Legal Research & Analysis

Innovative

Article

Constitutional Rights and Remedies in Bangladesh from a Comparative Constitutional Law Perspective

Md. Asif - Uz – Zaman* and Rubiyath Chowdhury Afifa

Department of Law, Shanto-Mariam University of Creative Technology, Uttara, Dhaka-1230, Bangladesh; rubiyathchowdhury09@gmail.com

* Correspondence: asifuzzaman.law02bup@gmail.com

Abstract: The Constitution of the People's Republic of Bangladesh is an autochthonous, i.e., home grown, as well as a right-based constitution in nature. It was self-adopted by the people of Bangladesh that signifies its autochthonism. Nonetheless, it should not be assumed that every concept embodied in the Constitution is unprecedented or exclusively devised by the framers of the Constitution of Bangladesh. As a comparatively new country, Bangladesh had less opportunity to bring novel principles in its Constitution. Instead, it was influenced by the concepts and principles of foreign constitutions as well as the customary and international law, through applying comparative constitutional law, in order to frame a comprehensive Constitution that reflects the will of the people. The right-based provisions and the remedial provisions of the Constitution of Bangladesh do not differ from this trend. The civil, political, economic, social and cultural rights of the people are recognized in the Constitution as rights and principles. It also provides constitutional remedies against the infringements; however, the enforcement mechanisms are not the same. Following the qualitative methodology, the present article demonstrates the influence of comparative constitutional law on the formulation and development of constitutional rights and remedies in Bangladesh. It is observed that the models of recognizing the rights of the people and implementing the constitutional remedies are the results of applying comparative constitutional law. Additionally, it explores the continuous effort of the judiciary to expand the scope of constitutional remedies with the assistance of comparative constitutional law. This article concludes through acknowledging the significance of comparative constitutional law on the gradual development, including the future scope, of the constitutional rights and remedies in Bangladesh.

Keywords: Bangladesh; comparative constitutional law; constitutional remedies; constitutional transplantation; human rights; judicial interpretation

Citation: Md. Asif – Uz – Zaman, Rubiyath Chowdhury Afifa. 2026. Constitutional Rights and Remedies in Bangladesh from a Comparative Constitutional Law Perspective. *Legal Research & Analysis* 4(2), 12-18. https://doi.org/10.69971/lra.4.2.2026.182

1. Introduction

Comparative constitutional law refers the study of the differences and similarities of the constitutional law in various legal systems from various countries. It entails researching a variety of legal structures from around the world in order to find the best solution to common global issues (Sarker 2023). This concept was rooted in Aristotle's book, 'Politics' (Sarker 2023). The conduct of monarchs during the 17th and 18th centuries was substantially influenced by comparative constitutional studies. The discipline was compelled to become more methodical and distinct from broader political philosophy as a result of the emergence of written constitutions in the late 18th century (Bose 2025). As a result, a thorough investigation and discussion regarding the precision of a variety of models were conducted and a variety of models were developed, such as the 1812 Spanish Constitution of Cadiz, which had an impact on the early constitutions of Latin America. These early constitutions included the 1821 Constitution of Gran Colombia, the 1830 and 1832 Constitutions of Venezuela, the Constitutions of New Granada, the 1823 and 1828 Constitutions of Peru, the Uruguayan Constitution of 1830, and the Argentine Constitution of 1826. The written constitution was an innovative technology that was adopted by a variety of states, primarily in Latin America and Western Europe, during the nineteenth century (Ginsburg 2012). This necessitated realistic comparisons of the superior institutions. In the early twentieth century, constitutional studies were a substantial element of the core curriculum, and comparative analysis was a fundamental component of the methodology. Two significant events occurred in the late twentieth century: the establishment of a conducive climate for the proliferation of comparative constitutional studies and academic advancement (Choudhury and Kabra 2017). In the late twentieth century, scholars encountered difficulty in disregarding constitutions due to substantial changes in the actual world. It

has become apparent that certain concerns addressed by constitutional courts are reoccurring across multiple nations as these courts have emerged as pivotal institutions for significant social and political adjudication. Appropriately, these courts initiated an investigation into the manner in which analogous challenges were resolved in other countries, particularly in established democracies with sophisticated jurisprudence on the subject (Dixon and Ginsburg 2011).

Through the study of comparative constitutional law, the legal bodies can borrow, transplant, or refer any idea from the constitutional framework of another country to solve a common legal issue. It is frequently used by the legislatures and the judiciary of different countries in the modern world for making and interpreting their own constitution. Bangladesh does not differ from this trend. It is relatively a new nation, born from exercising its right to self-determination and declared its independence on 26th March 1971. It is the 136th member of the United Nations out of the 193 States. The 'Proclamation of Independence, 1971' is the first constitutional document of Bangladesh that was adopted on 10th April 1971 and enforced retrospectively from 26th March 1971 (Haque 2023). The present Constitution of Bangladesh, formally named 'The Constitution of the People's Republic of Bangladesh, 1972', was adopted on 4th November 1972[1] and has been enforced from 16th December 1972.[2] This Constitution is an autochthonous constitution. It is a self-adopted constitution that has not been provided by any foreign nation. The Preamble of the Constitution of the People's Republic of Bangladesh, 1972 starts with the words, *"We, the people of Bangladesh…"* and ends with the words, *"…do hereby adopt, enact and give to ourselves this Constitution."* which clearly shows the autochthonous character of this Constitution. It is autochthonous from the view that its contents and principles were not imposed forcefully by any foreign nation or foreign authority on the time of its adoption and these were solely taken by the people of Bangladesh for their own through the Constituent Assembly. However, the autochthonism of the Constitution of Bangladesh does not mean that every word or principle of this Constitution is new in this world and created by the constitution-makers of Bangladesh. In this case, there is a great impact of comparative constitutional law on the adoption and development of the constitutional law in Bangladesh.

The framework of constitutional law in Bangladesh regarding the constitutional rights and remedies is majorly based on the Constitution itself, the relevant constitutional instruments and the judicial decisions. The Constitution of Bangladesh, though autochthonous, could not be considered as a totally new and unprecedented document while talking about the concepts and principles on providing rights and constitutional remedies that have been adopted by it (The Lawyers and Jurists 2025). These doctrines have been derived from different established constitutions in the world, judicial decisions of foreign and international courts, international laws and the customary laws from different legal systems. As a comparatively newer constitution, it was not practical to adopt all new concepts regarding rights and remedies in the Constitution of Bangladesh. Due to the prior acknowledgement of most of the significant issues inside distinct constitutional law frameworks, generating novel concepts proved exceedingly challenging as well as illogical in some cases (Fasone and Spigno 2025). Consequently, instead of endeavoring to incorporate novel concepts, the Constituent Assembly used a hybrid methodology to adopt the provisions on rights and remedies (Haque 2022). In this regard, the influence of comparative constitutional law holds a significant impact to shape the constitutional rights model and to gradually develop the remedial measures. It is true that a lot of issues regarding the constitutional remedy are not addressed in the constitutional texts, rather these issues have been addressed and resolved in various judicial decisions through the influence of comparative constitutional law (Sarker 2023). The present article examines how comparative constitutional law has influenced the constitution-makers as well as the judiciary of Bangladesh to adopt, interpret and develop the constitutional rights and remedies under the Constitution of Bangladesh.

2. Methods

This article analyzes the research topic through qualitative approach. The Constitution of Bangladesh and some other countries have been analyzed as primary data source. Besides the Constitutions, this article gives a particular focus on the significant case-precedents through which the comparative constitutional law has been applied to interpret the constitutional texts and to widen the scope of constitutional remedies in Bangladesh. To analyze the concepts, the present article considers secondary data as well, including books, journal articles, newspaper reports and internet sources.

3. Discussion and Analysis

3.1 Constitutional incorporation of the Rights of People

The Constitution of Bangladesh is a right-based constitution. The provisions regarding human rights have been mentioned in its Preamble, Part-II and Part-III. Those provisions have been influenced by the International Bill of Human Rights, which has three components- the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil & Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social & Cultural Rights (ICESCR) 1966.

The idea of UDHR has been incorporated in the third paragraph of the Preamble by overall mentioning, "*…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.*" Part-II of the Constitution of Bangladesh, named 'Fundamental Principles of State Policy', has ensured under article 8(1) the economic, social and cultural rights, such as- right to food, education, health etc. contained by this part as the fundamental principles. The provisions of this part are considered as 'principles' and can be applied for making laws and as a guide to the interpretation of the Constitution and other laws, nevertheless, it cannot be enforced judicially according to article 8(2). This part has been influenced by the ICESCR. Part-III of the Constitution of Bangladesh, named 'Fundamental Rights', has ensured the civil and political rights of people, such as- right to life, equal protection of law, free-speech, free-movement etc. Those rights have been

---

1 Constitution of People's Republic of Bangladesh 1972, Preamble, para. 5.

2 Ibid, art. 153 (1).

protected by judicial enforcement. According to article 44 of the Constitution, any infringement of these rights enables the aggrieved person to file a petition and to seek remedy under article 102(1). This part has been influenced by the ICCPR.

In addition to the international law, the Constitution of the United States, as one of the earliest Constitutions in the world, has an influencing value of making the future Constitutions of the modern States, including the Constitution of Bangladesh, although the influence is implied. Initially, the US Constitution had no provision regarding human rights, because of the fear of the constitution-makers that it would remove the rights of the people of America, which was existing as the 'natural human rights' of them (Law and Versteeg 2012). In that period, it was justified to fear about this, cause the human rights was then influenced by the international community which could be differ from the US perspective and could hamper their sovereignty. But this thing had been amended in US Constitution. On 1791, the first ten amendments of the US Constitution were ratified altogether. These ten amendments contain the provisions relating to the human rights and are known as the 'Bill of Rights'. It has ratified the civil and political Rights but has not mentioned about any of the ESC rights. According to the nineth amendment of the US Constitution, all unenumerated rights are continue to be existed, that protects the existing rights (Bill of Right Institute n.d.). It is a great provision of US Constitution which ensured the natural rights of the American people.

Article 45 of the Irish Constitution declares the principles, which mostly contain the socio-economic rights, as 'general guidance' for the legislature and for making laws, however, without judicial enforceability (Haque 2012). The Irish Constitution upholds the civil and political rights as judicially enforceable. This type of model exempts the government from financial accountability to enforce the economic rights for the people. This model has influenced the Bangladeshi model of incorporating socio-economic rights in its Constitution. The Constitution of India also follows the Irish model to protect the human rights in this regard. It has similarity with the International Bill of Human Rights regarding its right-based approach (Chakravarty 2022). It has included the civil and political rights in its Part-III, named 'Fundamental Rights' and the socio-economic rights in its Part-IV, named 'Directive Principle of State Policy', with and without judicial enforcement respectively.

The American, the Irish and the Indian Constitutions are the instruments which had been made before making of the ICCPR and ICESCR of 1966. The domestic laws of the civilized nation can be a source of international law according to the Constitution of International Court of Justice (ICJ). Therefore, the Constitutions of America, Ireland and India can naturally be considered as some of the sources of these international instruments as well.

The Constitution of the Republic of South Africa should also be counted in this discussion as the socio-economic rights have perfectly been implemented in this Constitution. It implements the civil-political as well as socio-economic rights with judicial enforceability.3 The Constitutional Court of South Africa has shown the enforcement of the ESC rights by the judiciary from several perspectives. In answering the question of when to judicially enforce the socio-economic rights, the Constitutional Court has created good examples in its decisions (Chakravarty 2022). The court considered the enforceability of socio-economic rights for creating accountability of the government; yet, it does not guarantee to enforce such rights in every situation. The remedy might be unavailable on the ground of reasonableness.[4] However, the Constitutional Court directs the State to uphold the right in cases where it is reasonable and necessary.[5]

3.2 Comparative Constitutional Remedies

The constitutional remedies can be achieved under the Constitution of Bangladesh in two ways broadly. Firstly, it can be achieved under article 102(1) against any infringement of the fundamental rights provided in Part-III of the Constitution. Any person aggrieved has the right to move to the High Court Division of Bangladesh Supreme Court in accordance with clause 1 of article 102 with an application to enforce the fundamental rights. This right to move to the High Court Division itself a fundamental right, guaranteed under article 44. The High Court Division, under clause 1 of article 102, may give any direction or order to any person or authority, either private individual or public authority, as may be appropriate to enforce the fundamental rights conferred by Part-III of the Constitution. The other way to get constitutional remedy is under clause 2 of article 102. The procedure under this clause can only be exercised against the State or government or public authority or any person functioning in connection with the affairs of the Republic or of a local authority. Additionally, this clause applies only to the situation where no other equally efficacious remedy is available for the applicant.

This model of constitutional remedy was influenced from the writ jurisdiction of the common law legal system. The British legal system allows the court to exercise five kinds of writ jurisdiction, namely, the writs of mandamus (we command), prohibition (to forbid), certiorari (to be certified), habeas corpus (to have the body) and quo warranto (by what authority) (Howlader 2006). The Union of India and the Islamic Republic of Pakistan also incorporate these five kinds of writ jurisdiction in their Constitutions by directly mentioning the Latin terms of the writs. In Bangladesh, the High Court Division has the power to provide five kinds of directions or orders under the clause 2 of article 102. On the application of any aggrieved person, the High Court Division, under article 102(2)(a), may direct any person functioning in connection with the affairs of the Republic or of a local authority to perform any lawful duty, or to refrain him from doing which is not permitted by law, or may declare any act done or proceeding taken by him has been done or taken without lawful authority. These powers of the High Court Division have similarity with the writ jurisdictions of mandamus, prohibition and certiorari, respectively. Article 102(2)(b) empowers the High Court Division, on the application of any person, whether aggrieved or not, to direct to bring a person in custody before it and to require a person showing the authority of holding a public office. These powers have similarity with the writ jurisdictions of habeas corpus and quo warranto, respectively (Haque 2022).

---

3 Constitution of South Africa 1996, Ss. 26, 27 and 29.

4 CCT 32/1997 ZACC 17.

5 5 SA 721 (CC).

3.3 Judicial Application of Comparative Constitutional Law regarding Constitutional Remedies

3.3.1 Establishing Public Interest Litigation (PIL)

Comparative constitutional law influenced to establish 'Public Interest Litigation' (PIL) in Bangladesh by the Supreme Court decisions. Although it was not a *de-novo* constitutional transplantation, rather a doctrinal evolution (Zaman 2025). For this, the idea of liberalizing *locus standi* and having 'sufficient interest' of a person, to be an 'aggrieved person' for bringing a litigation, was inspired from the four cases[6] of Mr. Raymond Blackburn in England, although the concept of public interest litigation was developed in United States initially. To bring a case there can be two types of interest of the aggrieved person, one is direct interest, i.e., directly aggrieved person, another is the person who is not directly aggrieved but somehow having relation to the subject-matter. The first one has 'interest' on the subject-matter and the second one has 'sufficient interest' on the subject-matter. *Kazi Mukhlesur Rahman vs. Bangladesh and Another (1974)*[7] is the first case where the idea of sufficient interest was introduced in Bangladesh. Later, in *Dr. Mohiuddin Farooque vs. Bangladesh & Others (1997)*[8], popularly known as FAP-20 case, the idea has got an effective shape and since then, it has been continuing to be applied in Bangladesh. The Supreme Court interpreted the word 'aggrieved' with the application of comparative constitutional law and bring the idea of 'sufficient interest' to liberalizing the concept of *locus standi* under Article 102(1) and Article 102(2)(a) of the Constitution of Bangladesh (Zaman 2025).

3.3.2 Judicial Scrutinization of Executive Satisfaction

In the case of *Aruna Sen vs. Government of Bangladesh (1975)*[9], the Supreme Court of Bangladesh interpreted the idea of judicial scrutinization executive satisfaction regarding the provision of 'Preventive Detention' provided in article 33(4) of the Constitution of Bangladesh. Aruna Sen's son Chanchal got preventive detention by the executive body. Aruna Sen then filed this writ petition by claiming that it was an unjustified detention on false ground. According to the above-mentioned article, the preventive detention is subject to the executive satisfaction and the satisfaction of the Advisory Board, and the judiciary has no authority to exercise its own satisfaction, therefore the interference of court in this regard was questioned by the opposite party, i.e., the detaining authority. The Supreme Court of Bangladesh stated that the court cannot go beyond the text of the constitution, therefore it was not here to exercise its own satisfaction, rather it was here to examine that whether there had been an actual executive satisfaction or not. The court declared by examining the reports and evidence that there was no executive satisfaction present in the case. This decision was an autochthonous constitutional transplantation of British legal system (Tonmoy 2025), because the British constitutional law upholds the idea, *"Every detention without trial is prima facie illegal,"* stated by Justice Atkin.[10]

3.3.3 Application of Judicial Review

The idea of judicial review was first established in the American case named *Marbury vs. Madison (1803)* by CJ Marshall, though this concept was first born in the British case named *Dr. Bonham's Case (1610)* by Judge Edward. In the *Marbury vs. Madison* case, the court *suo moto* declared a legislative act as void. It was not for what the Mandamus writ petition was sued, but the US Supreme Court did it on its own notion by exercising the power of judicial review. This idea was transplanted in Bangladesh at first in the case of *Anwar Hossain Chowdhury vs. Bangladesh (1989)*[11] where the Supreme Court of Bangladesh declared the provision of making six branches of High Court Division as void. The case of *Mohammad Tayeeb & Another vs. Bangladesh & Others*[12] is another example of exercising *suo moto* power of the court by judicial review which interpreted the word 'application' in article 102 of the Constitution of Bangladesh in a wide sense, so that a newspaper report can also be a form of 'application'. This case is an example of the judicial transplantation of constitutional interpretation.

3.3.4 Establishing Public Law Compensation

Bilkis Akter Hossain vs. Bangladesh (1997)[13] is the case where the concept of 'Public Law Compensation' was first transplanted in the Bangladeshi legal system from the Indian cases of *Rudul Sah vs. State of Bihar (1983)*[14] and *Nilabati Behara vs. State of Orissa (1993)*[15]. Nonetheless, it was not the inaugural victorious case, as the compensation granted to Bilkis Akter Hossain by the High Court Division was not ratified by the Appellate Division. The next step was taken in the *ZI Khan Panna vs. Bangladesh and Ors (2015)*[16] case where the Supreme Court of Bangladesh ratified the public law compensation but did not award the petitioner because it cannot be given in a wholesome basis. The public law compensation was finally given in the case of *CCB Foundation vs. Government of Bangladesh and others (2017)*[17], which is mostly known as the *Zihad Case*. It is first case in Bangladesh where the public law compensation has been awarded to the petitioner and established it as a precedent (Zaman 2025). The judiciary was influenced by Indian case decisions while transplanting the idea of public law compensation.

---

6 R. vs. Commissioner of Police (1968) 2 QB 118, Blackburn vs. Attorney General (1971) 1 WLR 1037, R. vs. Police Commissioner (1973) QB 241 and R. vs. GLC (1976) 1 WLR 550.

7 26 DLR (AD) 44.

8 17 BLD (AD) 1.

9 27 DLR (HCD) 122.

10 Liversidge vs. Anderson (1942) AC 206.

11 18 CLC (AD).

12 Writ Petition No. 5897 of 2000 and 67 DLR (AD) (2015) 57.

13 2 MLR 113.

14 4 SCC 141.

15 AIR 1993.

16 37 BLD 271.

17 5 CLR (HCD) 278.

3.3.5 Establishing Horizontal Application of the Constitutional Law

Horizontal application of constitutional law means getting constitutional protection against the private individuals other than the State or the government. The Constitution of Bangladesh offers the horizontal application of constitutional law under article 102(1) in any case where a private individual violates anyone's fundamental rights provided under Part III of the Constitution. Writ of Certiorari under article 102(2) was classically considered to be applied against the State or government only, which is called vertical application of the constitutional law. However, in the case, titled *Moulana Md. Abdul Hakim vs. Bangladesh and others (2014)*[18], the court established that the horizontal application of constitutional law is possible under article 102(2)(a)(ii) of the Constitution of Bangladesh to liable a private individual who is in connection with the public affairs. The court in this case referred a test named 'Datafin Test', which was established in a constitutional law case of United Kingdom, named *R (Datafin plc) vs. Panel on Take-overs and Mergers (1987)*[19] (popularly known as *Datafin case*). The *Datafin case* has introduced the two versions of constitutional writs in England. One is the classical version, i.e., writ against the government, and the other is the modern version, i.e., writ against any private individual in connection with the public affairs. Later, in *UTI Pership (Pvt.) Ltd. vs. Bangladesh and Others (2015)*[20], the court supported the decision of *Abdul Hakim case (2014)* with its standing that the writ jurisdiction can be applied against the decision of any private body connected with public functions (Ahmed 2016).

3.3.6 Connecting the 'Fundamental Principles' with the 'Fundamental Rights'

As discussed earlier, the socio-economic rights, such as the right to food, shelter, health, livelihood, etc., have been recognized in the Constitution of Bangladesh as 'fundamental principles', which are not judicially enforceable. According to article 8(2) of the Constitution, an aggrieved person cannot move to the court for enforcing the rights under these principles. However, in *Ain o Salish Kendra (ASK) vs. Government of Bangladesh & Ors. (1999)*[21] the Supreme Court of Bangladesh has created a precedent to address the socio-economic rights by connecting right to livelihood under article 15 and 20 with right to life, right to equality and right to equal protection of law under article 32, 27 and 31 respectively. In August 1999, a significant number of slum dwellers of Dhaka were wholesale evicted by the government authority without ensuring their rehabilitation and without any prior notice. The non-government organization Ain o Shalish Kendra (ASK) along with some aggrieved slum dwellers filed a writ petition to seek remedy against such eviction, which hampers the slum dwellers' right to livelihood. It was argued from the government side that the lands used to reside by the slum dwellers were property of the government and this type of informal residence endangered the daily life of city dwellers by becoming a hub of crime, drugs, trafficking, etc. Additionally, the judicial interference to enforce the right to livelihood, i.e., a fundamental principle, is barred by the Constitution, which was a question before the court to deal with this case. This type of situation has been precedented in the Indian case of *Olga Talis vs. Bombay Municipal Corporation (1985)*[22], where the Indian Supreme Court declared that the right to life of the slum dwellers of Bombay included their right to livelihood. India included right to life in Part-III of its Constitution as a judicially enforceable fundamental right. The right to livelihood is necessary for protecting the right to life, nevertheless the right to livelihood is not judicially enforceable in both India and Bangladesh. The Supreme Court of Bangladesh was influenced by the view of *Olga Talis case (1985)* and declared the right to life of the slum dwellers of Dhaka included right to livelihood. As a result, the enforcement of socio-economic right, i.e., right to livelihood, for the protection of the fundamental right, i.e., right to life, right to equality and right to equal protection of law, was precedented in the *ASK case (1999)* in Bangladesh as a result of applying comparative constitutional law in judicial interpretation. Subsequently, this kind of interpretation of connecting the fundamental principles with the fundamental rights to enhance constitutional remedy to protect the socio-economic rights was applied by the Supreme Court of Bangladesh in the cases of *Professor Nurul Islam vs. Bangladesh (2000)*[23] and *Adv. Zulhas Uddin Ahmed and Manjil Morshed vs. Bangladesh (2010)*[24] as well.

4. Observations

Throughout the present study, it has been observed that the influence of comparative constitutional law has made significant impact on shaping the constitutional rights model and developing the constitutional law of Bangladesh. The idea of segregating principles from rights and making the principles judicially unenforceable in Bangladesh Constitution was influenced from the Constitution of Ireland of 1937 (Haque 2012). However, the enforcement mechanism of South Africa can be a learning for Bangladesh that the enforcement of the socio-economic rights does not threaten the economy of a State, rather it allows the people to question and to check the accountability of the State. Additionally, it should be noted that the term 'Human Rights' is not defined anywhere in the Constitution of Bangladesh. The term is mentioned in the third paragraph of the Preamble and in article 11 of the Constitution, however these do not express the definition (Mofazzal and Shakil Ahmed n.d.). Article 152, the interpretation clause of the Constitution, as well as the General Clauses Act, 1897 are silent regarding this term. As discussed earlier, the economic, social and cultural rights have been differed from the civil and political rights in the Constitution of Bangladesh by making these as 'fundamental principles' and 'fundamental rights' respectively, although both categories are basically human rights. According to the international law, every human right is equal and there is no significance of differing these rights from each other. In *HM Ershad vs. Bangladesh (2001)*[25], Justice Bimalendu Bikash Roy Chowdhury opined that if there is no conflict between the provisions of the Constitution

---

18 34 BLD (HCD) 129.

19 QB 815.

20 Writ Petition No. 3519 of 2013.

21 19 BLD 488.

22 3 SCC 454.

23 52 DLR 413.

24 15 MLR (HCD).

25 21 BLD (AD) 69.

and international law, then international law shall be applicable to interpret the Constitution. As there is no definition of 'Human Rights' in the Constitution, a harmonious interpretation of the definition provided by the international law holds a persuasive value and should be applied in this regard.

The comparative constitutional law has also influenced the remedial mechanisms under the Constitution of Bangladesh. The influence of exercising writ jurisdiction is derived the British constitutional law. However, it should be noted that the Constitution of Bangladesh neither mentions the word writ in article 44 nor in article 102. The High Court Division, under the clause 1 of article 102, can make any direction or order to 'any person' as may be 'appropriate' against the infringement of the fundamental rights. This clause empowers the High Court Division as like a blank cheque to exercise a wide range of jurisdiction to provide any type of remedy against any private or public person or authority to protect the fundamental rights, which is not limited to the exact five types of writ jurisdiction provided in the common law legal system. Clause 2 of article 102 provides the description of five kinds of remedial jurisdiction of the High Court Division, without mentioning the Latin terms of the writs from British common law legal system as like the Constitutions of India and Pakistan. Therefore, the application of comparative constitutional law in the Bangladeshi model of writ jurisdiction does not limit the jurisdiction of High Court Division only within the meaning of the five types of writs, rather the scope of applying remedial procedure under article 102 is broader than the conventional common law legal system (Haque 2022).

The judiciary plays an important role on applying comparative constitutional law to develop a country's constitution through the case laws. It has been observed from the instant study that the judicial interpretations, based on the application of comparative constitutional law, have transplanted several constitutional principles to the constitutional law of Bangladesh. Footprinted in *Kazi Mukhlesur Rahman case (1972)* and developed in *FAP-20 case by Dr. Mohiuddin Ahmed (1997)*, the concept of 'sufficient interest' has been established in Bangladesh that allows an aggrieved person, who is not directly but sufficiently interested, to file a public interest litigation seeking constitutional remedy. The application of comparative constitutional law by the judiciary has turned this light on, which is now an established principle of the constitutional law of Bangladesh. The closed door of interference by the judiciary in the matter of preventive detention has been opened through the *Aruna Sen case (1975).* This case shows the application of comparative constitutional law to find out the way for the judiciary to question the existence of executive satisfaction for such detention. After such kind of judicial interpretation, the judiciary is now able to scrutinize the executive action of detaining a person and the executive is accountable to prove its reasonable satisfaction on the matter of the detention. Judicial review is another concept which has been developed in Bangladesh through the influence of comparative constitutional law by transplanting this idea from the decision of US court. Remedy of constitutional tort through public law compensation is another consequence of the application of comparative constitutional law that has got its full effect in the *CCB Foundation case (Zihad case) (2017)*. The horizontal application of constitutional law established in the *Abdul Hakim case (2014),* influenced from the British *Datafin case (1987),* has enhanced constitutional protection for an aggrieved person to get constitutional remedy from the State and from the private bodies or individuals having connection with the State. Additionally, connecting the fundamental principles of the Constitution of Bangladesh with the fundamental rights in the *Ain o Shalish Kendra case (1999)* opened the indirect way to provide constitutional remedy against the infringements of the socio-economic rights in Bangladesh. It is also a result of the application of comparative constitutional law through the judiciary in Bangladesh.

These constitutional transplantations enhance the applicability and enforceability of the constitutional law in Bangladesh. As a result, it is clear from the present study that the role of comparative constitutional law is indisputable and undeniable on the development of constitutional rights and remedies in Bangladesh.

5. Conclusions

Being a comparatively new country, it is natural that Bangladesh had less opportunity to adopt constitutional principles that can be solely called of its own. Many features of the constitutional law of Bangladesh relating to the rights of the people and constitutional remedies are either influenced by the comparative constitutional law or borrowed from them. Additionally, the comparative constitutional law has been constantly assisting the judiciary of Bangladesh since its enforcement to interpret the constitutional texts. Through the study of comparative constitutional law, the judiciary has been continuously making judicial interpretation and constitutional borrowing. Transplantation of different doctrines and principles have also been being happened through this study as well. Therefore, it is not an exaggeration to state that the application of comparative constitutional law is intimately involved with the past, present and future development of the constitutional law relating to the rights of the people and relating to the constitutional remedies in Bangladesh.

References

Ahmed, Mr. Justice Dr. Syed Refaat. 2016. The case of Moulana Abdul Hakim and judicial review: A move towards the right direction? *University of Asia Pacific Journal of Law & Policy* 2: 1–12. https://jlp.uap-bd.edu/publication/47

Bill of Rights Institute. n.d. Bill of Rights: First 10 Amendments. https://billofrightsinstitute.org/primary-sources/bill-of-rights/

Bose, S K. 2025. Introduction. In *Comparative Constitutional Law: Contemporary Insights,* edited by S K Bose. Haryana: Mind Your Law.

Chakravarty, Snehadri. 2022. Enforcement of Social and Economic Rights: South Asian Judicial Discourses. PhD Thesis, University of Dhaka. http://reposit.library.du.ac.bd:8080/xmlui/bitstream/handle/123456789/2556/Final%20Thesis%202022%20%28Print%29.pdf?sequence=1&isAllowed=y s

Choudhuri, Aratrika and Kabra, Shivani. 2017. Determining the Constitutionality of Constitutional Amendments in India, Pakistan and Bangladesh: A Comparative Analysis. *NUJS Law Review* 10: 669–791 . http://docs.manupatra.in/newsline/articles/Upload/78CC3177-35AE-4942-AE09-30C075224387.pdf

Fasone, Cristina and Spigno, Irene. 2025. Comparative Law and Global Governance. In *Research Handbook on Global Governance,* edited by Aoife O'Donoghue, Ruth Houghton, and Cher Weixia Chen. Cheltenham: Edward Elgar Publishing. https://doi.org/10.4337/9781789906332.00019

Ginsburg, Tom, and Rosalind Dixon. 2011. Comparative Constitutional Law: Introduction. University of Chicago Public Law & Legal Theory Working Paper No. 362. https://chicagounbound.uchicago.edu/public_law_and_legal_theory/67/

Ginsburg, Tom. 2012. Introduction. In *Comparative Constitutional Design,* edited by Tom Ginsburg. Cambridge: Cambridge University Press. https://doi.org/10.1017/cbo9781139105712.001

Haque, Dr. Muhammad Ekramul. 2011. The Bangladesh Constitutional Framework and Human Rights. *Dhaka University Law Journal* 22: 55–78. https://ssrn.com/abstract=4036033

Haque, Dr. Muhammad Ekramul. 2012. In Search of Origin of Recognition of Economic and Social Rights as Constitutional Principles: From Ireland to Bangladesh. *Dhaka University Law Journal* 23 : 79–84. https://ssrn.com/abstract=4029182

Haque, Dr. Muhammad Ekramul. 2022. Constitutional borrowing and transplants. *The Daily Star.* https://www.thedailystar.net/supplements/50-years-our-constitution-original-ideals-vs-reality/news/constitutional-borrowing-and-transplants-3160266

Haque, Dr. Muhammad Ekramul. 2022. Law Interview on the Proclamation of Independence 1971. *The Daily Star.* https://www.thedailystar.net/law-our-rights/news/the-proclamation-independence-1971-3306236

Howlader, Md. Abdur Rob. 2006. Writ Jurisdiction of the Supreme Court of Bangladesh. *Bangladesh Journal of Law* 10: 21–52. https://www.biliabd.org/wp-content/uploads/2021/08/Abdur-Rob-Howlader.pdf

Kanti Karmakar, Kanak. 2024. Influence of Constitutional Borrowing in the development of the Constitution of the People's Republic of Bangladesh. *SSRN*. http://dx.doi.org/10.2139/ssrn.4823870

Law, David S. and Versteeg, Mila. 2012. The declining influence of the United States constitution. *New York University Law Review* 87: 712–858. https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-87-3-Law-Versteeg_0.pdf

Nussbaum, Martha C. 2002. Introduction to Comparative Constitutionalism. *Chicago Journal of International Law* 3: 429–434. https://chicagounbound.uchicago.edu/cjil/vol3/iss2/12/

Roni, Md. Rakibul Hasan. 2025. Application of Comparative Constitutional Law in the Constitutional Law of Bangladesh: Special Focus on Judicial Transplant. *CIU Journal* 7. https://doi.org/10.64870/yqce5y02

Sarker, Md. Nazmul Hasan. 2023. Influence of Comparative Constitutional Law on the Development of Constitutional Law in Bangladesh. *EBAUB Journal of Law* 3: 43–51. https://ebaub.ac.bd/journal/ejl/files/vol3/lawjc3_4.pdf

The Lawyers & Jurists. 2019. Fundamental Rights of Bangladesh Constitution. https://www.lawyersnjurists.com/article/fundamental-rights-in-the-constitution-of-bangladesh/

Tonmoy, Istiak Kamal. 2025. From Big 'C' to Small 'c': How Comparative Constitutional Law Transformed Preventive Detention in Bangladesh. *International Journal of Law Management & Humanities* 8: 1596–1600. https://ijlmh.com/paper/from-big-c-to-small-c-how-comparative-constitutional-law-transformed-preventive-detention-in-bangladesh/

Tushner, Mark. 2002. State Action, Social Welfare Rights and the Judicial Role: Some Comparative Observations. *Chicago Journal of International Law* : 435–453. https://chicagounbound.uchicago.edu/cjil/vol3/iss2/13/

Tushnet, Mark. 2019. Comparative Constitutional Law. In *The Oxford Handbook of Comparative Law*, 2nd ed., edited by Mathias Reimann and Reinhard Zimmermann. Oxford: Oxford University Press. https://doi.org/10.1093/oxfordhb/9780198810230.013.39

Zaman, Md. Asif Uz. 2025. Liberalizing 'Locus standi' in the Mohiuddin Farooque Case: Whether a De-Novo Constitutional Transplantation or a Doctrinal Evolution. *Legal Research & Analysis* 3: 1–5. https://doi.org/10.69971/lra.3.2.2025.86

Zaman, Md. Asif Uz. 2025. Victims' Right to Public Law Compensation. *The Daily Star.* https://www.thedailystar.net/law-our-rights/news/victims-right-public-law-compensation-3956416