government to make education free for all. But there are still 4 million children out of schools. These groups are more disadvantaged, discriminated, abused or misused; the street children, the hard to reach out group of children, or the children who are victims of the social inequality. Even if they attend schools, they cannot continue schooling for these social factors. Also other school factors, teacher's behavior etc. also contribute towards their problems. They do not get good support from the family and cannot go to coaching centers, which has become supplementary education. Furthermore, there are child marriages too. These are hindering the process to make primary education compulsory and free for all.

The respondent focused on three things: 1. Commitment to achieve education for all by the year 2015; 2. Commitment to achieve gender parity that was also mentioned in the MDGs, and 3. Commitment to implement Constitutional promise to provide free education for all. The government has recognized basic education as a right. Under PEDP-I & PEDP-III, huge expansion has occurred in primary level in terms of infrastructure development, teacher recruitment, other positive interventions, and also cooperation and assistance from the development partners. These have helped the government in positive policy formulation. So the government has been successful in implementing curriculum, distributing free textbooks and motivating parents to send their daughters into schools. Also, there is a mass awareness about the benefits of girls' education which is one of the reasons why gender parity has been achieved.

The Respondent **ED3** explained Government Initiatives elaborately. He said:

In 'Article 17' of our Constitution, we had the success of getting primary education to be universal, and it should be uniform and mass-oriented. There was a commitment stored by the Constitution that children of our nation should be given free and compulsory education – whether up to primary or up to class eight, or something like that to be decided by the government policies.

Regarding education policy and legal frameworks, he said:

Among the education committees/ commissions of different governments, we found in 1972 the Qudrat-e-Khuda commission very vital which was almost indicating the national education policy of the country. And it held the national spirit of our independence, the real educational perspective to be fostered in a way that Bangladesh should achieve from primary education to higher education. Overall, it was a comprehensive education policy considering the backwardness of the people as well as the foresightedness of a nation. We can say it was a role model among the commissions.

He added that later, we found several commissions in few decades but those did not have much progressive viewpoint. Later, we found the National Education Policy, 2010. It reflected the Qudrat-e-Khuda Commission's outlook. The present government is still behind that, and it is yet to be implemented, because those policies are still on paper.

He opined about two acts:

The Act of 1974 was a very bold decision by the government but with the development of other sectors, the Act was not taken care of. And in 1990, it got a shape ultimately and we got a law- Primary Education (Compulsory) Act, 1990. There is a need for changing or amending the 1990 Act further.

He explained the exemplary initiatives undertaken by the Bangladesh Government in introducing female education which made a big milestone in the world arena. Enrolment rate is quite good and the drop-out rate has been reduced. Some sorts of incentives, particularly distribution of education materials, books etc. are much appreciated. Free book distribution in the beginning of the year becomes a festival in our country. It gives an enormous start to a child's psyche.

The Respondent **ED4** said:

In case of compulsory primary education, if the government does not take responsibility, then there will be problem. So, it is the government's responsibility to ensure that all children receive compulsory primary education and the government has to bear that cost.

He added that the governments did not ensure a uniform system of education. Now boys and girls are getting education through 3 mediums – Bangla, English and Madrassa.

Regarding Madrasa system **ED4** explained:

Madrassa education has 2 branches: Aliya & Qwami. Now Aliya Madrassa education and general education follow the same textbooks. Madrassa students study some additional books. But Qwami Madrassas are not connected to our mainstream education system. It is still an unknown territory to us. We tried to bring the Qwami Madrassa under the Education Policy, but could not do that. It is a big failure of our National Education Policy that we do not know what a child is learning in Qwami Madrassa. So, the government is not successful in establishing a uniform and universal system of compulsory education.

Regarding education policy and legal frameworks he mentioned:

Qudrat-e-Khuda commission was very forward-looking. Some education reports are somewhat biased to a particular religion. I always believe that all people, irrespective of religion and caste, should have the equal rights. There are some sorts of reflection of the Qudrat-e-Khuda commission in the 2010 National Education Policy. The major shortcoming of the 2010 Education Policy Report is that it has failed to accommodate all the children. Unfortunately, Qwami Madrassa could not be incorporated in this policy. I am sorry to say that we cannot produce human resources from the Qwami Madrassa system.

He also opined that it is not possible to change English medium overnight. Many of them even do not know Bangla well; however some boys and girls learn Bangla. But, this problem can be solved if the school authorities take initiative. We should not blame a child for not learning Bangla. Learning does not only take place in school. What a child learns from school is 5% of the education – the rest 95% is procured from outside, i.e. through playing with others, making discussions with friends, participating in events etc.

Regarding Education Law, **ED4** said:

We did not have any education law; only a law has been formulated of late. One of the major problems of our education system is that our children are bound to read 'Guide Books'. Coaching was initially made illegal in the draft education law. But in the latest draft law, it was approved in the name of 'Shadow Education'. If we legalize coaching centers, then we are discriminating, since all guardians/parents do not have capacity/ ability to send their children to the costly coaching centers. Coaching centers only teach students how to get good grades in the exams. So, policies and laws are not being formulated according to the Constitution.

He further added that the Act of 1990 was not being implemented completely. Nevertheless, it is better to have Acts/ Laws related to education.

In terms of government steps, he mentioned that the government is successful as both boys and girls are now receiving education. Some effective decisions have been taken by the policy makers. Mass people are very much aware to send their children to schools now. NGOs in our country are also playing a key role in this regard.

The Respondent **ED5** gave his opinion about the government initiatives regarding implementation of compulsory primary education. On ‘government responsibilities’, he said:

In 1972, the government took responsibilities of primary education, but it was a vast field. I feel that it is very difficult to cover the entire thing. So, we see now-a-days that even though our Constitution has the law that all children are supposed to go to school; I feel that the government does not have the capacity to bring all children to schools.

He also mentioned that many children are not going to government primary schools since the quality of education is not maintained there. They go to private primary schools to get better service from them. The private schools are doing very good and so, the government should foster those private institutions too. We have more or less statistics that 70 thousand children are on the street, and the Government has no policy for these children. But some NGOs are taking responsibilities for them, at least for minimum education. So, if the government cooperates with them, then they can get the maximum output.

We know that there are 4 different kinds of education system in our country. If we count all the systems together, we will see that not even 70% of our education system is covered by the uniform system of education in Bangladesh. Because, now there are kindergartens, madrassas, tolls and private institutions. Private institutions are registered, but madrassas and kindergartens are not. The government is trying hard to get them registered so that they can bring all of them (school, madrassa, kindergartens etc.) together under one umbrella. If they can bring all of them together, then we can say that is a ‘uniform’ system.

ED5 further added:

One thing is that when Qudrat-e-Khuda report came out, they got the criteria that some amount of GDP should be spent on education. But the government could never do this. And still in the 2010 Education Policy, there are provisions that at least some percentage of GDP should go to the education sector, but we are still far behind from that. Even though the government has good interests & provisions, they will not be able to achieve those due to lack of funds. Although they are making buildings for primary schools in rural areas, those are not being built properly due to poor monitoring. Most of the buildings will not last more than 10 or 20 years for bad construction. In this way, a lot of funds are misused. They (the government) have good policies, but I think they cannot implement the entire thing accordingly.

Regarding the Acts of 1974 and 1990 and the Policy of 2010, he remarked:

In 1974, the government nationalized all the primary schools, though they did not have the financial capacity to maintain all of them. At that time we had some very good primary school but when the Government took over those schools, they lost their name & quality.

Then in 1990, when the government made another law, it was only then that they actually started to develop. The government had a plan to establish schools in remote areas, in every village. They started working but problems cropped up there as well. When the government started hiring people for schools, they did not get enough qualified teachers for certain areas. So, one teacher had to take many classes and teach up to class V.

Later on in 2010, the government made another law so that those who are in the villages could not easily come to the cities. Transfer of teachers was stopped. Now, teachers who are appointed at a certain place remain there and that will help.

ED5 also explained about the National Education Policy, 2010. He mentioned:

It is a very good policy, but if you cannot implement it, then a good policy will never help you accordingly. The government decided in the 2010 Policy that the primary education level will be up to class VIII. But how they were going to achieve this was not mentioned in the plan. According to them, by 2019 every school would be primary till class VIII, but I am in doubt whether they can make proper infrastructure and other things to achieve that. So, it is very difficult to implement the policy. It would be appreciated if they had proper implementation plans.

The Respondent **PA1** talked about the Government Initiatives for implementation of compulsory primary education. He said:

I think we have advanced in primary education field. In 1974, enrollment was only 30% and drop-out rate was high. Now enrolment in primary schools are 98% - 99%. So, the governments are successful in universalizing primary education. However, Constitutional obligation is yet to be fulfilled.

He also mentioned:

The Primary Schools (Taking Over) Act, 1974 was a very remarkable and progressive step by the then government. The present government has nationalized many registered and non-government primary schools. We should amend the present Act, because we need to make secondary education compulsory, since without completing secondary level education, a boy or a girl can do nothing in their real life.

The Respondent **PA1** suggested that Laws need to be updated. He also pointed out that National Education Policy, 2010 is somewhat outdated. It is idealistic. Dual mode of teaching-learning is absent. We need an action plan. A policy is nothing; the main thing is an action plan.

The Respondent **PA2** gave his opinion regarding government responsibility & initiatives for compulsory primary education. He said:

I think according to “Article 17” of the Constitution, the government is responsible to provide all children compulsory primary education. Framers of our Constitution were very wise and they had farsightedness. They took education seriously in a newly independent country. After independence, in a war-ravaged country like Bangladesh, the government took bold steps to include education in the Constitution. But it was not possible to make education a fundamental right. The state was not capable to do so and society was not prepared.

Regarding legal frameworks, he added:

Before independence, there were no government primary schools. Through the ‘1974 Act’, Bangabandhu nationalized many primary schools. Again, in 1990, the Primary Education (Compulsory) Act was passed where education up to grade five was made compulsory. I think the State started to do that to fulfill the constitutional responsibility. Then, Children Act 1974 (amended in 2013) was also a very good initiative which recognized the right to education for all children.

The Respondent also indicated many problems for implementing compulsory primary education. According to him, it is very difficult to send the children to schools in

remote areas and agriculture based villages. The government has taken many initiatives to address these issues. They are providing scholarships/stipends to the children which are deposited in the account of a child's mother. Once the government took an initiative to remove illiteracy, the Total Literacy Movement (TLM), which was very fruitful.

In case of government's responsibility, he highlighted the term **uniformity**:

Uniformity is not possible overnight. Diversified systems have been created for meeting the demands of the society. We cannot ignore the class system of society. Because, there is demand in the society. And many people can bear the education cost. So, economically-solvent parents will send their children to the English medium schools – that's the reality. We have to think how we can provide the same curriculum of basic subjects for all kinds of schooling. Madrassa students are also our children – we want their development too. They also need to learn technology to meet the demands of the society. So we need to give the children of all mediums both values and technological knowledge.

Regarding government's **initiatives**, he explained that they decided to distribute free and new textbooks from the very beginning of each academic year (1st January) to the children. Textbooks are now printed in Bangladesh. Many good teachers have been appointed through exams, but they need to be trained. At present, many trained teachers can develop multimedia content. PEC exam has been introduced. Drop-out has been reduced. In 2009, more than 18 lac learners attended PEC exam and among them, more than 16 lac passed. Now the number is 30 lac. There is a question regarding quality. But, a large number of children are completing their primary education. We did not get any complain from the ministry, but there are allegations that there exists manipulation in the PEC exam. In this case we have to take strong administrative measures.

The Respondent **PA3** gave his opinion about Government Initiatives regarding implementation of compulsory primary education. For 'government responsibilities' he said:

Compulsory primary education is very much clearly stated in the Article-17 of the Constitution of Bangladesh. According to this Article, the responsibilities of the government are: Primary and Mass Education related policy formulation and implementation; Compulsory Primary Education program monitoring and implementation; Non-Formal Education program implementation; Development of curriculum & textbooks in primary education level; Preparation of reading materials/ contents, printing and distribution of textbooks for primary students; Initiation of Primary and Mass Education related research and training program.

He then talked about the achievements of the government in compulsory primary education. He pointed out:

There are many achievements in Compulsory Primary Education. We have to prioritize on which component we shall give emphasis upon at first. Enrolment rate is above 90% and drop-out rate has reduced to 10%. Firstly, we need to send all children to schools and secondly, we have to emphasize on quality. Some technical and resource limitations still exist. Due to geographical barrier (i.e. hilly/remote area), efforts cannot be delivered fully to bring all children into the classrooms/schools.

Regarding the measures taken by the government, the Responded **PA3** mentioned that the governments have taken numerous steps till now. In order to fulfill the Constitutional obligation, the governments have promulgated the “Primary Education (Compulsory) Act, 1990”. To implement this ‘Act’ and to coordinate, monitor and observe the progress of implementation of this ‘Act’ at the field level, Compulsory Primary Education Implementation Cell was created under the Ministry of Education in 1990. Later the word “Cell” was replaced by the word “Unit”. Compulsory Primary Education Implementation Monitoring Unit (CPEIMU) is a unit under the Ministry of Primary and Mass Education, Government of Bangladesh. Compulsory Primary Education program was introduced initially in 64 Upazillas/Thanas on January 1, 1992, and subsequently all over the country on January 1, 1993.

Regarding the uniformity he stated his perception:

Constitution has made a clear direction to establish a uniform, mass oriented and universal primary education system in Bangladesh. All the measures in terms of law and policy taken by the governments are aligning with the obligations of the Constitution. In case of uniformity, we have to accept diversity/ the demand of our society. Everyone has the right to choose his/her education system. Our aim/ objective is whether we can ensure 100% free and compulsory primary education. I cannot count English medium schools as

they are very small in numbers. Moreover, after completing O/A levels, majority of the students (i.e. 90%) are studying in our universities. Sense of feeling and patriotism mainly come from parents/family. Students read textbooks as a part of formal education.

He then talked about the legal frameworks. He said that the Primary Schools (Taking Over) Act, 1974 was a very progressive step by the then government. As per the obligation of the Constitution, then 36,165 primary schools were nationalized under this Act. The Primary Education (Compulsory) Act, 1990 was formulated to increase the active participation of local government. The government thought that 100% enrollment in primary education would be more effective in the presence of an elected local body. Actually the Act 1974 was a seed (or the root) that was affirmed by the Act of 1990.

He further added:

We have unlimited budget/ financial allocation. However, we are not in a position to absolve those. It will take time for capacity building. Money is spent not only for making buildings but also producing quality teachers. Regarding quality education this government's commitment is unquestionable.

To fulfill the targets of MDGs and Education for All (EFA), the government was totally committed. Ministry of Primary and Mass Education promulgated the National Plan of Action (NPA). There are 64,000 schools and more than 3 lac teachers. Teachers are from 9 streams and their qualifications are varied from SSC to Master's level. So it is a huge task to bring them into the mainstream. Time is needed for this.

Inclusion of autistic children in primary education is already a work in progress. Each school will have a trained teacher for autistic children. It is a commitment of the government to the special needs/ disabled children. Recently, 15,000 schools have been built which are disable-friendly.

The Respondent **PA4** gave his opinion about **Government Initiatives** regarding implementation of compulsory primary education. For 'government responsibilities', he said:

I think our Constitution should be amended to include right to education as a fundamental right. Many acts/policies are taken in primary education. But in a true sense, uniform primary education system is yet to be fulfilled. English mediums and Madrassas are running according to the demand of the society. However, Madrassa education has been standardized. But if I say that all schools will be similar to government primary schools or there will be no Madrassa education, this will create confusion among the mass people. There is religious education in many countries. But some courses/subjects are fixed by their governments so that uniformly educated people can be produced. In our country that is also happening right now. Teachers are recruited and trainings are also being provided.

He also added that

We did some works for Primary Education (Compulsory) Act, 1990. I think this Act is very effective which upholds 'Education for All'. However, this 'Act' is yet to be implemented fully. Recently from class VI to VIII, school establishment and PEC exam regulations/policies are being formulated.

The Respondent **PA5** talked about Government Initiatives regarding implementation of compulsory primary education. He said:

Article 17 is the basis of Universal Primary Education. Education was made free and compulsory. In Pakistan period, there were no government primary schools. When our government made education compulsory and universal, the 'Education for All' principle was in their mind. But no separate law was made for implementation. It was included in the principles of our Constitution.

He then mentioned about various initiatives taken by the successive governments to develop socio-economic situation of the country. Stipends are provided for 100% students. Various incentives (biscuit feeding, mid-day meal etc.) are given. Gradually, the state takes responsibility for all children's education. He claimed that:

AL government's commitment is different from that of other governments. Bangabandhu nationalized more than 36,000 schools, and his daughter nationalized additional 26,193 primary schools in 2013. We are advancing according to the Article-17. Now people compare us with Europe, America – nobody is comparing us with Pakistan. However, our quality is not similar to that of a developed country. But it is our remarkable achievement that every child is going to school. The government is giving free textbooks to all the children.

Regarding uniformity he remarked:

At the moment our education system is not uniform. It did not happen overnight. There are historical, social, political, religious and other causes.

Our people are divided into various casts, sects and religions. It is very easy to say uniformity. But my question is will it be only English medium or only Bengali medium? Will there be any Madrassa education? So, what will be the basis for uniform primary education? There is also a debate about what is reactive and what is progressive. Some people want only English, some think about only religious education. But, now, we are the residents of a global village.

I am not the authority to explain the term ‘uniform’ used in the Constitution – it is the responsibility of the Supreme Court.

He further added that inclusive school environment for all has been created. The government is trying to establish a common goal of education. All children are citizens of Bangladesh. However, everyone’s religious freedom is ensured. The goal is human well-being. The fundamental spirit of the Constitution is human well-being/welfare. Through education, this message is upheld. The government has created ‘Education Aid Trust’. Now, stipend/ scholarship is provided through online accounts.

Primary education is not a fundamental right yet. But in reality, as citizen, people think like this. If it becomes a right then there will be legal bindings. The government has to take responsibility for all types of primary institutions; they have to make all schools free, scholarships have to be provided to all schools.

Analysis of the Opinions of the Respondents

The educationists and the policy administrators, who have been interviewed by this researcher with structured questionnaires, are in full consensus that the consecutive incumbents can fairly be credited for nationalization of the primary schools, high rate of primary school enrollments, recruiting good teachers, developing infrastructure, distributing free textbooks among the students at the beginning of the year; and giving some incentives to the marginalized students. Nevertheless, critics pose question marks as to the quality and ultimate outcome of the primary education in Bangladesh.

All the respondents (i.e. Legal Experts, Educationists and Policy Administrators) talked about the Theme “Government Initiatives” which include government responsibilities, legal frameworks and different measures taken by the government for implementing primary education. Regarding ‘government responsibilities’ to implement compulsory primary education, they were of the opinion that- primary education is the sole responsibility of the government. It should be compulsory and free. They mainly mentioned ‘Article-17’ of the Constitution of Bangladesh which specifically deals with compulsory primary education. One educationist thought that the government and the community should jointly ensure participation of all children to quality primary education.

Regarding the ‘Legal Frameworks’ all respondents said that both ‘Primary Schools (Taking Over) Act, 1974’ and ‘Primary Education (Compulsory) Act, 1990’ were the bold steps by the then governments. Actually, the Act of 1974 was a seed (or the root) that was affirmed by the Act of 1990. However, one policy administrator mentioned that apart from these two Acts, the Children Act, 1974 (amended in 2013) was also a very good initiative which recognized the right to education for all children. We are lagging behind in implementing the Act of 1990. There is a need for changing or amending that Act further.

Regarding ‘Measures’ it came out from their opinions that various measures were taken by the government for implementing primary education. The legal experts opined that the laws enacted, policies adopted, and the measures taken by the governments for primary education are well appreciated but they did not result in the fulfillment of the obligations imposed by the Constitution. Nonetheless, one legal expert was of the opinion that their implementations are not speedy and adequate.

We have got 7 education commissions in the Independent Bangladesh namely, Qudrat-e-Khuda, National Education Advisory Committee, Mazid Khan Education Commission, Mafizuddin Ahmed Education Commission, Shamsul Haque Education

Commission, MA Bari Education Commission, Moniruzzaman Mia Education commission and Kabir Chowdhury Education Commission-2009 (National Education Policy, 2010). These commissions act as the foundation of education policies. However, among the education commissions/ committees formulated after independence, only the Shamsul Huq Committee Report and the 2010 Education Policy Report were passed in the parliament; the others were not. One educationist is of the opinion that until and unless an education policy in the parliament, one cannot call it a National Policy. All the educationists thought that Quadrat-e-Khuda commission was a milestone. It was very a forward-looking and pragmatic education commission for a new nation. According to an educationist, when the government changes, they usually make a committee according to their own political ideology. They try to make new curriculum, new contents. Every government starts with a fresh policy – they never think of the good works of their predecessors. Some policies are good but they cannot be implemented accordingly.

The latest ‘National Education Policy, 2010’ is dynamic, but it has shortcomings also – there are no clear guidelines on how this can be implemented. There are gaps in the policy and implementation frameworks. Almost all the respondents mentioned about Qwami Madrassa. With regret they said that Qwami Madrassa could not be incorporated in this policy. Members of the National Education Policy, 2010 Committee suggested for only 2 public exams, i.e. SSC & HSC. Surprisingly, 4 exams (i.e. PEC, JSC, SSC and HSC) were introduced in this policy. However, there are some reflections of the Quadrat-e-Khuda commission in the 2010 National Education Policy.

All the respondents agreed to the point that numerous steps have been taken by the successive governments for implementing and developing primary education. Various incentives are being provided. Stipends are provided for 100% students. Free textbooks are being given to the children. The multicolored books are appreciated by the children. Inclusive school environment has been created. Special emphasis has

been given for female education through stipends. Many non-government primary schools have been nationalized or turned into government primary schools.

All the measures in terms of law and policy taken by the governments are aligning with the obligations of the Constitution to establish a uniform, mass oriented and universal primary education system. All the respondents agreed that the government was not fully successful in establishing a uniform system of education. Many of the respondents thought that there was not any problem for diversified (i.e. Bangla medium, English medium & Madrassa) education system as the government is trying to give the same curriculum in the basic/core subjects. However, primary education is not yet a fundamental right. It is in the Fundamental Principles of State Policy. Constitutional obligation is yet to be fulfilled. According to two Legal Experts, Principles are sometimes more important than Fundamental rights. When our Constitution was formulated, many issues were included as principles rather than fundamental rights keeping in mind the resource constraints. Even if it is made a judicially enforceable fundamental right, the court's mandate may not be available. Courts can give a verdict like- 'we think that should be done'.

Among the fifteen respondents, ten respondents expressed their opinion quite positively that education must be included as a fundamental right in our Constitution. Two legal experts opined that amending the Constitution to make the right to education a fundamental right may help to emphasize the critical importance of education but enforcement of such rights is subject to availability of resources. One legal expert had a different view. He thought that it is not necessary to include the right to education under the fundamental rights in the Constitution. Because, if we include it as a fundamental right, legal problems will be there – there will be a burden upon the judges and courts. It should not be made compulsory bringing it to Part-3 of the Constitution (Fundamental Rights). It is quite okay in Part-2 (Fundamental Principles of State Policy).

To meet the challenges, Bangladesh Government has taken a lot of sector-wise projects. Policy Administrators gave the statistical description about the measures taken by the Government:

1. School Feeding Project: To address the drop-outs, supply of 75gm biscuit in each day at 93 Upazillas (mostly treated as poverty line area covering) to 3.04 million students is ensured.
2. Stipend Project: Started in 2010, 11.7 million students (mostly from poor family) from 62,087 schools are getting stipends.
3. Distribution of books: At primary stage 10, 52, 69,221 copies of 6 colored books are delivered among 2, 17, 21,129 students. At pre-primary stage 1, 02, 57,741 copies of colored books are delivered among 1, 02, 57,741 students.
4. Initiative has been taken to recruit new teachers and in order to train them, the ministry is working with IER for 'distance learning' training.
5. Logistics: At present, on the basis of ICT Policy, preparation of ICT based content for class teaching is on the process. Computer with internet connection is supplied to 1109 subordinate offices of this ministry. Modernized laboratory has been established in 55 PTIs. 503 Model Primary Schools are equipped with laptop, multimedia and internet connection.
6. Infrastructure: Under PEDP-I (Primary Education Development Project –I) from July 1997 – June 2003, reconstruction of 2826 school buildings and 7926 additional classrooms have been completed.
7. Under PEDP-II (Primary Education Development Program –II) from July 2003 – June 2011, reconstruction of 818 school buildings and 20,436 additional classrooms have been completed.
8. Under PEDP-III (Primary Education Development Program –III) from July 2011 – June 2017, 26080 additional classrooms have already been constructed and 12923 are ongoing.
9. SDG-4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all- is related to the education sector. Special emphasis has been given to this goal. The Planning Commission is mapping the ministry by targets in the implementation of the goal no. 4 of the SDGs aligning with 7th Five Year Plan (2016-2020). The government has taken a good step- a senior secretary is the SDG coordinator and the SDG cell/office is within the Prime Minister's office.

6.2.4 Theme IV

Major Issues and Challenges for Implementation of Primary Education

Opinion of Legal Experts

Regarding the theme “Issues and Challenges” the respondent **LE1** pointed out:

The challenge that remains for the current government and future governments is to make adequate allocations in budgets and to fully execute the aforementioned budget so that adequate resources are available to implement the Constitutional commitment.

According to the Respondent **LE2**, the government’s challenge is not that much. But he talked about an issue:

From the very beginning, value of humanity should be instilled within the children; it should be taught to our children. The parents need to be trained and every parent needs to be a teacher.

The Respondent **LE3** clearly stated his perception about the theme “Issues and Challenges”. Regarding issues he said:

We are emphasizing on quantity to show the world, but we are ignoring the content as well as quality of the teachers. As a result, the sense of humanity and nationality is not growing up among the children; extremists are being born.

He further added:

English medium or English version education system is not a problem at all. But all types of schooling should have some basic courses. The state will decide which basic courses should be there. History of liberation war, national anthem etc. must be included there.

According to **LE3**, the challenges of the government for ensuring primary education are:

1. Monitoring attendance and ensuring no drop-outs occur,
2. Arranging for providing hot meals to the school children and possibly rescheduling school timing for that.
3. We have resources, but in every sector, effective monitoring and proper management needs to be ensured.

4. Removing corruption and ensuring transparency; corrupt practices must be stopped.
5. The state shall take measures for people from backward socio-economic class.
6. PEC & JSC exams have to be abolished immediately. Many developed countries have no exams/ in primary level.

The Respondent **LE4** gave his opinion regarding issues and challenges. He opined:

Mandatory primary education is not a legal challenge. For mass education not being spread, the main challenge is unequal society – inequality has increased during the last 45 years.

They (Government) are emphasizing education as part of the global goals. They are prioritizing girls' education to show the international community. But, they are not doing that according to the Constitution. Quality is going down.

According to the Respondent **LE5**, the challenges are to build up the infrastructure for the children, because we have sufficient number of children; they are one fourth of the population. Second, the challenge is to increase the number of teachers to cope with the number of children.

He further added:

Third, we need trained teachers. If the trained teachers are there, then the students will be enriched with the learning. They will be careful about their studies and will be able to cope with the education system. Moreover, the trained teachers should be properly looked after by the government– so far as the salary is a concerned.

He continued:

Fourth, there must be uniformity of compulsory subjects in all types of primary schools – Bengali medium, English medium, English version, Kindergarten, Madrassa etc. All these should have uniform courses (i.e. Bengali, English, Mathematics and subject of Social Sciences comprising history, politics, geography, and customs). They may add some other courses, but uniformity must be there.

Fifth, facilities for the students – supply of free textbooks, exercise books, tube-wells & toilets inside the schools must be ensured. There should be a specific teacher who will look after the health and other comforts of the students.

Opinion of Educationists

The Respondent **ED1** opined that the primary education should be up to class VIII and it should be implemented. Actually, there are other factors to be considered. Now instructions for class VI, VII & VIII are given in secondary schools. If we incorporate them in primary schools, we need to appoint new teachers. It will require huge amount of money. Teachers who are now teaching at secondary level (VI, VII & VIII), need orientation in primary school teaching if they are to be recruited in primary schools. The easiest way is to introduce a new curriculum up to class eight. That is the main issue. At present, if you build new schools, recruit new teachers and use the existing secondary curriculum that will not be primary education.

Then he explained:

If I tell you to read Quran in the Church, the Quran will not be converted to Bible. We should develop the primary school curriculum up to class eight; we should develop the textbooks up to class eight. Using existing physical facilities and manpower/teachers will not take huge amount of money. Now there are some schools that only teach up to class eight. For that, class nine students are going to different/other schools. Where we are teaching is not the issue; what we are teaching is the main issue. The curriculum is important.

He further said:

Basic/ primary education should be the fundamental right of a citizen. The government should provide educational opportunity at the door-step for all; within 2 km of every household, there will be schools, teachers, books etc. If primary education is made compulsory and the government provides opportunities, then anybody who does not send his child to school should be penalized.

The government by laws should make it a fundamental right. We need an education law by which education up to certain level must be made compulsory. If you make it a fundamental right as well as compulsory, only then will it work.

He added:

In education sector, there are achievements as well as challenges. Gender parity, enrollment rates– these are achievements. But, reducing drop-outs is a challenge; giving quality education is a challenge.

For quality education we need some major steps: i. Quality teachers including head teachers, ii. Quality curriculum, and iii. Quality management system. Other things are infrastructure and monitoring. If we have committed teachers, then they themselves will monitor. If we have quality teachers, then teaching-learning, assessment – everything will be covered.

He mentioned that there are a few good teachers, but the majority are not up to the mark. That is the major challenge. The government should have a policy – someone who does not have a good academic background cannot avail the chance to be appointed as a teacher. Those who have joined earlier should be provided good training. Curriculum is a continuous process –it can be redesigned; it can be changed if needed.

The Respondent shared his experience:

While I was in IER as a teacher, one of my PhD student was doing research on ‘Relation between intended curriculum and implemented curriculum’. He found a wide gap between them. Many of the teachers even do not know what is curriculum, although they have been given various trainings. The government sends a copy of the curriculum to all schools, but you will find them in the basket, not in the hands of the teachers.

In the National Curriculum of 2012, we have given emphasis on five areas- moral education, ethics, knowledge etc. The name of the religious books “Dhormo Shikkha” has been changed to Islam O Noitik Shikkha (moral education), Hindu Dhormo O Noitik Shikkha etc. There is a necessity to revise the curriculum, but implementing the curriculum is a major challenge. Attention should be given to that.

We have to give emphasis on developing school teachers’ ethics and morality. Emphasis must be given on teachers’ training program. We need a teacher recruitment system so that weak people cannot get the opportunity to be appointed as a teacher. Programs regarding parents’ education and awareness should be organized so that they can guide their children. Values need to be instilled among the children in order to address terrorism through family and school simultaneously. The drop-out problem should be addressed by arranging 2nd chance education for drop-out children within the 6-13 years age group.

Ultimately, we have to set a target that by 2020 or 2022 we can bring all children of various school-going age-groups to the schools. In that case, School Management

Committee (SMC) and community leaders can play an effective role. Follow up activities are also needed. Civil society should play their role too. Inclusive education is a challenge – disabled children should be given the chance to continue their education in the mainstream general school. Some SDG targets have already been achieved by Bangladesh – gender parity, enrollment etc. However, quality education is a challenge. Ensuring quality education and recruiting qualified teachers is a must. Mid-day tiffin for school-children which is a government policy needs to be implemented. Utilizing money in the proper way is also a challenge.

Regarding the theme “Issues and Challenges”, the respondent **ED2** said,

It’s really a challenging issue for the government of a country like Bangladesh to establish uniform education system. Historically, we have inherited this divided system of education from the British and then from Pakistan. Many countries in the world also do not have a uniform system – they have private schools and public schools. Additionally, in every country there is also a class division in the education system – elite schools for the elites, and common schools for the common people. So, this kind of division in education sector exists all over the world. There are also Christian Missionary schools, Jews schools even in developed countries that claim themselves secular.

She also mentioned a few issues:

But, in Bangladesh, I think, it is not impossible to make our school system uniform & mass-oriented. May be in future, we can modernize orthodox or religious education and bring them to the mainstream by making the curriculum more life-oriented, job-oriented, skill-oriented, and science-oriented and by changing the teachers’ attitude in a positive way through training.

On the Issues and Challenges, **ED2** added,

Quality of teaching-learning is a big issue and a major challenge for the government. We looked and analyzed the national assessment and examination system of class five and class eight. Very low percentage of children are achieving the required level of competency. So, low quality of education is a big challenge. All the successive governments have taken different measures, but implementation capacities at all levels- like the Ministry of Primary Education, Directorate of Primary Education and its field offices as well as the role of head teachers, the leadership of head teachers and the role of the teachers, are questionable. The teachers are given 18 types

of training. Even then, their quality is low because motivation, commitment, values are not there. These are the main obstacles.

Regarding the Issues and Challenges **ED3** said:

When a new government comes to power, they do not have the information regarding the history of the successful implementations of their predecessors at their disposal. Every government starts with a fresh policy. Thinking afresh is very different and that should not be the way. It should be a continuous process – if we can adopt good things to that, then we can proceed. That is why, it is the failure of the governments as they do not sustain the process. This is a parochial outlook of our governments.

Regarding the challenges, he commented that there is a lack of quality teachers, insufficient teachers in primary schools, infrastructural problems, lack of educational materials etc.

Budget is of course a challenge; the allocation for education is not up to the required level. So, there is a gap in supply and demand, and this should be taken care of. Social security is also a matter, especially for the girls. This is not only a challenge for the government, but also a societal challenge.

There is also a challenge for ensuring uniformity as we got a mixed pattern of primary education – government primary schools, non-government primary schools, NGO schools etc. The challenges are big – the facilities available at the schools are not that much, particularly in the rural areas. So they need to be targeted first and quickly. Good teachers, good environment, and playground – these are a part of complete education.

Regarding the Issues and Challenges, **ED4** stated his perception:

I think Sustainable Development Goals brought some negative/harmful effects on us. To achieve the target of SDGs, high marks/grades are being given in the exams so that all the students get a good GPA (GPA-5) without learning properly. No one studies for failing, but a student needs to work hard for passing an exam. SDGs, however, are not bad at all, since at least a goal/target was set. However, to achieve this, we are busy creating a short-cut road.

Then he talked about more issues and challenges:

Primary education management is the major challenge. I don't see any problem if a girl gets appointed after completing SSC. Kids usually like

female teachers. But they must be trained. Teaching aids/ materials are also very important. Financing – allocating sufficient money is a challenge. I assume that we are not providing primary education properly in our country. If we can give our children values during this time, that will be reflected throughout their whole life. There should not be any exam up to class III. Finland has one of the best education systems in the world and they have teaching-learning as well but no exam. The environment of primary schools must be joyful for children. Each school should have a library with books – children’s reading habit should be developed.

He pointed out that primary education completion is not satisfactory – children are not learning properly. Actually, our expectations are not being fulfilled. Our teachers are not committed – they do not own their profession. Mothers usually take their children to schools. But if there would be a beautiful school bus for taking children from their home to school, that would be very good; there would be no discrimination, no traffic jam.

We have been fighting to establish education as a right. The government is not doing that as they think it would rather be a liability for them. Countries who have invested in education are more developed now. But, we are not providing sufficient money. Only one-third of required money is allocated in the budget for education sector.

There is also shortage of primary school teachers. Number of teachers in all primary schools need to increase. Emphasis should be given on the three components of education: i. Qualified and motivated teachers. ii. Beautiful multicolored textbooks. iii. Changing exam system.

I’m really worried about our primary education. Little kids start their life here – if we fail to give them proper education, they will face obstacles in high school. Linking up the primary education with secondary education is a great challenge. How is it possible that there would be no connection between class five and class six?

Regarding the Issues and Challenges, **ED5** clearly said that teachers need to get the textbooks at the beginning of December so that they can have it before the academic year. It is a must for the course teachers for making syllabus and taking preparations. But teachers do not know what they are going to teach, as the books are changing every time.

For the textbooks, a 5 year plan is needed. The books should not be changed for five years; they can only be modified if necessary. Training the teachers is a challenge – school teachers in the cities are getting different trainings but teachers in the remote areas are not getting the trainings at all. The government is giving training only to government school teachers, but a huge number of private school teachers are not getting that. If you have a good book but do not know how to teach, that book will have the no use and you will receive no output.

He also pointed out that although coaching centers are prohibited, the students have to attend coaching due to the parents being illiterate. The teachers also cannot stop coaching businesses since it is quite impossible to cope with life with the small amount of money they get paid from the schools. Government exams like PEC create fear in the minds of children and guardians. If we stop this type of exams, then private coaching will be stopped. Teachers must be trained on how to control the examination hall. If we cannot do that, then there is no use of taking MCQ exams. Without learning, some students are scoring high. Plus, about CQ (Creative Question) – teachers must know how to make it and teach the students. Trained teachers must be there. Most of the schools do not have the system of training on constructing the questions and preparing the students. Sometimes it is difficult to find good trainers for giving training on CQ or structured questions.

ED5 further added:

Government's monitoring is a must for ensuring that both the teachers and the students are in the classroom. Monitoring from every level must be there. There are so many coaching centers and students have to go one coaching center or another. They have no time to sit by themselves and think and study.

He suggested:

Taking admission test is needed to assess student's aptitude for making admission decisions. Many of the teachers are involved in coaching centers. It would be appreciated if they did not do that. However the salary that they are provided is not enough for their livelihood. How can they run their families? If the family is not maintained properly, then subsequently, they will not be able to teach properly.

Opinions of Policy Administrators

Regarding the Issues and Challenges for implementation of compulsory primary education, **PA1** clearly stated:

Every year 4 million children are born. Among these 4 million, only 3 million are completing PEC. Therefore, 25% children drop out before completing class 5. We must remember these ¼ children, their education is also a Constitutional obligation. If we look at class 8, we can see only 2 million students appearing – 50% are dropping out. That is also a Constitutional obligation.

Another big challenge is ensuring education for differently-abled people. What are we doing for them? There is a Constitutional obligation for them too.

He then pointed out that another big problem is educational governance.

Creating teachers is always given emphasis. But there is no effort for producing head teachers. Head teacher means manager. Many people think that the best teacher means the best education. But I think 'no'. Head teacher is the driving force, who will direct other teachers. We also need relational education. We should think of redesigning our school building/ classrooms; there should be a kitchen in every school. We need to go for more than 10 subjects – interdisciplinary/ multidisciplinary approach should be there.

He further said that next issue is ICT. ICT alone cannot do anything. But without ICT we cannot move. Every learning needs ICT; embedding ICT in the learning process is required. However, we have a big trouble for that – 30% of our schools do not have electricity. We have to devise new ideas. We should go for fiber optics. Every school needs to be ICT-connected. We must emphasize on teacher's content development. There must be effort for teacher's training. In every district we have PTI. But, PTIs are underutilized – they should be utilized effectively. We must have dreams. Not all dreams are achievable, but goals should be set higher. Primary school teachers should be taken to foreign countries where they will see and learn.

He further added:

Textbooks are not suitable for the children. They look like books of Masters' level. We usually try to give a lot of information in the textbooks – but there is only little content. We have to redesign our textbooks so that our children can develop their critical thinking skills. Our education is somewhat idealistic

– I will be a good citizen, etc. But, education should be life-oriented – our culture needs to be transformed towards the next generation. In our schools, we see the picture of Abraham Lincoln, but why not the picture of Zainul Abedin or Kazi Nazrul? We cannot respect ourselves – which is a big lapse in our education system. If education fails to create self-respect, that education is useless.

The Respondent also talked about the policy issues. He said there are problems in policy matters; i.e. whether primary education is up to grade five or eight. He praised Qudrat-e-Khuda Commission and commented that primary education up to class VIII was also there. We have to merge our primary and secondary education now (up to class VIII); only then will it run smoothly.

He boldly said:

Many people say that financing is a problem – if you give more money that will work. I don't believe it. Look at Sri Lanka; they spend only 1.8% GDP – not very much. So, how you manage your money is important. Thus we should improve our educational resources, educational governance and educational management. We are not preparing our teachers as education managers. Our policy-makers should strongly address this issue.

Then he summarized his opinion:

I've said earlier about emphasizing on both quality and quantity. We have to move from equality to equity. We have to develop our infrastructure. ICT should be embedded in our system. Institutional rearrangements and reforms should be done – particularly, in ministry and directorate levels. We should think that why our teachers are habituated in negative thinking. We need to do research and then take action plan based on the research results. We must need analytical software. The world is changing continuously. So our education needs to be changed and adjusted. If we fail to do that, we will remain outdated and outmoded.

Uniformity is a big challenge. However, I like diversity – there should be different systems. There is no need to close Madrassa. Madrassa means school. So what we can do is change their curriculum; the aims and objectives should be the same. Our major challenge is teacher recruitment; i.e., corruption in the recruitment process, teacher training, poor quality of teachers etc.

Gender equality is a great achievement, but gender equity still remains a big challenge. Resource or money is not a challenge; resource management, governance and making manpower are the major challenges. Another challenge is perceptual challenge – challenge of self-confidence, attitude of do or die. Government has taken a good step regarding Sustainable

Development Goals. A senior secretary is the SDG coordinator. SDG cell/office is within the Prime Minister's office. I think it will be very effective.

Regarding the Issues and Challenges, **PA2** gave his opinion. He said:

We want to develop our children as human resources for the 21st century. We want to give them critical thinking and problem solving skills. Thus, we need skill based study. Good teachers are not being produced for learning system. Creative teachers are very rare as the current teachers are the product of rote learning.

He further said that the provision for teacher's training was in PEDP-II which is also in PEDP-III. Contents of the books should be redesigned so that a child feels interest to learn as well as all the domains of learning objectives are fulfilled. Head teachers can play a vital role to ensure students' proper learning. They should take a special class to show other teachers how to conduct a class.

The Respondent **PA2** shared his experience:

When I was the DG of DPE, I used to call 5 schools randomly and ask the teacher to hand over the phone to a student. Then I asked the child what he is learning, what he ate in breakfast etc. I think that was a method to ensure effective teaching-learning in the schools.

Regarding the challenges, he remarked:

Economic challenge – budget constraints still exist, but we have to take combined efforts. It is not correct to think that NGOs are doing nothing; unity is very important. Budget is not sufficient, if we compare ours with other budgets. But it is not limited at all – the government has to think of all other things. Proper utilization needs to be ensured for dissipating the full amount of budget. We have to create teacher-educators i.e. experts. Giving training to 4.5 lac teachers is a challenge. In Sweden, 60,000 Cora (6, 00,000 BDT) is spent per learner. But we cannot do that for our children/students. So budget should be increased. Trained manpower is needed to use the budget properly.

However, a good number of teachers lack the attitude to learn something new or to change themselves – that's the real challenge. But, the new comers have interests, they are learning. Our society has changed enormously.

He further added that the main theme of SDGs is quality. The government has taken initiatives to achieve the targets of the SDGs. However, quality is a challenge not only in our country but all over the world. Many good initiatives are being undertaken in our country, but we want to execute them like Singapore or other developed countries. To achieve the targets of SDGs, we have to address the following challenges: i. Maintaining appropriate teacher-students ratio. ii. Improving teaching-learning materials in the classroom. iii. Proper monitoring of education officers. iv. Involving parents and community. v. Educating the parents/ guardians.

Regarding the Issues and Challenges, **PA3** opined:

We have taken initiatives against child abuse and physical punishment in the schools. The other challenges which need to be addressed are: i. Appointment of qualified teaching staff; ii. Establishment of new school buildings/ classrooms, and reconstruction of buildings; iii. Ensuring the standard teacher-student ratio; iv. Avoiding traditional teaching methods

The challenges are fixed – now the challenge is to achieve the goals. We have to achieve 100% literacy by 2030. Now the challenge is to achieve the goals/targets that we have set. Mass-oriented education is possible by 2030. However, uniformity may not be possible. New challenges will emerge after 2030. Another challenge is to sustain the achievements.

Regarding the Issues and Challenges, the Respondent **PA4** pointed out the following:

Poverty is the number one challenge for primary education. The Act is there but due to poverty, parents cannot send their children to schools. Drop-out is a big challenge, but the mindset is changing now. On ensuring primary education in the remote areas, there are some villages/ remote areas that do not have any schools or any road to go to schools. Financial resource – at least 6% - 8% of national budget should be allocated for education. Lack of skilled manpower – recruitment of qualified teachers in primary education sector is a challenge. Motivated teachers are not being produced; no organization is available in our country to produce teachers. Our perception is that one who is not getting a job will become a teacher. So, we need an institution that will produce only teachers, like BKSP which only produces players.

There are other challenges too. Interactive joyful classroom environment has not been created yet. Traditional teaching-learning is prevalent. We have to think on how we can create interactive joyful classrooms. Government's policy is important. We should increase the duration of teaching-learning hours in the classroom. Sri Lanka and India are ahead of us in this regard.

Right to education should be a fundamental right. Reformation is very challenging and it will take time. The government has taken many initiatives – we have got a very good education policy. Measures can be taken through discussions with the civil society and other stake-holders. Accessibility is satisfactory, near 100% enrolment. But, drop-out should be addressed in primary education. Good environment, appointing qualified teachers, supplying quality/good textbooks should be ensured. The government is taking many initiatives and gradually, we will see a change.

Regarding the Issues and Challenges for implementation of compulsory primary education, the Respondent **PA5** clearly said:

Now, according to the ‘National Education Policy, 2010’, completion exam will be after class eight. I also believe that there should be one public exam after completion of class eight. We can change the name of JSC to PEC. I am fully convinced that this cycle should be implemented. Even many countries do not have any exam in class eight. Teachers in our country cannot take assessment of their students like this. Besides, they do not take any oath during appointment as teachers. Lack of qualified and motivated teachers is a challenge.

Analysis of the Opinions of the Respondents

All the Respondents (i.e. Legal Experts, Educationists and Policy Administrators) talked about the theme “Major issues and challenges for implementation of primary education”. According to them establishing a uniform education system is the main challenging issue for the government as historically, we have inherited this divided system of education from the British and then from Pakistan. However, some respondents said that they liked diversity – there should be different systems and thus there was no need to close Madrassa or English medium schools. So what the government can do is change the curriculum of Madrassa and English medium. In fact, the aims and objectives should be the same in all systems of education. One respondent opined that there must be uniformity of compulsory subjects in all types of primary schools – Bengali medium, English medium, English version, Kindergarten, Madrassa etc. All the curricula should have uniform courses (i.e. Bengali, English, Mathematics and subject of Social Sciences comprising history, politics, geography, ethics and customs).

According to twelve respondents, budget or allocating sufficient money for primary education is of course a challenge; the allocation of education is not up to the standard as it is required. So, there is a gap in supply and demand which should be taken care of. But, three policy administrators claimed that money is not a problem at all since the government has allocated sufficient money. However, all the respondents emphasized for proper utilization of the money allocated.

The respondents also talked about policy issues. They said there are problems in policy issues; i.e. whether primary education is up to grade five or eight. All the respondents opined that the primary education should be up to class eight and this should be implemented.

Providing quality education is a challenge. All the respondents said that there is lack of qualified and professionally motivated teachers in our primary education. If we need quality, we must improve capacity building. We need to enhance the capacity of head teachers, teachers and involve the community and guardians. It needs combined efforts of all – not only of the government but also of all the stakeholders. Their active involvement will make the goal achievable. Another big challenge is ensuring education for differently-abled people since there is also a Constitutional obligation for them. Linking up the primary education with secondary education is a great challenge in terms of connection between classes five and six, in terms of infrastructure, teachers etc.

Poverty is an enormous challenge for primary education. The Act is there but due to poverty, parents cannot send their children to schools. However their mindset is changing; even a rickshaw-puller wants his child be educated. Ensuring primary education in the remote areas is another challenge; some villages/ remote areas do not have any schools or any road to go to schools.

Achieving 100% literacy by 2030 is a major challenge. Addressing drop-outs in the primary education is a vital issue. Another challenge is lack of qualified and motivated teachers in the primary schools. Teacher recruitment is a key area (i.e., corruption in recruitment system, teacher's training, poor quality of teachers etc.) Educational governance and making capable head teachers are also great obstacles in the primary education sector of Bangladesh. Another crucial issue is the debate on the cycle of primary education completion (PEC or JSC) examinations and the assessment/exam systems. The other challenges are: redesigning school buildings/classrooms (one respondent gave emphasize on having kitchens in school premises), supplying quality/good textbooks and redesigning the books, emphasizing on both quality and quantity i.e. no children should be left behind from education etc. Resource management, governance and creating manpower are significant challenges as well. The other issues and challenges in primary education are: effective management & proper monitoring of the implementation, ensuring transparency, removing corruption, appointment of qualified teachers etc. Another crucial challenge is to sustain the achievements.

Last but not least there is a big challenge relating to right to education. Education related articles of the Bangladesh Constitution, stand as provisions providing education as a basic necessity. Education is neither entitlement of the people nor the constitution has declared it fundamental right since it has been kept in Part III of our constitution. Moreover, Constitution of the People's Republic of Bangladesh has not provided specific and separate article for compulsory primary education. Therefore, making education a fundamental right is a big challenge.

CHAPTER SEVEN

MAJOR FINDINGS, DISCUSSIONS AND CONCLUSION

7.1 Introduction

All the studies worldwide indicate that education for all is the key to sustainable development, both local and global. Though it is said that a country can accomplish its first task of developing efficient human resources by giving proper emphasis on education; education in developing countries takes place under conditions that are very different from those in developed countries. Differences exist in curriculum, school environment, teacher-student ratio, teachers' qualification, and the health and nutritional status of the learners.²⁸⁴

Although primary education has been recognized as a seminal human right for more than half a century back and it is well known that quality primary education is vital for the development of any nation; it is still far from being universally available in most developing countries.²⁸⁵ A majority of developing countries still face serious challenges in advancing the basic education of their young and adults.²⁸⁶ Compulsory education has been adopted throughout the world due to the genuine belief that it leads to increased literacy and discourages child labor. In spite of spectacular successes in different sectors of compulsory primary education, Bangladesh has to go a long way for a standard, inclusive and constitutionally mandated system of basic education.

Bangladesh is a developing country with many fragilities and challenges in the education sector. The successive governments have achieved spectacular successes as

²⁸⁴Lockheed, M. E. 1993. The Condition of Primary Education in Developing Countries, in H. M. Levin and M. E. Lockheed, eds., *Effective Schools in Developing Countries*. London: The Falmer Press.

²⁸⁵Colclough, C., with Lewin, K. M. 1993. *Educating All the Children: Strategies for Primary Schooling in the South*. New York: Oxford University Press.

²⁸⁶Levin, H. M. 1993. Accelerated Schools in the United States: Do They Have Relevance for Developing Countries, in H. M. Levin and M. E. Lockheed, eds., *Effective Schools in Developing Countries*. London: The Falmer Press.

to enrollment of the children in the primary schools, recruitment of teachers, developing infrastructure, giving incentives to the marginalized students etc. But there are lots of challenges as to the quality of the primary education, application of teaching tools, high frequency of drop outs, inclusion of the children of the marginalized groups, removing disparities among the different streams of primary education and most importantly, there are questions as to whether the intended learning outcomes (ILOs) of primary education could be achieved with the existing curriculum, infrastructure, and teaching staffs. Bangladesh's prospective success in removing illiteracy and achieving long-term outcomes by ensuring quality basic education for all the children appears to depend on the uniform, scientific and suitable curriculum, potent school environment, teacher-student ratio, teachers' qualification, the health and nutritional status of the learners, and other factors.

This study is a scholarly endeavor to determine the constitutional responsibility of the Bangladesh Government to implement compulsory primary education. The Government of Bangladesh, under the constitution and as a signatory to the education related international instruments, is pledge-bound to ensure primary education for all. To fulfill its obligation, successive governments have enacted laws and taken measures and programs. The study has assessed the value of the laws; effectiveness of the measures and programs; and has tried to make an objective analysis of the issues relating to primary education in Bangladesh. The study has also underlined the challenges to be addressed by the state functionaries and made a number of recommendations to promote the cause of primary education in Bangladesh.

In order to fulfill the objectives of the study, this researcher has collected data by applying the research tools as detailed in 'Chapter Three'. Chapter Seven has delineated the major findings; elaborated the discussions based on the analysis of documents and collected data; and finally provided a number of recommendations. Systematic discussions, nuanced analysis, necessary enquiries and application of research tools help get the answer to the questions, uncover the realities, and come to

logical conclusions. This further helps in identifying the major issues and challenges as to the implementation of compulsory primary education.

7.2 Major Findings and Discussions

This research is based on two types of data: (a) data from the documents review; and (b) data from the in-depth interviews (IDIs) of the selected respondents. All the related documents have been thoroughly studied and analyzed by the researcher and methodically discussed in two chapters of this thesis: Chapter Four – ‘The Nature of Constitutional Responsibility and Constitutional Obligation Relating to Primary Education’ and Chapter Five – ‘National Legal Framework and Measures Taken for Implementing Primary Education’. The views and observations got from the in-depth interviews are meticulously analyzed and interpreted in Chapter Six. Here in Chapter Seven, the researcher has stated major findings and elaborated discussions on the basis of the reviewed documents; and collected data, comments and observations got from the IDIs.

I. Findings and Discussions to the Proclamation of Independence of Bangladesh, Preamble and the Articles of the Bangladesh Constitution to Find Out the Core Spirit of the Constitution

A nuanced comparison between the Proclamation of Independence and Bangladesh Constitution’s preamble reveals that preamble clearly has stated the ultimate objective of establishing sovereign Republic of Bangladesh. The Proclamation of Independence expresses the desire ‘to ensure for the people of Bangladesh equality, human dignity and social justice’; whereas constitution’s preamble clearly declares that fundamental aim of this State is to establish a socialist society through democratic process. The nature of socialist society has been further qualified by the words ‘free from exploitation’.

The preamble of the constitution has also specified the attributes of the society dreamt to be established by the great leaders of the liberation war and thereby by the people of Bangladesh for their final deliverance. The words – ‘equality’, ‘human dignity’, and ‘social justice’ – got clearer meaning and higher connotation in the preamble to the Constitution of Bangladesh. Now the preamble to the Bangladesh Constitution provides that an exploitation-free socialist society having rule of law, basic human rights, equality and justice for its citizens has been the ultimate goal of the Bangladesh State. More uniquely, the preamble has broadened the ambit of justice; coming out of the matrix of social justice; and qualified it as political, economic, and social. An inquiry into the Bangladesh Constitution and the opinion of the legal experts reveal that core spirit lies in the Proclamation of Independence of Bangladesh, in the preamble, and articles 17, 16, 15, 11 and 7 of the constitution of the People’s Republic of Bangladesh.

Discussion

In this study identifying the core spirit of the Bangladesh Constitution as to primary education has been the first and foremost imperative in pursuance of the research objectives. One can also invoke the Proclamation of Independence of Bangladesh as it provides for equality, human dignity and social justice on which the edifice of the newly independent country and its society stand. Education, including its first stage at the primary level, is said to be instrumental to build a society where people are equal in the eye of law; where they lead a life of dignity; and where social justice is at the disposal of the people to bloom their full potentials.

All the legal experts, who are interviewed by this researcher, are in agreement that preamble of the Bangladesh Constitution has mirrored the philosophy of the supreme law of the land. It also has elaborated the objectives of the newly independent state for which 3 million martyrs made supreme sacrifices. Preamble, whether it is a preamble of a constitution or any other statute, has a paramount value to the students of law, legal experts, courts, and other legal institutions; though it does not have any mandatory effect.

“Preamble is an introductory statement in a constitution, statute, or other document explaining the document’s basis and objective; esp., a statutory recital of the inconveniences for which the statute is designed to provide a remedy.”²⁸⁷

In *Den v. Urison*²⁸⁸, it was held that,

“The preamble cannot control the enacting part of the statute, in cases where the enacting part is expressed in clear, unambiguous terms; but in case any doubt arises on the enacting part, the preamble may be resorted to explain it, and show the intention of the law maker.”

Preamble, thus, can be considered as an important tool to understand the constitution as a whole, in its intent, its intrinsic meaning, and its fundamental tenets.

In *Jacobson v. Massachusetts*²⁸⁹, the US Supreme Court specified the preamble’s place in court decisions and legal thinking. Within the constitution the preamble does not have any legal power; rather it is an introduction to the supreme law of the land and does not, in and of itself, permit the exercise of any kind of legal power. The spirit of the constitution can be understood with the help of the words, sentences and paragraphs; but the real legal authority does not emanate from the preamble. Thus a precise connotation indicates that, for all that the preamble to the constitution may provide a cogent basic framework for understanding the philosophy behind the constitution as a whole; but it is not in any way directly legally relevant in providing entitlements or authority either to the citizens or to the state.²⁹⁰

This researcher strongly argues that the Proclamation of Independence of Bangladesh, together with the Bangladesh Constitution’s preamble, constitutes a complete guideline to understand the nature of the State of Bangladesh as well as the core spirit of the constitution. One of the Legal Experts (LE2), who drafted the Proclamation of Independence of Bangladesh, said that the Proclamation of Independence provided the guiding principles to draft the Constitution of Bangladesh and its preamble mirrors the philosophy and objectives of the supreme law of the land.

²⁸⁷ Black’s Law Dictionary, Ninth Edition, Thomson Reuters, 2009, pp. 1294- 1295.

²⁸⁸ *Den v. Urison*, 2 N.J.L. 212 (1807).

²⁸⁹ *Jacobson v. Massachusetts* 197 U.S. 11 (1905).

²⁹⁰ “A Complete Overview of the Preamble”, US Constitution Laws.com

The Proclamation of Independence of Bangladesh bears special importance as it unequivocally declares that,

“... We the elected representatives of the people of Bangladesh, as honour bound by the mandate given to us by the people of Bangladesh whose will is supreme, duly constituted ourselves into a Constituent Assembly, and having held mutual consultations, and in order to ensure for the people of Bangladesh equality, human dignity and social justice declare and constitute Bangladesh to be sovereign Peoples’ Republic ...”²⁹¹

The Proclamation of Independence has truly reflected the goals of the freedom fighters and aspirations of the freedom-seeking and peace-loving people of Bangladesh. The members of the Constituent Assembly, people’s representatives and law makers, declare in the Proclamation of Independence that the objective of establishing the sovereign People’s Republic of Bangladesh is to ensure equality, human dignity, and social justice for the people of Bangladesh. The liberation war and independence of Bangladesh had been ultimately destined for building an egalitarian society; where education would be an important tool to fulfill the people’s aspiration.

Paragraph three of the preamble to the Constitution of Bangladesh has clarified the objective of establishing this independent country, as it provides that,

“Further pledging that it shall be a fundamental aim of the State to realize through democratic process a socialist society, free from exploitation – a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens ...”²⁹²

In the context of the above discussions it can be concluded that the Proclamation of Independence expresses the desire ‘to ensure for the people of Bangladesh equality, human dignity and social justice’; whereas constitution’s preamble clearly declares that fundamental aim of this State is to establish a socialist society through democratic process. The nature of socialist society has been further qualified by the words ‘free from exploitation’. The founders of Bangladesh wanted to establish a

²⁹¹ The Proclamation of Independence, Mujibnagar, Bangladesh, Dated 10th Day of April, 1971.

²⁹² Preamble to the Constitution of the People’s Republic of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs, Government of the People’s Republic of Bangladesh, October, 2011.

society with rule of law, fundamental human rights and freedom, equality and justice that got clearer meaning and higher connotation in the preamble to the Constitution of Bangladesh and some of the articles, i.e. articles 17, 16, 15, 11 and 7 of the Constitution of People's Republic of Bangladesh. Needless to say, this philosophy should be reflected in the education system of our country.

II. Findings as to the Question Whether Education is A Right or A Basic Necessity or A Policy Instrument under the Bangladesh Constitution to Find Out the Nature of the Constitutional Responsibility of the Government of Bangladesh for the Development of Primary Education

In a comparison of the education related articles of the Constitution of Bangladesh with those of the other countries will not place the constitutional dispensation on a satisfactory footing. For example, section 16 of the Constitution of Finland has provided that, "Everyone has the right to basic education free of charge." Article 31 of the Constitution of the Republic of Korea has provided 6 sub-articles elaborating education in terms of its essence, structure and objectives. Most importantly, the Article of the Korean Constitution has talked about elementary and compulsory education.

The articles of Bangladesh Constitution relating to education has not mentioned 'basic education' as mentioned by the Constitution of Finland; or 'elementary education' as mentioned by the Constitution of the Republic of Korea; rather Article 17 of the Bangladesh Constitution has used the words 'free and compulsory education'. The Korean supreme law of the land has provided that all the citizens having children are obliged to provide at least elementary education to them and other education as provided by law and compulsory education shall be free of charge.

Article 17 of the Bangladesh Constitution has provided that, "The State shall adopt effective measures for the purpose of – (a) establishing a uniform, mass-oriented and

universal system of education and extending free and compulsory education to all children to such stage as determined by law.” Thus, from the language of article 17 it is clear that Bangladesh Constitution has not mentioned ‘primary education’. It has said about establishing a uniform, mass-oriented and universal system of education, neither specifying primary, or other education.

Switzerland’s Constitution has said about education for more than two dozen times. The Constitution of Finland has recognized that basic education is the right of everyone and it is free of charge. Even the neighboring India, in a historic move, has made elementary education a fundamental human right on 1 April, 2010.

Article 17 has not recognized education as a right; rather it has said about the obligation of the State as to education, relating education to the needs of society, and removing illiteracy; and Article 15 has recognized education as a basic necessity, not a right. Both the articles, together with other articles discussed above, have been placed under Part II of the Bangladesh Constitution having the title ‘Fundamental Principles of State Policy’.

Fundamental principles of state policy, as revealed from the language of Article 8 of the constitution, do not impose any obligation on the State or government functionaries in terms of absolute value or mandatory imperatives as the fundamental principles are not judicially enforceable; rather the fundamental principles of state policy shall be applied by the State in making of laws, shall be a guide to the interpretation of the Constitution and of other laws, and most importantly, shall be fundamental to the governance of Bangladesh and shall form the basis of work of the State. Bangladesh’s ‘Fundamental Principles of State Policy’ have persuasive value, how higher they may be, and they will impose obligations on the State accordingly, but not as stronger as they would be if they would be judicially enforceable.

Education is both a basic necessity and a policy instrument under the constitutional dispensation of Bangladesh, as it appeared from the language of the education related articles which are placed under the ‘Fundamental Principles of State Policy’ Part of

the Bangladesh Constitution. Education is neither recognized as the right of the people of Bangladesh nor is it judicially enforceable and here lies the fundamental weakness of the Bangladesh Constitution. Moreover, it has not provided specific and separate article for compulsory primary education.

Discussions

There is no denying the fact that education should ideally and simultaneously be a right, a basic necessity and a policy instrument. But the recognition of education as a fundamental human right would cast strong responsibility on the state vis-à-vis governments on the one hand; people would be better entitled and privileged to get education on the other. States and governments appear to be less obliged if education is recognized as a basic necessity or any constitution considers education as a policy instrument. The articles of the Bangladesh Constitution related to education has brought this debate to the fore that whether education is a right or basic necessity or a policy instrument?

It is to be remembered on this point that as to economic, social and cultural rights there is a global debate whether these rights should be at all recognized as rights or basic necessity, indicating the debate between blue rights or civil and political rights and red rights or economic, social and cultural rights. One should not keep his/her eyes away from the debate of attaching more importance to either first generation of human rights or civil and political rights, which emerged and developed by the French revolution, American independence and British democratic movement, or to second generation of human rights or economic, social and cultural rights, which emerged by the socialist revolution in Russia and developed and recognized by the socialist countries throughout the whole world.²⁹³ Having this debate continuing, right to

²⁹³ For detailed discussion see Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, Cambridge University Press, 2013. Thomas Buergenthal, Dina Shelton and David P. Stewart, *International Human Rights in a Nutshell*, West Group, 2002. Rhona K.M. Smith, *Textbook on International Human Rights*, Oxford University Press, 2012, Abdullah Al Faruque, *International Human Rights Law: Protection Mechanisms and Contemporary Issues*, New Warsi Book Corporation, 2012

education gets recognized by the UNESCO and the International Covenant on Economic, Social and Cultural Rights, 1966 as well as all the civilized nations attach great importance to education either by their supreme law of the land or by a separate human rights law or other statutes.

As to the status of education as fundamental human right, UNESCO has stated that:

Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty.

Normative instruments of the United Nations and UNESCO lay down international legal obligations for the right to education. These instruments promote and develop the right of every person to enjoy access to education of good quality, without discrimination or exclusion. These instruments bear witness to the great importance that Member States and the international communities attach normative action for realizing the right to education. It is for governments to fulfill their obligations both legal and political in regard to providing education for all of good quality and to implement and monitor more effectively education strategies.

Education is a powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens.²⁹⁴

The UN and specially the UNESCO are clear in their footing to recognize education as a fundamental human right. But unfortunately Bangladesh, like some other countries, has not recognized education as a fundamental human right. Even Bangladesh lags behind other South Asian countries, namely India, Sri Lanka, Pakistan, and Nepal, as those countries have included the right to primary education in their constitutions. It is to be noted that every country that excels in the education ranking either has a constitutional guarantee to education, or has ensured the right through an independent statute, if there is no constitutional guarantee. Each country

²⁹⁴ The Right to Education, UNESCO

has enacted law recognizing education as a fundamental right of citizens, at least until the age of adulthood.²⁹⁵

As to basic education the Constitution of Finland has provided that:

Everyone has the right to basic education free of charge.

Provisions on the duty to receive education are laid down by an Act. The public authorities shall, as provided in more detail by an Act, guarantee for everyone equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship.

The freedom of science, the arts and higher education is guaranteed.²⁹⁶

It is pertinent to mention here article 31 of the Constitution of the Republic of Korea, which provides that:

Article 31

- (1) All citizens shall have equal rights to receive an education corresponding to their abilities.
- (2) All citizens who have children to support shall be responsible at least for their elementary education and other education as provided by Act.
- (3) Compulsory education shall be free of charge.
- (4) Independence, professionalism and political impartiality of education and autonomy of institutions of higher learning shall be guaranteed under the conditions as prescribed by Act.
- (5) The State shall promote lifelong education.
- (6) Fundamental matters pertaining to the educational system, including in-school and lifelong education, administration, finance, and the status of teachers shall be determined.²⁹⁷

Countries which do not have written constitutions have included the right to education by supplementary documents, such as the Human Rights Act of the United Kingdom, 1998, and the Australian Capital Territory Human Rights Act, 2005. Countries like New Zealand have incorporated international laws, namely the International Covenant

²⁹⁵ Stephen Lurie, "Why Doesn't the Constitution Guarantee the Right to Education? Every country that outperforms the U.S. has a constitutional or statutory commitment to this right." *The Atlantic Daily*, 16 October, 2013.

²⁹⁶ Section 16, Chapter 2 of the Constitution of Finland.

²⁹⁷ Article 31 of the Constitution of the Republic of Korea.

on Economic, Social and Cultural Rights (ICESCR), 1966, to laid the basis for the right to education.²⁹⁸ Article 13 of the International Covenant on Economic, Social and Cultural Rights has meticulously talked about education and hence worth mentioning which provides that:

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject

²⁹⁸ Stephen Lurie, "Why Doesn't the Constitution Guarantee the Right to Education? Every country that outperforms the U.S. has a constitutional or statutory commitment to this right." *The Atlantic Daily*, 16 October, 2013.

always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.²⁹⁹

As to the status of education as fundamental human right, UNESCO has clearly stated that, “Education is a fundamental human right and essential for the exercise of all other human rights.” Now, if we compare the articles of Bangladesh Constitution relating to education with those of the constitutions of other countries and the International Covenant on Economic, Social and Cultural Rights and the commitment of the UN and the UNESCO; then, we can appreciate whether education has been recognized in the settings of the original Constitution of Bangladesh as per the international standard; and how educational view of the constitution has been developed in the last four decades, if the constitutional provisions are not sufficient to pursue the goals of education and developing human capital.

Article 17 of the Bangladesh Constitution is the only article which has said about education directly and what would be the role of education in Bangladeshi society. Article 15 has mentioned about education with other basic necessities and it is related to education by wider implications on society. Wording of these two constitutional articles appear to be weak, if we compare it with the wording of the UNESCO’s commitment and article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. Moreover, none of this article has recognized education as a fundamental human right.

It is to be mentioned that Bangladesh is a signatory to the ICESCR and ratified this international human rights instrument on 5 October, 1998.³⁰⁰ Policy makers of Bangladesh, this researcher argues, could take notice of article 13 of the ICESCR when the original Constitution of Bangladesh was drafted as the ICESCR was adopted by the United Nations General Assembly on 16 December, 1966³⁰¹ or the successive governments could have recognized education as a fundamental human

²⁹⁹ Article 13 of the International Covenant on Economic, Social and Cultural Rights, 1966.

³⁰⁰ United Nations Treaty Collection.

³⁰¹ Ibid

right, including free compulsory primary education, by an amendment of the constitution. In this context, this researcher is of the view that articles 17 and 15 of the original Bangladesh Constitution is weak in terms of wordings, commitment and recognition of education as a fundamental human right. The successive governments also have failed to stand with its international commitment.

In a comparison of the education related articles of the constitution with those of the other countries will not place Bangladeshi constitutional dispensation on a satisfactory footing. For example, section 16 of the Constitution of Finland has provided that, “Everyone has the right to basic education free of charge.” Article 31 of the Constitution of the Republic of Korea has provided 6 sub-articles elaborating education in terms of its essence, structure and objectives. Most importantly, the article has talked about elementary and compulsory education.

The articles of Bangladesh Constitution relating to education has not mentioned ‘basic education’ as mentioned by the Constitution of Finland; or ‘elementary education’ as mentioned by the Constitution of the Republic of Korea; rather article 17 of the Bangladesh Constitution has used the words ‘free and compulsory education’. This researcher considers that the Korean Constitution has provided education related provisions with much clarity and precision. The Korean supreme law of the land has provided that all the citizens having children are obliged to provide at least elementary education to them and other education as provided by law and compulsory education shall be free of charge.

Article 17 of the Bangladesh Constitution has provided that, “The State shall adopt effective measures for the purpose of – (a) establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as determined by law.” Thus, from the language of article 17 it is clear that Bangladesh Constitution has not specified ‘basic education’, elementary education’ and ‘primary education’. It has said about establishing a uniform, mass-oriented and universal system of education, neither specifying primary, secondary,

higher-secondary, or tertiary education nor vocational or technical education. Moreover, education is not recognized by the Bangladesh Constitution as a fundamental human right.

The neighboring India, in a historic move, has made elementary education a fundamental human right on 1 April, 2010. On this day India has joined a group of few countries in the world, with a historic law making education a fundamental right of every child coming into force. The Right of Children to Free and Compulsory Education Act, 2009, came into effect in 2010, made the elementary education an entitlement for children in the 6-14 age group in India.³⁰²

Article 17 has not recognized education as a right; rather it has said about the obligation of the State as to education, relating education to the needs of society, and removing illiteracy; and article 15 has recognized education as a basic necessity, not a right. Both the articles, together with other articles discussed above, have been placed under Part II of the Bangladesh Constitution having the title ‘Fundamental Principles of State Policy’. As to the importance and implications of the ‘Fundamental Principles of State Policy’, the constitution has provided that:

The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and other laws of Bangladesh, and shall form the basis of work of the State and of the citizens, but shall not be judicially enforceable.³⁰³

Fundamental principles of state policy, therefore, do not impose any obligation on the State or government functionaries in terms of absolute value or mandatory imperatives as the fundamental principles are not judicially enforceable; rather the fundamental principles of state policy shall be applied by the State in making of laws, shall be a guide to the interpretation of the Constitution and of other laws, and most

³⁰² Aarti Dhar, “Education is a fundamental right now”, The Hindu, 01 April, 2010.

³⁰³ Article 8 (2) of the Constitution of the People’s Republic of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs, Government of the People’s Republic of Bangladesh, October, 2011

importantly, shall be fundamental to the governance of Bangladesh and shall form the basis of work of the State.

Education is both a basic necessity and a policy instrument under the constitutional dispensation of Bangladesh, as it appeared from the language of the education related articles which are placed under the ‘Fundamental Principles of State Policy’ Part of the Bangladesh Constitution. Education is neither recognized as the right of the people of Bangladesh nor is it judicially enforceable. In the time span of more than four decades after the adoption of the constitution, the successive governments or law makers did not feel the necessity to amend the education related articles of the Bangladesh Constitution to make them suitable to fulfill its international commitments. Education related articles of the Bangladesh Constitution, as a result, stand as provisions providing education as a basic necessity and a policy instrument. Education is neither entitlement of the people nor the constitution has declared it fundamental right. Moreover, it has not provided specific and separate article for compulsory primary education.

III. Findings and Discussions as to the Legislative, Administrative and Other Steps for Implementing Compulsory Primary Education to Examine the Legal Framework and Measures taken by the Government of Bangladesh for Implementing Compulsory Primary Education

All the respondents (i.e. Legal Experts, Educationists and Policy Administrators) talked about the Theme “Government Initiatives” which include government responsibilities, legal frameworks and different measures taken by the government for implementing primary education. Regarding ‘government responsibilities’ to implement compulsory primary education, they were of the opinion that- according to Article 17 of the Constitution of Bangladesh, primary education is the sole responsibility of the government. One educationist thought that the government and

the community should jointly ensure participation of all children to quality primary education.

Regarding the '**Legal Frameworks**' all respondents said that both 'Primary Schools (Taking Over) Act, 1974' was a very bold step just after the independence. 'Primary Education (Compulsory) Act, 1990' was also a positive step by the then government. Actually, the Act of 1974 was a seed (or the root) that was affirmed by the Act of 1990. However, one policy administrator mentioned that apart from these two Acts, the Children Act, 1974 (amended in 2013) was also a very good initiative which recognized the right to education for all children. We are lagging behind in implementing the Act of 1990. There is a need for changing or amending that Act further. Among the fifteen respondents, ten respondents expressed their opinion quite positively that education must be included as a fundamental right in our Constitution. Two legal experts opined that amending the Constitution to make the right to education a fundamental right may help to emphasize the critical importance of education but enforcement of such rights is subject to availability of resources. One legal expert had a different view. He thought that it is not necessary to include the right to education under the fundamental rights in the Constitution. Because, if we include it as a fundamental right, legal problems will be there – there will be a burden upon the judges and courts.

Regarding '**Measures**' it came out from their opinions that various measures were taken by the government for implementing primary education. The legal experts opined that the laws enacted, policies adopted, and the measures taken by the governments for primary education are well appreciated but they did not result in the fulfillment of the obligations imposed by the Constitution. Nonetheless, one legal expert was of the opinion that their implementations are not speedy and adequate. But the policy administrators opined that various measures were taken according to the constitutional obligations.

We have got 7 education commissions in the Independent Bangladesh; namely, Qudrat-e-Khuda (1974), National Education Advisory Committee (1978), Mazid Khan Education Commission (1983), Mafizuddin Ahmed Education Commission (1987), Shamsul Haque Education Commission (1997), MA Bari Education Commission (2001), Moniruzzaman Mia Education commission (2003) and Kabir Chowdhury Education Commission-2009 (National Education Policy, 2010). These commissions act as the foundation of education policies. All the educationists thought that Qudrat-e-Khuda commission was a milestone. It was a forward-looking and pragmatic education commission for a new nation. There are some reflections of the Qudrat-e-Khuda commission in the 2010 National Education Policy. The ‘National Education Policy, 2010’ is dynamic, but it has shortcomings also – there are no clear guidelines on how this can be implemented.

According to an educationist, when the government changes, they usually make commissions or committees according to their own political ideology. They try to make new curriculum, new contents. Every government starts with a fresh policy – they never think of the good works of their predecessors. Some policies are good but they cannot be implemented accordingly. There are gaps in the policy and implementation frameworks. Almost all the respondents mentioned about Qwami Madrassa. With regret they said that Qwami Madrassa could not be incorporated in this policy. Members of the National Education Policy, 2010 Committee suggested for only 2 public exams, i.e. SSC & HSC. Surprisingly, 4 exams (i.e. PEC, JSC, SSC and HSC) were introduced in this policy.

All the respondents agreed to the point that numerous steps have been taken by the successive governments for implementing and developing primary education. Various incentives are being provided. Stipends are provided for 100% students. Free textbooks are being given to all the children. The multicolored books are appreciated by the children. Inclusive school environment has been created. Special emphasis has been given for girl children education. Many non-government primary schools have been nationalized or turned into government primary schools.

All the measures in terms of law and policy taken by the governments are aligning with the obligations of the Constitution to establish a uniform, mass oriented and universal primary education system, said by the policy administrators. But all the respondents of legal experts and educationists said that the government was not fully successful in establishing a uniform system of education. Most of the respondents thought that there was not any problem for diversified (i.e. Bangla medium, English medium & Madrassa) education system if the government provides the same curriculum in the basic/core subjects. That means there will be unity in diversity. Basic educational philosophy will be the same. However, primary education is not yet a fundamental right. It is in the Fundamental Principles of State Policy. Constitutional obligation is yet to be fulfilled. According to two Legal Experts, Principles are sometimes more important than Fundamental rights. When our Constitution was formulated, many issues were included as principles rather than fundamental rights keeping in mind the resource constraints.

Among the fifteen respondents, ten respondents expressed their opinion quite positively that education must be included as a fundamental right in our Constitution. Two legal experts opined that amending the Constitution to make the right to education a fundamental right may help to emphasize the critical importance of education but enforcement of such rights is subject to availability of resources. One legal expert had a different view. He thought that it is not necessary to include the right to education under the fundamental rights in the Constitution. Because, if we include it as a fundamental right, legal problems will be there – there will be a burden upon the judges and courts. It should not be made compulsory bringing it to Part-3 of the Constitution (Fundamental Rights).

One of the Policy Administrators gave the statistical description about the measures taken by the Government recently. They are as follows:

1. School Feeding Project: To address the drop-outs, supply of 75gm biscuit in each day at 93 Upazillas (mostly treated as poverty line area covering) to 3.04 million students is ensured.

2. Stipend Project: Started in 2010, 11.7 million students (mostly from poor family) from 62,087 schools are getting stipends.
3. Distribution of textbooks: At primary stage 10, 52, 69,221 copies of 6 colored textbooks are delivered among 2, 17, 21,129 students. At pre-primary stage 1, 02, 57,741 copies of colored books are delivered among 1, 02, 57,741 students.
4. Initiative has been taken to recruit new teachers and in order to train them, the ministry is working with IER, Dhaka University.
5. Logistics: At present, on the basis of ICT Policy, preparation of ICT based content for class teaching is on the process. Computer with internet connection is supplied to 1109 subordinate offices of this ministry. Modernized laboratory has been established in 55 PTIs. 503 Model Primary Schools are equipped with laptop, multimedia and internet connection.
6. Infrastructure: Under PEDP-I (Primary Education Development Project –I) from July 1997 – June 2003, reconstruction of 2826 school buildings and 7926 additional classrooms have been completed.
7. Under PEDP-II (Primary Education Development Program –II) from July 2003 – June 2011, reconstruction of 818 school buildings and 20,436 additional classrooms have been completed.
8. Under PEDP-III (Primary Education Development Program –III) from July 2011 – June 2017, 26080 additional classrooms have already been constructed and 12923 are ongoing.
9. SDG-4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all- is related to the education sector. Special emphasis has been given to this goal. The Planning Commission is mapping the ministry by targets in the implementation of the goal no. 4 of the SDGs aligning with 7th Five Year Plan (2016-2020). The government has taken a good step- a senior secretary is the SDG coordinator and the SDG cell/office is within the Prime Minister’s office.

All the respondents, specially the Policy Administrators (PA) agreed in one point that government is success to bring out the children in primary education. In 1974, enrollment was only 30% and drop-out rate was high. Now enrolment in primary schools is 98% - 99%. So, the governments are successful in universalizing primary education. However, Constitutional obligation is yet to be fulfilled.

From the views of all the respondents, it is very much clear that the successive governments have taken some good initiatives for implementing primary education.

After independence, Bangladesh had only 16.8% literacy rate³⁰⁴. Successive governments have taken different initiatives to promote the sectors of education since then. Immediately after the independence the government nationalized 36,165 primary schools and regularized them under the Primary Education (Taking Over) Act, 1974. To realize the constitutional provisions and international commitments the government also enacted the Primary Education (Compulsory) Act, 1990. Therefore, it's clear that the laws enacted, policy adopted, and the measures taken by the Governments for Primary Education are well appreciated but unfortunately they do not result in obligations imposed by the Constitution being fulfilled solely.

In spite of commitments and efforts to achieve goals, the progress rate was not very prospective till 1991. The literacy rate was 35.3% in 1991³⁰⁵. The whole primary education was constrained by the formidable barriers and poverty was one of the major reasons. The poverty rate was 44.2 percent in 1991³⁰⁶. Poverty excluded thousands of children from primary education. The majority of these 'excluded children' were either living in isolated rural communities, or disaster-prone areas, or urban slums, or areas having marginalized ethnic minorities. Moreover, many poor parents were not sufficiently motivated to send their children to schools. But after 1991, Participation in education has expanded remarkably in Bangladesh. Desired initial enrolment in primary has been achieved. Gender equality in enrolment at the primary level is another accomplishment of the last two decades. In 2009 the democratically elected government received a strong mandate for the change. A new education policy, adopted in 2010, appropriate for the time and the envisaged future, was a pledge of the government³⁰⁷.

According to the UNICEF Annual Report 2015, Grade 1 students with pre-primary education (PPE) increased to 51 per cent in 2014 from 47 per cent in 2013

³⁰⁴High level International Round Table on Literacy, "Reaching the 2015 Literacy Target: Delivering on the promise" UNESCO, Paris, 6-7 September 2012

³⁰⁵Progress Report of Bangladesh on Abuja Framework for Action 2010, (E-9 Ministerial Review Meeting on Education for All)

³⁰⁶ World Bank, "Learning Bangladesh Journey toward Ending Poverty" Session.

³⁰⁷ EFA 2015 national review: Bangladesh; 2014 - UNESCO

nationwide. The primary net enrolment ratio increased from 97.3 percent in 2013 to 97.78 per cent (boys 96.6 per cent; girls 98.8 percent) in 2014. School completion rates increased to 79.1 per cent in 2014 (78.6 percent in 2013) and the survival rate to Grade 5 improved 81 per cent in 2014 (80.5 per cent in 2013).

The Each Child Learns (ECL) initiative aiming at improving quality of education was expanded to 980 (1.24 per cent) public primary schools (700 in 2014), with a total of 7,438 teachers trained (2 per cent) and approximately 400,000 (2.36 per cent) students reached (250,000 in 2014). The number of primary school-age out-of-school Children decreased to 9 per cent (9 and 8 per cent for boys and girls, respectively) [15 per cent in 2010]. A total of 3,902 children (60 percent) were mainstreamed into formal schools upon completion of the basic education course.³⁰⁸

Above mentioned discussion has made it clear that there is no question regarding the development of the primary education in Bangladesh especially in last two decades; but the question is how far the successive governments are successful to fulfill the constitutionally directed primary education in Bangladesh.

IV. Findings and Discussions as to Identifying Issues ad Challenges Relating to the Compulsory Primary Education in Bangladesh

a. Issues: This study, with the help of the documents review and outcome of the In-depth Interviews (IDIs), has already identified the nature of society which the constitutional framers wanted to establish in independent Bangladesh; analyzed whether education and primary education are fundamental human right, or basic necessity or policy instrument or principle; revealed the expected role of education in that society and the hard realities; identified the nature of constitutional obligations of the successive governments to ensure free and compulsory primary education in

³⁰⁸ UNICEF Annual Report 2015.

Bangladesh; assessed the value of the laws and effectiveness of the measures and programs taken by the incumbents to make all the children complete their primary education. Distinctive feature of this research lies in the fact that it has tried to make an in-depth analysis of the legislative and administrative measures relating to primary education in Bangladesh. The findings, discussions and analysis have surfaced the following issues and challenges.

Issue No. 1: Is Primary Education a Fundamental Human Right or a Basic Necessity or a Policy Instrument or Principle under the Constitutional Dispensation of Bangladesh?

Bangladesh Constitution, to the utter dismay of some critics, has not mentioned the term ‘primary education’, or ‘basic education’ or ‘elementary education’. Article 17 has cast responsibility on the State to establish a ‘uniform, mass-oriented and universal system of education’ for all.

Education, including primary education, has not been recognized as a fundamental human right under Articles 15, 16 and 17 of the Bangladesh Constitution; rather it is recognized as a basic necessity under Article 15. Education is a policy instrument or principle under Articles 16 and 17 of the constitution. Reasonably, the argument is plausible that in the articles of the original constitution the policy makers and the incumbents could not recognize education and primary education as a fundamental right.

Issue No. 2: Is the Nature of Constitutional Obligation of the Government of Bangladesh as to Ensuring Free and Compulsory Primary Education Obligatory or Mandatory?

‘Primary education’ is not mentioned in the constitution. Secondly, education and education related issues are placed in part II of the constitution as economic, social and cultural rights (ESC rights). The ESC rights, as fundamental principles of state policy, are not judicially enforceable. So, the constitutional obligation of the

Government of Bangladesh as to ensuring free and compulsory education is obligatory, not mandatory.

Issue No. 3: Do the Successive Governments Ensure Primary Education with Satisfactory Quality?

In spite of the enormous successes of the Government of Bangladesh, there are lots of questions as to the quality of the primary education. Regarding the quality of primary education in Bangladesh, the UNICEF Bangladesh³⁰⁹ observed the following factors: (1) Enrollment; (2) Attendance; (3) Teaching; (4) Learning; (5) School hours; and (6) School environment. Here is the evaluation made by the UNICEF:

Enrollment: The Government of Bangladesh has made significant progress in recent years to increase primary-school-age enrollment rates. However, access to education remains a challenge for vulnerable groups, particularly working children, disabled children, indigenous children and those in remote areas or living in extreme poverty. Only half of all children living in slums attend school, a rate 18 percentage points lower than the national average.

Attendance: Drop-out rates have made substantial progress where in 2006 the proportion of pupils starting grade one who reach grade 5 was 63.6 per cent, in 2009 this has increased to 79.8 per cent. However, progress is still required in this area. Absenteeism is also a significant problem. Parents often withdraw their children from school as a strategy for coping with natural disasters or economic difficulties, such as rising food prices. Recent studies show that boys are more likely to drop out of school than girls, or not enroll at all, pointing to an emerging gender imbalance.

Teaching: At least ten per cent of primary school teaching posts are vacant. To compensate for the lack of teachers, high-school graduates can apply for teaching positions. One third of staff at government schools teach without a Certificate in Education.

Learning: Promoting interactive and inclusive learning is difficult in face of traditional teaching methods that require students to memorize facts. Students regularly fail to meet required curriculum competencies, so repetition rates are high. It currently takes an average of 8.5 years for a child to complete grades one through five. 10 per cent of primary school students are above primary school age (11+).

School Hours: Primary schools often do not have enough space to accommodate all local children. To combat the problem, 90 per cent of government schools run a 'double shift': half the students attend school in the morning and the other half attend in the afternoon. A child in a double-shift school is typically in the classroom

³⁰⁹ The Children: Quality Education, Bangladesh UNICEF, 2010.

for between three and four hours a day. Regular school closures further reduce class time.

School Environment: The Government is working to improve learning environments, building 17,277 new classrooms between 2005 and 2007, improving ventilation and lighting, and increasing access for disabled children. In those schools that are still waiting for these improvements, dark and cramped classrooms continue to hamper learning.³¹⁰

Recently Education Watch Report 2016 presented the detailed picture on primary education of Bangladesh. Following is the key messages emanating from the findings of the Education Watch 2016 study:

School Education is the principal source for literacy attainment but the quality deficits in schooling also has been a drag on progress in literacy. Strong relationship of literacy status and years of schooling completed indicates contribution of school education. From 2002 to 2016, literacy skills improved somewhat at different grade levels, but it still remains unsatisfactory for primary grades completers. More than a third of the fifth grade completers were found to be non-literate in 2002. The situation has not improved since then.³¹¹

There are, as already mentioned, questions and lot of disappointments as the quality of primary education in Bangladesh. John Richards and Shahidul Islam in their recent column titling ‘Of what value is primary school completion?’ stated with utter disappointment the following:

Can students who complete primary school read and do simple sums? A recent survey we conducted revealed that among children who had reached grade 5 (but not higher), 72 percent could read a grade 2 level story and only 40 percent could solve grade 2 level subtraction problems. In a large-scale national survey commissioned by the Directorate of Primary Education, only 25 percent of grade 5 students performed “at grade level” in Bangla and math...often using commercial guide books (by the tutors) rather than helping students learn basic skills, and that grading of the PECE exam does not tell us what children really learn.³¹²

³¹⁰ Ibid

³¹¹ Report of Education Watch 2016: “Literacy, Skills, Lifelong Learning: SDG4 in Bangladesh: Where Are We” published by Campaign for Popular Education (CAMPE) in cooperation with European Union of Bangladesh, December 2016

³¹² John Richards and Shahidul Islam, “Of what value is primary school completion?”, The Daily Star, 25 July, 2017

Above mentioned facts and discussion clearly evidence that quality of primary education is not at the satisfactory level.

Issue No. 4: Is the Primary Education in Bangladesh Inclusive?

In the context of Bangladesh, it can be said that Bangladesh has an inclusive primary education when all the children of the Muslim community, Hindu community, Christian community, Buddhist community together with the children of indigenous people, dalits and marginalized groups can go to the primary schools or the State has sufficiently ensured free and compulsory primary education for all the children in Bangladesh. However, ‘access to education remains a challenge for vulnerable groups, particularly working children, disabled children, indigenous children and those in remote areas or living in extreme poverty. Only half of all children living in slums attend school, a rate 18 percentage points lower than the national average.’³¹³ In the light of this data, it is difficult to conclude that the primary education of Bangladesh is inclusive.

Issue No. 5: Are the Curriculum and Textbooks Uniform and Satisfactory?

Bangladesh is a unitary country having its society and culture mostly homogenous, with its constitutional Article 17 providing to establish a uniform, mass-oriented and universal system of education. But, in the field level there exist varied streams of primary education – namely the government-run Bengali medium primary education; kindergarten or English medium primary education; Madrasas (Government and Qwami); NGO-run primary education; and other streams of primary education. In the different streams of primary education the curriculum and textbooks are different.

The control and monitoring of the state functionaries over the curriculum and textbooks of the primary education institutions, other than the government-run primary schools, are neither sufficient nor satisfactory. Against this backdrop, this

³¹³ The Children: Quality Education, Bangladesh UNICEF, 2010

researcher considers that an anomalous condition exists in the primary education of Bangladesh as to its curriculum and textbooks.

Issue No. 6: Are the Quality of Teachers and Their Teaching Methodology Satisfactory and Whether These Can Help Attain Expected Outcome?

It is the quality, commitment, training and teaching methodology of the teachers which are the most important factors in ensuring quality primary education. Consecutive governments are successful in recruiting good number of teachers for the primary schools, as many of the primary school teachers have honors and/or masters degrees. But it is not effectively monitored whether the teachers are performing their teaching responsibilities properly. Also problems lie with the training and commitment of the teachers. It is alleged that money is the main consideration of many teachers, which happens to be a major problem of the whole society, as education sector has been commercialized with the advent and development of open market economy and consumerist ethos. Non-application or insufficient application of teaching methodology is another cause of low-quality primary education in Bangladesh.

Issue No. 7: What about of Drop-Outs?

Recently, the government claims that they are nearly 100% successful in primary school enrolment. Despite the recent progress in enrolment, there has been a dropout rate of 21 per cent in primary education, according to the Education for All (EFA) Global Monitoring Report. From 2005 to 2013, the net enrolment rate increased by 10.1 per cent—from 87.2 in 2005 to 97.3 in 2013—while the average dropout rate slumped more than half from 10.2 per cent to 4.3 per cent during the same period, the report says.³¹⁴ Recent studies show that the boys are more likely to drop out of the schools than girls, or not enroll at all due to poverty or natural disasters, pointing to an emerging gender imbalance.

³¹⁴ “Dropout rate in primary education: UNESCO Report” Tuesday 22 August 2017

Issue No. 8: Does the System of Primary Education in Bangladesh Ensure Expected Outcome?

There is a basic question which constitutes an important issue that – what is the expected outcome of the primary education in Bangladesh? Simply, the researcher considers that the objective of establishing the system of primary education in Bangladesh is to ensure proper learning of the students. ‘National Students Assessment 2013’ results show that there is wide gap in student learning outcomes in terms of significant over and under-achieving. For example, around 8% of grade 3 pupils achieved grade 5 level competency in Bangla, while 11% of grade 5 pupils achieved only grade 2 level or below in math.³¹⁵ Recently, the Department of Monitoring and Evaluation of the Bureau of Primary Education has assessed the efficiency of the students in Mathematics by a survey conducted on the students of class three and five in 1 thousand 185 primary schools in the whole country. The survey result has been published under the title ‘National Students Assessment 2015’, where the efficiency of the students were examined in four areas – number, counting, data and figure, and circle. The survey result has come up with the findings that 90 percent students of the primary level in Bangladesh are inefficient in Mathematics.³¹⁶ There are lots of questions whether the existing primary education in Bangladesh can yield expected outcomes? Drop-outs, insufficient application of teaching methodology, absence of expected standard may be identified as causes for not attaining expected outcomes.

Issue No. 9: Do the Successive Governments Have Been Able to Establish a ‘Uniform, Mass-oriented and Universal System’ of Primary Education in Bangladesh after 45 Years of Its Independence?

³¹⁵ National Student Assessment 2013 for Grades 3 and 5, Ministry of Primary and Mass Education, Government of the People’s Republic of Bangladesh

³¹⁶ Primary Education: 90 Percent Students are Inefficient in Mathematics (In Bengali ‘Prathomik Shikhhkha: Gonite Opotu 90% Shikhhkharthi), First Page, The Bonik Barta, August 3, 2017.

Combined reading of Articles 8 (2) and 47 (1) of the Bangladesh Constitution suggests that the successive governments are obliged to give effect to the obligations imposed by the constitutional provisions progressively.

Successive Governments have attained many other successes in the field of primary education. But the area where the consecutive Governments have not focused that is to establish ‘uniform, mass-oriented and universal system’ of primary education in the whole of Bangladesh. All the educationists, policy administrators, and the legal experts are in agreement that there is a total failure in establishing ‘uniform, mass-oriented and universal system’ of primary education in Bangladesh.

b. Challenges: In the light of the issues identified above, and on the basis of the discussions and analysis made in chapter 7, this researcher is inclined to identify the following challenges for the current Government and future state functionaries and policy makers:

- (1) Recognizing Primary education as a fundamental human right by an amendment of the Bangladesh Constitution.
- (2) Providing the constitutional amendment a separate and detailed article as to primary education where the objectives, structure, and contents of the primary education should be stated elaborately and clearly.
- (3) Imposing the constitutional amendment a mandatory obligation on the Government of Bangladesh to ensure free, compulsory and quality primary education for all the children in Bangladesh.
- (4) Taking effective measures by the successive Governments for ensuring ‘uniform, mass-oriented and universal’ system of primary education in Bangladesh.
- (5) Adopting effective measures by the current and future state functionaries to fulfill Bangladesh’s commitments under the international human rights instruments, including the ICCPR, 1966; the ICESCR, 1966; the CEDAW, 1979; the EFA, 1990.

- (6) Making the primary education of Bangladesh inclusive and eliminating all sorts of discriminations.
- (7) Reaching the goals relating to primary education under the SDGs (Sustainable Development Goals).
- (8) Preventing drop-outs and ensuring quality primary education.
- (9) Attaining intended learning outcomes (ILOs) at the level of primary education, that means the state functionaries should administer primary education in Bangladesh to educate the children with the basic knowledge and skills of Bengali, English, Mathematics, Science, Bangladesh and Global Studies, Religion, Information Technology (IT), Art and Craft, so that they will get proper education with morality, values, and skills.

7.3 Summary, Conclusion & Recommendations

Education is universally recognized to be important from time immemorial as the most important task of education is to make the people literate, enlightened, and able to explore their potentialities. Different types of education equip people with different skills which further provide them employment. Education, thus, has all-extensive externalities. It is the cornerstone of all sorts of development – individual, social, and global. The new global agenda, namely the Sustainable Development Goals (SDGs), has correctly recognized the critical role of education for both sustainable development and broader change, and the interlinkages between education and transformative change. The SDGs have included an integrated and all-encompassing agenda, which emphasize poverty eradication, inclusive growth, environmental sustainability, equality, and people-centered development. Moreover, one can understand the importance of education as education plays a significant role across all the SDGs, driving progress towards sustainable development and a way forward.

Education is a seminal human right that is instrumental to individual and social development. It not only promotes advancement of knowledge, but also ensures

sustainable growth. The Universal Declaration of Human Rights (UDHR) states that, “*Everyone has the right to education.*” It says that, in addition to it, education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. The UDHR also stipulates that education should be directed towards the full development of the human personality and strengthening respect for human rights. Finally, it acknowledges that parents have a prior right to choose the kind of education that shall be given to their children. International Covenant on Economic, Social and Cultural Rights (ICESCR) is spectacular in that as it sets out detailed formulations of the right to education. Article 13 of ICESCR contains a general statement that everyone has the right to education and that education should contribute to the full development of the human personality.

For well-grounded reasons, all the countries of the world have consistently supported the notion that every child in every country should be given the opportunity to complete at least primary education. Moreover, education—particularly free primary school for all children, is a fundamental right to which governments committed themselves under the 1989 Convention of the Rights of the Child.³¹⁷ Furthermore, Education for All (EFA) is an international commitment made by the countries to ensure complete primary education for all children. Subsequently, EFA was adopted as the Millennium Development Goal (MDG) for achieving universal primary education.

The title of this thesis is – “Constitutional Responsibility of the Government of Bangladesh for Implementing Compulsory Primary Education: Issues and Challenges.” The overall objective of this research work is to examine the constitutional responsibility of the Government of Bangladesh for implementing compulsory primary education as well as the issues and challenges of its implementation. Specific objectives of this study are:

³¹⁷ UNICEF- Goal: Achieve Universal Primary Education.

(a) To explore the core spirit of the Constitution of the People's Republic of Bangladesh relating to primary education; (b) To determine the nature of Constitutional Responsibility of the Government of Bangladesh for the development of primary education; (c) To examine the legal framework and measures taken by the Government of Bangladesh for implementing primary education; and (d) To identify the major issues and challenges relating to implementation of primary education in Bangladesh according to the Constitutional responsibility.

This study used a basic interpretive qualitative research approach as its methodology to determine the nature of the Constitutional obligation of Bangladesh Government as to primary education with regard to the issues and challenges relating to it. Based on the objectives of this study, the qualitative research approach seemed to be an appropriate methodology for conducting the study. In order to attain the aim and objectives, the study pursued the following two techniques:

1. Document Reviews
2. In-depth Interviews (IDIs)

After discussing and analyzing the provisions of the Bangladesh Constitution, and the Proclamation of Independence of Bangladesh, this researcher draws the following conclusions.

Combined readings of the Bangladesh Constitution's Preamble, the Proclamation of Independence of Bangladesh, 10 April, 1971 and Articles 7, 10, and 11 of the Bangladesh Constitution suggest that the successive governments should try to establish in the deltaic land of Bangladesh a society which will have the following attributes and the people will have the following entitlements:

- The State shall establish a socialist society in Bangladesh through the democratic process (Paragraph Three of the Preamble of the Bangladesh Constitution);

- A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society (Article 10 of the Constitution);
- The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed (Article 11 of the Constitution);
- All powers in the Republic belong to the people and this Constitution is the solemn expression of the people of Bangladesh (Article 7 of the Constitution);
- The objective of establishing the sovereign People’s Republic of Bangladesh is to ensure equality, human dignity, and social justice for the people of Bangladesh (The Proclamation of Independence of Bangladesh);
- The State shall establish a socialist society in Bangladesh – a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens (Paragraph Three of the Preamble of the Bangladesh Constitution).

Now it is clear from the discussion made above that the Proclamation of Independence of Bangladesh and the Preamble of the Bangladesh Constitution and other articles envisioned to establish a just, egalitarian and socialist society in Bangladesh. As such, the question is – what role will education play in the constitutionally envisioned society; that means in a just, egalitarian and socialist society?

Articles 15, 16 and 17 of the Bangladesh Constitution thus have clarified what role education will play in the society of Bangladesh. The combined reading of the above mentioned 3 articles suggest that the role of education in Bangladeshi society will be–

- To produce properly trained and motivated citizens to serve the needs of society (Article 17 (b));
- To remove illiteracy within a timeframe determined by law (Article 17 (c));
- To ensure right to work for the citizens of Bangladesh, that is the right to guaranteed employment at a reasonable wage (Article 15 (b));

- To bring about a radical transformation in the villages, to promote an agricultural revolution; and to remove the incongruity in the living standards of the rural and urban mass (Article 16).

This researcher considers that the roles to be played by education in Bangladeshi society as envisioned by the Bangladesh Constitution are not exhaustive, but one may be content with the list of responsibilities given to education by the Constitution and which tasks education should accomplish to establish a just, egalitarian and socialist society. But the hard realities are different. In spite of the achievements of the successive governments, there are lots of challenges. Policy makers and government functionaries have to take many steps to ensure quality of primary education, minimize and stop drop outs, ensure final outcome, and to include all segments of society within the mainstream primary education, namely the children of indigenous people, dalits and other marginalized groups.

In a comparison of the education related articles of the Constitution with those of the other countries, this researcher does find Bangladeshi constitutional dispensation on a satisfactory footing. For example, section 16 of the Constitution of Finland has provided that, “Everyone has the right to basic education free of charge.” Article 31 of the Constitution of the Republic of Korea has provided 6 sub-articles elaborating education in terms of its essence, structure and objectives. Most importantly, the article has talked about elementary and compulsory education, where the first three sub-articles have provided the following:

Article 31

- (1) All citizens shall have equal rights to receive an education corresponding to their abilities.
- (2) All citizens who have children to support shall be responsible at least for their elementary education and other education as provided by the Act.
- (3) Compulsory education shall be free of charge.³¹⁸

³¹⁸ Article 31 of the Constitution of the Republic of Korea.

The articles of Bangladesh Constitution relating to education has not mentioned 'basic education' as mentioned by the Constitution of Finland; or 'elementary education' as mentioned by the Constitution of the Republic of Korea; rather Article 17 of the Bangladesh Constitution has used the words 'free and compulsory education'. This researcher considers that the Korean Constitution has provided education related provisions with much clarity and precision. The Korean supreme law of the land has provided that all the citizens having children are obliged to provide at least elementary education to them and other education as provided by law and compulsory education shall be free of charge.

Article 17 of the Bangladesh Constitution has provided that, "The State shall adopt effective measures for the purpose of – (a) establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as determined by law." Thus, from the language of Article 17 it is clear that Bangladesh Constitution has not specified 'basic education', elementary education' and 'primary education'. It has said about establishing a uniform, mass-oriented and universal system of education, neither specifying primary, secondary, higher-secondary, or tertiary education nor vocational or technical education. Furthermore, education is not recognized by the Bangladesh Constitution as a fundamental human right.

Switzerland's Constitution has mentioned education for more than two dozen times. The Constitution of Finland has recognized that basic education is the right of everyone and it is free of charge. Even our neighboring country India, in a historic move, has made elementary education a fundamental human right on 1 April, 2010. On that day, India joined a group of remarkable countries in the world, with a historic law, making education a fundamental right of every child coming into force. The Right of Children to Free and Compulsory Education Act, 2009, came into effect in

2010, making elementary education an entitlement for children in the 6-14 age group in India.³¹⁹

Article 17 has not recognized education as a right; rather it has said about the obligation of the State as to education, relating education to the needs of society, and removing illiteracy; while Article 15 has recognized education as a basic necessity, not a right. Both the articles, together with other articles discussed above, have been placed under Part II of the Bangladesh Constitution having the title ‘Fundamental Principles of State Policy’. As to the importance and implications of the ‘Fundamental Principles of State Policy’, the Constitution has provided that:

The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and other laws of Bangladesh, and shall form the basis of work of the State and of the citizens, but shall not be judicially enforceable.³²⁰

Fundamental principles of state policy, therefore, do not impose any obligation on the State or Government functionaries in terms of absolute value or mandatory imperatives as the fundamental principles are not judicially enforceable; rather the fundamental principles of state policy shall be applied by the State in making of laws, shall be a guide to the interpretation of the Constitution and of other laws, and most importantly, shall be fundamental to the governance of Bangladesh and shall form the basis of work of the State. Bangladesh’s ‘Fundamental Principles of State Policy’ have persuasive value, how higher they may be, and they will impose obligations on the State accordingly, but not as stronger as they would be if they would be enforceable by a court of law.

Education is both a basic necessity and a policy instrument under the constitutional dispensation of Bangladesh, as it appeared from the language of the education related

³¹⁹ Aarti Dhar, “Education is a fundamental right now”, The Hindu, 01 April, 2010.

³²⁰ Article 8 (2) of the Constitution of the People’s Republic of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs, Government of the People’s Republic of Bangladesh, October, 2011

articles which are placed under the ‘Fundamental Principles of State Policy’ part of the Bangladesh Constitution. Education is neither recognized as the right of the people of Bangladesh nor is it judicially enforceable and here lies the fundamental weakness of the Bangladesh Constitution. In the time span of more than four decades after the adoption of the Constitution, the successive governments or law makers did not feel the necessity to amend the education related articles of the Bangladesh Constitution to rectify its initial drawbacks and to make them suitable to fulfill its international commitments.

As to the field reality, the educationists interviewed have mentioned both successes and failures of the successive governments as to the implementation of compulsory primary education. One of the educationists, (ED1), has talked about the successes of the successive governments. Ensuring gender parity in primary education and distribution of free textbooks comprise the spectacular successes of the government functionaries, he viewed. He stated that primary education has been designed from grade I to VIII under the Education Policy 2010, and similar curriculum as well as similar textbooks for core subjects are followed (however, it might be delayed). Another respondent, Educationist 2 (ED2) viewed that the governments at the helm of the state powers have been successful in developing infrastructure, recruiting teachers, and designing curriculum; but she unequivocally recognized that the government is far behind in establishing a ‘uniform, mass-oriented, and universal’ system of compulsory primary education in Bangladesh.

All the respondents, i.e. legal experts, educationists and policy administrators, agreed on one point that ‘right to education’ must be a fundamental right. In fact, it is one of the most significant issues in present days.

The term “Education” is found in the constitutions of 174 countries, i.e. nearly in every single one. Each of the countries which are ahead in terms of education have a fundamental commitment in common: a constitutional, or statutory, guarantee of the

right to education. By centralizing education as a key focus of the state, these countries establish baseline requirements that set the frame for policy and judicial challenges, as well as contribute to what is known as “culture” of education. Every country that grades higher in the education rankings either have a constitutional guarantee to education, or have ensured it as a right through an independent statute in case of not having any constitutional mandate. Each have constructed law around education as a fundamental right of the citizens, at least until the age of adulthood.³²¹ The conscious citizens of this state hope that sooner or later, our children, tomorrow’s nation builders, will get their education as a fundamental right which will be guaranteed by the Constitution of the People’s Republic of Bangladesh.

7.3.1 Recommendations

In the context of the entire research, this researcher feels obliged to list recommendations on eight main points, which are- legislative, governmental and administrative, teachers, textbook and curriculum, examinations, infrastructure, classroom environment and others. On these eight points, the researcher has prepared the following recommendations to be taken for consideration.

I. Legislative

- To ensure equality, human dignity and social justice for all people of Bangladesh (according to the Proclamation of Independence), the right to education must be kept in part III of the Constitution of the People’s Republic of Bangladesh, which means in Fundamental Rights, instead of part II- Fundamental Principles of State Policy.
- The policy makers first have to implement the existing Constitutional provisions to establish a uniform, and mass oriented education system for all

³²¹ Stephen Lurie, “Why Doesn’t the Constitution Guarantee the Right to Education?” October 16, 2013

children. In the second step, the Constitution should be amended to make right to education as a fundamental right. The Constitutional provisions relating to education should be updated in the light of the International Conferences on Education, Sustainable Development Goals, changing needs of Bangladesh, and the challenges of the 21st century.

- Primary education sector should be given top priority to make the nation enlightened. According to Article 17 of the Constitution, primary education should be related to the needs of the society which will produce properly trained and motivated citizens to serve those needs. While preparing all the students based on the demands of the society, both values and technology should be given emphasis.
- Ensuring uniform primary education –the word ‘uniform’ needs to be explained. Government should take steps to provide the same curriculum of basic subjects for all kinds of schooling and learners.

II. Governmental and Administrative

- Proclamation of Independence of Bangladesh, Preamble and existing Articles 7, 10, 11, 15, 16 and 17 of the Bangladesh Constitution, the Education Policy, 2010, the Qhudrat-e-Khuda Commission Report, and the prospective law regarding education should guide the Government functionaries and future policy makers to establish an education system which is suitable to cope with the challenges of the 21st century as well as the needs of a just, egalitarian and social-democratic society.
- Education laws, policies need to be separated from any political and religious interest, ideology, and influence.

- Education policies need to be long-term with a strategic plan for implementation. Academic calendar needs to be uniform and fixed (minimum flexibility) for all throughout the country.
- Policy makers should take more progressive policies and measures to encourage the female students, which will promote women's empowerment on one hand, and help the government to fulfill its commitment under the SDGs on the other hand.
- Allocation of sufficient money for primary education in the Budget must be ensured.
- Government should ensure transparency in primary education sector strongly. Proper monitoring of education officers needs to be confirmed.

III. Teachers

- Besides the public schools, Government should take care of the private schools too in order to maintain discipline. They should give trainings to the teachers of all types of schools for making qualified teachers and ensuring their quality. "Producing good teachers by providing effective training" can be an effective measure.
- Proper incentives must be given to those teachers who are creative as well as committed to their profession. Initiatives should be taken for making capable head teachers. Government should make plans to build up a specialized institute for producing teachers only.
- There should be qualified and capable promotion committees for evaluating and giving promotions to the teachers of primary schools. Reasonable

promotion system within the ladder, starting from Assistant teachers to Head teachers, will bring job satisfaction among the teachers of primary schools.

- Initiatives should be taken to reduce the teacher-student ratio. In this way, the number of teachers will be increased in the schools. This would help in improving teaching quality in the classrooms. Subject based teachers must be groomed.

IV. Curriculum, Syllabus, and Textbooks

- Learning of basic knowledge, embedding human values and morality are much more important than satisfying the students and parents with good grades. The Government functionaries should design the curriculum in a way to achieve the above mentioned objectives.
- In primary level, all segments and streams of curriculums should be reviewed, the diversity should be reduced and the system must be brought into a range of uniformity and universality. Measures should be taken to minimize the major discriminations that exist between different streams of primary education.
- Contents and design of the textbooks are very important for the primary level children. So, proper care should be taken by the Government. Multicolored textbooks of standard, sustainable quality must be guaranteed. It must be ensured that teachers will get the textbooks at the beginning of December so that they will be able to have the books before the academic year, i.e. January, for taking proper preparation.
- Equality, human dignity and social justice must be reflected in the curriculum and textbooks. Special textbooks reflecting the spirit of liberation war have to be prepared by the experts.

- Primary education should focus on providing essential life skills. The curriculum and syllabus should have modules to help children develop relationship skills, effective communication skills as well as problem solving and decision making skills. Children will learn personal safety, physical activity etc. from school.
- A five-year plan should be adopted for the textbooks so that within five years, there will be no need for changing the contents, except for modifications.

V. Examinations

- Government exams like Primary Education Completion (PEC) Examination creates fear in the minds of the children and guardians. This increases dropouts too. This type of public examination has to be abolished immediately for the betterment of children.
- The current school examination system should be changed. Emphasis should be given to the children's regular performances for assessing them.
- Students should be properly assessed during class teaching and annual examination. Adopting unfair means in the annual examination should be stopped which is possible by changing the system of examination and assessment and by careful monitoring.

VI. Infrastructure:

- Primary education in the remote areas has to be ensured by making school buildings and roads. An atmosphere needs to be created so that children love to come to school. Each school should have a library with sufficient number of books. School building/ classrooms should be redesigned if needed. Moreover, every school should have a kitchen. Arrangements of healthy meal for children need to be made and sustained.

- Disabled children should be given the chance to continue their education in the mainstream general schools. There should be a ramp system for the disabled children.

VII. Classroom Environment

- Interactive, joyful classroom environment must be ensured. Teaching-learning materials in the classroom must be provided. Increasing the duration of teaching-learning hours for each subject in the classrooms rather than increasing the number of subjects in the curriculum should be an effective measure. Maintaining appropriate teacher-student ratio is essential to ensure proper learning of the students.
- Both quality and quantity must be emphasized. No children should be left behind. Drop-outs should be addressed. To make the parents aware of primary education & development of the children, awareness raising programs must be held regularly in the concerned areas.
- Classrooms must be redesigned for making them techno-friendly where children will be able to learn technology without any fear or pressure. Instilling values among the children in order to address terrorism through family and school simultaneously should be given priority.

VIII. Others

- Quality education for all students should be the concern of the schools. Hence, special attention should be given to all the students from class I to V, not only the public examinees.

- Further researches should be conducted with the practitioners in primary education to understand their perspectives regarding policies, rules and their implementation in the primary education level.
- Government should take responsibilities for implementing the positive recommendations provided by the NGOs, civil society, and others, to ensure quality education and to bring social justice in the society.
- Steps may be taken to give second chance to the children who have failed to complete their primary education. Government can provide more incentives to the children of poor and marginalized groups; and these will include – school feeding programs or mid-day meals.
- Government can take inclusive policy and measures and encourage the NGOs and development partners to take the same for the children of the indigenous communities and dalits.

7.3.2 Implications of the Study

This study involved purposefully selected group of people of three categories - legal experts, educationists, and policy administrators. Thus, the study presented the perspectives of three categories of people regarding Constitutional responsibilities for implementing primary education for all children. The data was collected through document reviews related to the legal and policy papers pertaining to implementation of primary education for all children in Bangladesh and semi-structured face-to-face in-depth interviews. The Constitution of the People's Republic of Bangladesh stated the foundational guideline—uniform, mass-oriented and universal system of education for all citizens which integrated primary education. Primary Education Acts 1974, 1990 and National Education Policy 2010 and other policy documents provided

various initiatives and measures created for implementation of primary education for all.

Participants in the research were legal experts, who provided the legal analyses and opinions regarding the spirit of the Constitution and Government Ordinances; educationists, who stated their perspectives that have been practiced in primary educational institutions on the basis of their experiences, and policy administrators, who expressed their viewpoints regarding application of the laws and other policies regarding primary education for all. Though this qualitative study reflected the perspectives of limited participants, it provided the experts' perceptions based on their knowledge and experiences as well as delivered a sense of direction for implementing uniform, mass-oriented and universal system of primary education for all. Those who are interested in the development of primary education will get a detailed and authentic picture regarding the issues and challenges of primary education. This research will help the educationists, policy administrators and civil society for taking any positive step for development of primary education in Bangladesh. With the acts of the Government, the combined efforts of community, trained and motivated teachers and other professionals, quality of primary education can be ensured and a uniform, mass-oriented, and universal system of free and compulsory education for all can be implemented.

Last of all, this research can be used by future legal and education researchers for studying the education system of any nation on the basis of Constitutional laws and policy administrations of that country. Future researchers can reveal the gap between the theory and practice in the education system by using this research.

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Appendix I

Proclamation of Independence

Proclamation of Independence official announcement declaring independence of Bangladesh by the Bangladesh government-in-exile on 17 April 1971. The Proclamation so announced in effect provided the fundamental instrument of law as well as an interim Constitution of the Mujibnagar government during the war of liberation, including that of the government in liberated Bangladesh until the adoption of the Constitution, made effective from 16 December 1972.

The Proclamation of Independence was made to tackle a serious situation. On the night of 25 March 1971, immediately before the military crackdown and moments before Bangabandhu Sheikh Mujibur Rahman was arrested by the Pakistan Army, he made a Declaration of Independence. Bangabandhu's declaration was as follows:

This may be my last message: From today Bangladesh is independent. I call upon the people of Bangladesh wherever you may be and with whatever you have, to resist the army of occupation to the last. Your fight must go on until the last soldier of the Pakistan occupation army is expelled from the soil of Bangladesh and final victory is achieved.

The message of Sheikh Mujibur Rahman's declaration of independence was reportedly sent to Chittagong shortly after mid night for transmission throughout Bangladesh over the transmitter of the East Pakistan Rifles. On 26 and 27 March two declarations of independence was made in the name of Sheikh Mujibur Rahman from Chittagong Radio Station (later named as Swadin Bangla Betar Kendra) one by MA Hannan, general secretary of the Chittagong Awami League and the other by Major Ziaur Rahman.

Following the military crackdown by the Pakistan army in Dhaka and elsewhere on 25 March 1971, top Awami League leaders including some elected members of both National Assembly (MNA) and Provincial Assembly (MPA) crossed over to India for safety. By 30 March 1971, most of them were able to assemble in Kolkata. On 10 April 1971, the MNAs and MPAs who were able to meet together in Kolkata formed themselves into a constituent assembly in exile and drafted the Proclamation of Independence. The formal meeting of the constituent assembly was held on 17 April 1971 at Baidyanathtala (re-named Mujibnagar after the proclamation), a border area in the present Meherpur district, where Professor M Yusuf Ali, an MNA formally read out the Proclamation of Independence at a simple ceremony. With this declaration the newly formed Constituent Assembly was proclaimed supreme and sovereign authority of Bangladesh. The proclamation of Independence confirmed the Declaration of Independence made by Sheikh Mujibur Rahman on 25 March 1971. The Proclamation declared that the independence of Bangladesh be deemed to have come into effect from 26 March 1971. It also legalised the Mujibnagar government and gave direction to all involved in the War of Liberation for establishing the chain of command.

The full text of the Proclamation of Independence runs as follows:

Mujibnagar, Bangladesh

Dated 10th day of April, 1971

Whereas free elections were held in Bangladesh from 7th December, 1970 to 17th January, 1971 to elect representatives for the purpose of framing a Constitution,

AND

Whereas at these elections the people of Bangladesh elected 167 out of 169 representatives belonging to the Awami League,

AND

Whereas General Yahya Khan summoned the elected representatives of the people to meet on the 3rd March, 1971, for the purpose of framing a Constitution,

AND

Whereas the Assembly so summoned was arbitrarily and illegally postponed for indefinite period,

AND

Whereas instead of fulfilling their promise and while still conferring with the representatives of the people of Bangladesh, Pakistan authorities declared an unjust and treacherous war,

AND

Whereas in the facts and circumstances of such treacherous conduct Bangabandhu Sheikh Mujibur Rahman, the undisputed leader of the 75 million people of Bangladesh, in due fulfillment of the legitimate right of self-determination of the people of Bangladesh, duly made a declaration of independence at Dacca on March 26, 1971, and urged upon the people of Bangladesh to defend the honour and integrity of Bangladesh,

AND

Whereas in the conduct of a ruthless and savage war the Pakistani authorities committed and are still continuously committing numerous acts of genocide and unprecedented tortures, amongst others on the civilian and unarmed people of Bangladesh,

AND

Whereas the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it impossible for the elected representatives of the people of Bangladesh to meet and frame a Constitution, and give to themselves a Government,

AND

Whereas the people of Bangladesh by their heroism, bravery and revolutionary fervour have established effective control over the territories of Bangladesh,

We the elected representatives of the people of Bangladesh, as honour bound by the mandate given to us by the people of Bangladesh whose will is supreme duly constituted ourselves into a Constituent Assembly, and having held mutual consultations, and in order to ensure for the people of Bangladesh equality, human dignity and social justice,

Declare and constitute Bangladesh to be sovereign Peoples' Republic and thereby confirm the declaration of independence already made by Bangabandhu Sheikh Mujibur Rahman,

AND

do hereby affirm and resolve that till such time as a Constitution is framed, Bangabandhu Sheikh Mujibur Rahman shall be the President of the Republic and that Syed Nazrul Islam shall be the Vice President of the Republic,

AND

that the President shall be the Supreme Commander of all the Armed Forces of the Republic,

shall exercise all the Executive and Legislative powers of the Republic including the power to grant pardon,

shall have the power to appoint a Prime Minister and such other Ministers as he' considers necessary,

shall have the power to levy taxes and expend monies [sic],

shall have the power to summon and adjourn the Constituent Assembly,

AND

do all other things that may be necessary to give to the people of Bangladesh an orderly and just Government.

We the elected representatives of the people of Bangladesh do further resolve that in the event of there being no President or the President being unable to enter upon his office or being unable to exercise his powers and duties, due to any reason whatsoever, the Vice President shall have and exercise all the powers, duties and responsibilities herein conferred on the President,

We further resolve that we undertake to observe and give effect to all duties and obligations that devolve upon us as a member of the family of nations and under the Charter of United Nations,

We further resolve that this proclamation of independence shall be deemed to have come into effect from 26th day of March, 1971.

We further resolve that in order to give effect to this instrument we appoint Professor Yusuf Ali our duly Constituted Potentiary and to give to the President and the Vice-President oaths of office.

Sd/ Professor M Yusuf Ali

Duly Constituted Potentiary

By and under the authority of the Constituent Assembly of Bangladesh

Laws Continuance Enforcement Order

In the exercise of power conferred by the Proclamation, the Acting President Syed Nazrul Islam issued the Laws Continuance Enforcement Order to ensure continuity of all the existing laws. Following is the full text of the Order:

Mujibnagar

Dated 10th day of April, 1971

I, Syed Nazrul Islam, the Vice President and Acting President of Bangladesh, in exercise of the powers conferred on me by the Proclamation of Independence dated tenth day of April, 1971 do hereby order that all laws that were in force in Bangladesh on 25th March, 1971, shall subject to the Proclamation aforesaid continue to be so in force with such consequential changes as may be necessary on account of the creation of the sovereign independent State of Bangladesh formed by the will of the people of Bangladesh and that all government officials, civil, military, judicial and diplomatic who take the oath of allegiance to Bangladesh shall continue in their offices on terms and conditions of service so long enjoyed by them and that all District Judges and District Magistrates, in the territory of Bangladesh and all diplomatic representatives elsewhere shall arrange to administer the oath of allegiance to all government officials within their jurisdiction.

This order shall be deemed to have come into effect from 26th day of March, 1971.

Signed: Syed Nazrul Islam

Acting President.

[Sajahan Miah]

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Appendix II

The Constitution of the People's Republic of Bangladesh

4th November, 1972

Preamble

We, the people of Bangladesh, having proclaimed our independence on the 26th day of March, 1971 and through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh;

Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution;

Further pledging that it shall be a fundamental aim of the State to realize through the democratic process to socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens;

Affirming that it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that we may prosper in freedom and may make our full contribution towards international peace and cooperation in keeping with the progressive aspirations of mankind;

In our Constituent Assembly, this eighteenth day of Kartick, 1379 B.S corresponding to the fourth day of November, 1972 A.D., do hereby adopt, enact and give to ourselves this Constitution.

Appendix III

THE PRIMARY SCHOOLS (TAKING OVER) ACT, 1974

(ACT NO. VIII OF 1974).

[5th February, 1974]

THE PRIMARY SCHOOLS (TAKING OVER) ACT, 1974

(ACT NO. VIII OF 1974).[5th February, 1974]

An act to make provisions for the taking over by the Government of certain primary schools in Bangladesh.

WHEREAS it is expedient to make provisions for taking over by the Government of certain primary schools in Bangladesh and for matters ancillary thereto;

It is hereby enacted as follows:-

Short title and commencement 1. (1) This Act may be called the Primary Schools (Taking Over) Act, 1974.

(2) It shall be deemed to have come into force on the 31st day of October, 1973.

Definition 2. In this Act, unless there is anything repugnant in the subject or context, “primary school” means a school or department of a school giving instruction in primary education.

Taking over of primary school

3. (1) Notwithstanding anything contained in any other law, rule, regulation or bye-law for the time being in force or in any contract or agreement, or in any deed or other instrument, the Government may by notification in the official Gazette, take over any primary school on such date as may be specified in the notification.

(2) On the date specified in the notification under subsection (1),-

(a) the primary school and all its assets and property, including lands, buildings and funds and all other rights and interests in, or arising out of, such property, and all records and other documents of whatever nature relating thereto, shall stand transferred to, and vested in the Government;

(b) all teachers of the primary school shall become employees of the Government and shall hold their service under the Government on such terms and conditions as the Government may determine; and

(c) all committees or authorities managing and administering the affairs of the primary school shall cease to function.

Management of the primary school taken over

4. After a primary school is taken over under section 3(1), the Government shall manage and administer the affairs of that school in such manner as it may deem fit.

Removal of difficulty

5. The Government may, for the purpose of removing any difficulty arising out of, or in connection with, or in relation to the taking over of any primary school under section 3, make such order as it considers expedient.

Power to make rules

6. That the Government may, after previous publication, make rules for carrying out the purposes of this Act.

Repeal and savings

7. (1) The Primary Schools (Taking Over) Ordinance, 1973 (P.O. No. XXII of 1973), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken, including any order made, notification issued or direction given under the said Ordinance shall be deemed to have been done, taken, made, issued or given, as the case may be, under the corresponding provision of this Act.

Appendix IV

[Published: The Bangladesh Gazette, Extra, 13 February, 1990 (1 Falgun, 1396 of Bangle Year)]

*Part V-Acts, Bills, etc., of the Bangladesh Parliament
Bangladesh Parliament
Dhaka, 13 February, 1990 (1 Falgun, 1396 of Bangle Year)
The following acts of Parliament received the assent of the President
on the 13
February, 1990 (1 Falgun, 1396 of Bangle Year) and are hereby
published for general information*

Primary Education (Compulsory) Act, 1990

Act No. 27 of 1990

An Act made to provide for the obligation to primary education.

Whereas it is expedient to provide for the obligation to primary education;

Therefore the following Act is hereby made.

1. Short title. This Act may be called (Obligation to) Primary Education Act, 1990.

2. Definitions. Unless there is anything repugnant in the context, in this Act-

- a) "Guardian" means the child's father or, in his absence, the mother or, in the absence of both parents, any person taking care of the child.
- b) "Committee" means Obligation to Primary Education Committee established as under section 4.
- c) "Primary Education" means education for children determined or consented to by the Government.
- d) "Primary Education Institute" means any governmental or non-governmental educational institute where provision for primary education has been made. e) "Child" means any boy or girl between 6 and 10 years.

Obligation to primary education.

- (1) The Government may, by notification in the official Gazette, declare primary education obligatory in whatever area from whenever onwards.
- (2) The guardian of any child dwelling permanently in a area where primary education is obligatory shall, in the absence of justified reasons, get his child admitted for the purpose of receiving primary education in a primary education institute of the said area in the vicinity of his place of residence.
- (3) The "justified reasons" mentioned in subsection (1) shall be understood as the following reasons, namely:
 - a) The impossibility of admitting a child in a primary education institute for illness or any other unavoidable reason.
 - b) The non-availability of a primary education institute within 2 kilometres of the dwelling place of the child.
 - c) The impossibility of admitting a child in a primary education institute even if applied for.
 - d) The decision of a primary education officer that the education a child is receiving at the time being is equivalent to a primary education.
 - e) The decision of a primary education officer that it is not desirable to enter a child in a primary education institute on account of it's being mentally retarded.
- (4) In the areas where primary education shall be obligatory no person shall keep children engaged in such occupations as may prevent them from attending a primary education institute for the purpose of receiving primary education.

Obligatory Primary Education Committee.

- (1) Every area where primary education shall be obligatory shall have a Committee called Obligatory Primary Education Committee for every ward of the union or municipal areas.
- (2) The Committee for any union ward shall be formed by the following members, namely:
 - a) a member of the ward nominated by the Chairman of the Upazila Council, who shall be its Chairman too.
 - b) two patronizers of learning nominated by the Chairman of the Upazila Council after taking the advice of the Chairman of the Union Council.
 - c) two lady patronizers of learning nominated by the Chairman of the Upazila Council after taking the advice of the Chairman of the union Council.
 - d) the headmaster or lady principal of a primary education institute, who shall be it's secretary too.

- (3) The Committee for any municipal area ward shall be formed by the following members, namely:
- a) a ward commissioner nominated by the Mayor of the municipal corporation or the Chairman of the municipal meeting, who shall be its Chairman too.
 - b) two patronizers of learning nominated by the said Mayor or Chairman after taking the advice of the ward commissioner.
 - c) two lady patronizers of learning nominated by the said Mayor or Chairman after taking the advice of the ward commissioner.
 - d) the headmaster or lady principal of the primary education institute, who shall be the secretary too.
- (4) There being more than one primary education institute in a ward, the headmaster or lady principal of any of these shall be member of the Committee and the Chairman of the Upazila respectively the Mayor of the municipal corporation, or the Chairman of the municipal council shall decide who of those shall be secretary of the Committee.

Duties and Responsibilities of the Committee.

- (1) The Committee shall ensure that all children dwelling permanently in its area be entered in and regularly present at the primary education institute, and shall take for this purpose all measures it deems necessary or which are prescribed by the Government.
- (2) The Committee shall prepare a list of all children dwelling permanently in its area, which shall contain the name of the child, the name of the guardian and the age of the child; the names of the children to be entered in a primary education institute or to be exempted therefrom shall be contained in the list separately.
- (3) The list prepared according to subsection (2) shall be rectified every year in the last week of December; the names of those who cease to be children with the beginning of the new year shall be cancelled and the names of those who will be children entered.
- (4) A copy of the list mentioned in subsection (2) and the rectified list mentioned in subsection (3) shall be sent to all primary education institutes situated within two kilometres of the primary education officer and the concerned ward.
- (5) Every year in the last week of January, the headmaster or lady principal of any primary education institute shall send a list containing the names of all children entered in their institute to the concerned Committee and primary education officer.
- (6) The headmaster or lady principal of any primary education institute shall send, in the first week of any month, a list containing the names of all children who had been absent for at

least 7 days during the foregoing month to the concerned Committee and primary education officer.

(7) Where the Committee is satisfied that a child entered in its list has, without justified reasons, not been entered in a primary education institute or been absent for at least 7 days within a month without the approval of the headmaster or lady principal of the education institute, it may after hearing the statement of the guardian or, if necessary, investigating the case, give order that the guardian of the child, in case of the child's not having been admitted, admit the child within the term determined by the Committee in a primary education institute, or that, in case of the child's having been absent, he ensure that the child be present regularly at the education institute concerned.

Punishment.

(1) If any Committee fails to accomplish its duties under this Act, any of its members shall be punished with a fine of not more than 200 Takas.

(2) If any guardian fails three times in a row to comply with an order given under section 5 (7), he shall be punished with a fine of not more than 200 Takas.

Cognizance of an offence.

Without a complaint in written form by the Chairman of the Committee, no Court shall take cognizance of any offence under this Act.

Power to make rules.

The Government may, by notification in the official Gazette, make rules for the purpose of this Act.

Appendix V

Questionnaire for IDIs

Constitutional Responsibility of the Government of Bangladesh for Implementing Primary Education: Issues & Challenges

Your sincere answers help the researcher to explore the true spirit of the Constitution of the People's Republic of Bangladesh as to primary education and to determine the nature of constitutional obligation of the Government of Bangladesh as to implementing primary education in Bangladesh.

Name:

Designation:

Years of Experience:

Address:

Questionnaire for Legal Experts

Question: 1. Which Articles and/or parts of the Constitution of the People's Republic of Bangladesh are relevant with the primary education in Bangladesh?

Question: 2. What is the true spirit of the Constitution of the People's Republic of Bangladesh as to primary education?

Question: 3. What is the nature of constitutional obligation that has been cast in the policy makers/ Governments in Bangladesh as education/primary-education related Articles are placed in the Fundamental Principles of State Policy of the Constitution?

Question: 4. Do you think that existing constitutional provisions are sufficient to produce properly trained and motivated citizens to serve the needs of the society?

Question: 5. Do you think that the Constitution of the People's Republic of Bangladesh should be amended to include the right to education in the Fundamental Rights of the Constitution?

Question: 6. Do you think that the laws enacted, policy adopted, and the measures taken by the Governments for Primary Education are in line with the obligations imposed by the Constitution?

Question: 7. How do you evaluate the Primary Education (Taking Over) Act, 1974 and the Primary Education (Compulsory) Act, 1990 in ensuring Education for All?

Question: 8. What are the challenges that remain for the Governments for implementing constitutionally mandated primary education in Bangladesh?

Questionnaire for Educationists

Question: 1. What should be the responsibilities of the successive Governments to implement compulsory primary education in a country which has achieved its independence through a bloody liberation war?

Question: 2. How far the successive governments are successful in establishing a uniform, mass-oriented, and universal system of compulsory primary education for all children as mandated by Article 17 of the Bangladesh Constitution?

Question: 3. How do you evaluate the reports of the Education Commissions/Committees formed during different Governments in Bangladesh considering the Constitutional Responsibilities on Primary Education?

Question: 4. Do you think that the laws enacted, policy adopted, and the measures taken by the successive Governments are in line with the obligations imposed by the Constitution?

Question: 5. How far were the acts, Primary Education (Taking Over) Act, 1974 and the Primary Education (Compulsory) Act, 1990, supportive regarding the Constitutional Responsibilities of the Government of Bangladesh on primary education?

Question: 6. How do you evaluate the National Education Policy, 2010 regarding Constitutionally mandated primary education in Bangladesh?

Question: 7. Current Government is successful in achieving gender parity in primary education and distributing free textbooks at the beginning of the year. What are the factors that facilitate the government to do this successfully?

Question: 8. In spite of the successes, the Government has lots of challenges. How do you evaluate the measures that successive Governments have taken to meet the challenges?

Question: 9. What are the measures/administrative steps that should be taken by the Government, NGOs and civil society to achieve the targets of the SDGs (Sustainable Development Goals)?

Question: 10. What are the challenges that they (the Government, NGOs and civil society) have to face, to achieve the targets of the SDGs and other international instruments relating to primary education to which Bangladesh is a signatory?

Questionnaire for Policy Administrators

Question: 1. What are the responsibilities of the Government of Bangladesh under the Constitution to implement compulsory primary education?

Question: 2. Do you think that the governments are successful in establishing a uniform, mass-oriented, and universal system of compulsory primary education for all children as mandated by Article 17 of the Bangladesh Constitution? If the answer is no, then, what are the causes?

Question: 3. What are the measures that the governments have so far initiated? What administrative steps are taken? What laws are enacted to fulfill the constitutional obligations of the Government (which represents the State)?

Question: 4. Do you think that the laws enacted, policy adopted, and the measures taken by the successive Governments are in line with the obligations imposed by the Constitution?

Question: 5. How do you evaluate the Primary Education (Taking Over) Act, 1974 and the Primary Education (Compulsory) Act, 1990?

Question: 6. Current Government is successful in achieving gender parity in primary education and distributing free textbooks at the beginning of the year. What are the factors that facilitate the government to do this successfully?

Question: 7. In spite of the successes, the Government has lot of challenges as to drop out, logistics, infrastructure, trained and committed teachers, quality of education etc. What are the measures that the governments have taken to meet the challenges?

Question: 8. What are the measures/administrative steps that the Government has taken to achieve the targets of the SDGs (Sustainable Development Goals)?

Question: 9. What are the challenges that remain for the current Government/future Governments to achieve the targets of the SDGs and other international instruments relating to primary education to which Bangladesh is a signatory?

Question: 10. What are the challenges that remain for the current Government/future Governments for implementing constitutionally mandated primary education in Bangladesh?