

DISSERTATION
ON
CONSTITUTIONAL SAFEGUARDS ON THE PROTECTION OF THE RIGHTS OF
MINORITY IN BANGLADESH: A CRITICAL ANALYSIS

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CONSTITUTIONAL SAFEGUARDS ON PROTECTION OF MINORITY IN BANGLADESH:
A CRITICAL ANALYSIS

Submitted To

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This research work is conducted for the fulfillment of the course requirements of LAW 412 to accomplish the Legal Research Methodology and Effective Writing under Department of Law, Daffodil International University.

Date: 22 December, 2019

Professor Dr. Farhana Helal Mehtab

Associate Dean

Faculty of Humanities and Social Science

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Subject: Submission of a dissertation paper on Constitutional Safeguards on the Protection of the Rights of Minority in Bangladesh: A Critical Analysis

Dear Sir,

After my utmost endeavor I have been able to make a research on “Constitutional Safeguards on the Protection of the Rights of Minority in Bangladesh: A Critical Analysis”. Thereby it’s a great pleasure for me to submit this research paper on the above stated topic. During concluding this research I have made all attempts to make this research useful and up-to-date by gathering all the relevant information in this paper so that it can fulfill one’s thirst for knowledge and your expectation.

Therefore, I shall remain grateful to you if you go through this research paper for your evaluation and I would be happy if any valuable suggestion is made from your part in this matter.

I am always available for any clarification of any part of this paper at your convenience.

Thanking you for your kind supervision.

Sincerely yours,

Name: Amrin Akter

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Constitutional Safeguards on the Protection of the Rights of Minority in Bangladesh: A Critical Analysis

Certificate of Supervisor

This is to certify that the work entitled “Constitutional Safeguards on the Protection of the Rights of Minority in Bangladesh: A Critical Analysis” is an original work by Amrin Akter, ID: 191-38-297 (LL.M-F), Department of Law, Daffodil International University (DIU), completed under my supervision and submitted in the partial fulfillment of the requirement for the award of Masters of Law degree (L.L.M-F) from the Daffodil International University (DIU).

I wish him success



Professor Dr. Farhana Helal Mehtab
Associate Dean
Faculty of Humanities and Social Science
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Constitutional Safeguards on the Protection of the Rights of Minority in Bangladesh: A Critical Analysis

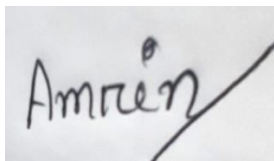
Student's Declaration

I do hereby solemnly declare that the work presented in this Thesis Paper has been carried out by me and has not been previously submitted to any other University/ College/ Organization for an academic certificate/degree. I, Amrin Akter, ID No: 191-38-297 (LLM-F) Declare that the thesis paper on "Constitutional Safeguards on the Protection of the Rights of Minority in Bangladesh: A Critical Analysis."

Submitted in partial fulfillment of requirement for the award of Masters of Law at Daffodil International University (DIU) was prepared by me. The work, I have presented does not breach any existing copyright and no portion of this report is copied from any work done earlier for a degree or otherwise.

I further undertake to indemnify the damage arising from breach of the foregoing obligations.

Sincerely,

A handwritten signature in black ink that reads "Amrin" with a diagonal slash through the end of the word.

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Constitutional Safeguards on the Protection of the Rights of Minority in Bangladesh: A Critical Analysis

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At the very beginning, I would like to express my deepest gratitude to the Almighty Allah for giving me the strength and the ability to finish the task within the scheduled time.

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Abbreviation

CHT	Chittagong Hill Tracts
CSCE	Conference on Security and Co-operation in Europe
ECRML	European Charter for Regional or Minority Languages
FCNM	Framework Convention for the Protection of National Minorities
ICCPR	International Covenant on Civil and Political Rights
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
PCJSS	Parbatya Chattagram Jana-Samhati Samiti
SB	Shanti Bahini
UNESCO	United Nations Educational, Scientific and Cultural Organization
USCIRF	United States Commission on International Religious Freedom
UPDF	United Peoples' Democratic Front

Abstract:

The major problem faced by every developing nation is that the large number of human sector falls under the poverty line. They are deprived of adequate access in the basic needs of life such as health, education, housing, food, security, employment, justice and equity which also include issues related to sustainable livelihood, social and political participation of the vulnerable groups exists as the major problem in the developing nations. The Constitution of Bangladesh guaranteed to all the people of Bangladesh the civil, political, economic, social, and cultural rights for their realization by all sections of the polity without any kind of discrimination. However, due to poverty, customary and cultural practices prevailing in the country there have not much opportunity offered to various groups and which lead to deprive them of being treated equally as the other sections of the society. There are various disadvantaged groups of people such as women, children, Scheduled Castes, Scheduled Tribes, Linguistic Minorities, Religious Minorities, Sexual Minorities etc. In order to expand their rights, the Constitution of Bangladesh has provided a number of concessions to protect them from exploitation by other groups. The scale of violence went up with the supporters of war criminals further exacerbating the overall situation.

Keywords:

Poverty, Deprived of basic needs, Discrimination, Disadvantaged groups, Protection, Exploitation, Violation.

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Chapter One: Introductory Chapter

Minorities in any nations continue to be a susceptible element of a society. Minority groups are in no way taken into consideration as one of the vital components of the nation via majority network. In superior nations, minorities are incredibly better than in growing nations and taking part in all rights similarly with majority human beings. Within the South Asian situation, most of the folks people perpetually makes an attempt to impose their values, cultures, faith, language, and lots of others, at the minorities. Bangladesh is likewise not an exception to the present. Rather than looking to enhance their pathetic situations, their problems are simply politicized and not anything significant is being accomplished for the development of their socioeconomic reputation. It's far more important to enter the foundation reasons of why the majority and minority human beings have opposed approach.

1.1 Background of the study

Democracy isn't always the law of most people however the protection of the minority, says Albert Camus. The ascendancy of Bangladesh in 1971 was the triumph of the progressive people, and they considered it as an end to the predominance of panic, communal and sectarian oppression. After the Bangabondhu sheikh Mujibur Rahman perception by the political leaders and dogmatic suzerains were established on the state supreme power. They incorporated the highly discriminatory provisions in the preamble and basic principles throughout the constitutional reformations, enactment, and enforcement of discriminatory law and orders for the minorities group. For that reason, crushing religious shrines and grooves are now causing it the minority people of Bangladesh and their rights.

There is no uniform definition, even our constitution does not give any definition of minorities and have not sufficient information to the test for assessment of a group as a minority. In 1972 charter of Bangladesh gave positive rights to its citizens. Those rights are known as essential rights. On

the opposite fingers, the human rights of minorities are unequivocally set out at people followed to worldwide human rights settlements and announcements. Savagery against the minority group culture and people according to our constitution To find out legal solution for protecting cultural genocide and to promote the minority community in a better position Suggestions for tolerance and due respect for human rights of the minorities. The study become glaringly took it as an end to the reign of terror and communal couldn't continue to be freed from that nightmare for lengthy. within the publish- liberation duration additionally the political pioneers and political elites, joining of the country- subsidized and orders unfair for the minorities, kidnapping, torment, arrive snatching, contamination of non secular establishments and locations, forcible eviction, violation in opposition to minority ladies, electoral violence and many others. Delivered on an extreme risk to the lifestyles of minority human beings in Bangladesh and in their rights. In 971 its 'the Nationalists, and persecution of the Bangalee provincers of Pakistan had as of now made the common strengths within the teeth of the fiercest restriction amalgamation of East Bengal and Assam the royal powers on grounds of both authoritative comfort and the isolated interface of Bengal's Muslim from however pupils generation.

1.2 Research objective

1. To analysis the scenario of violation against the minority
2. To recognize the plurality of the culture and people according to our constitution
3. To find out legal solution for protecting cultural genocide
4. Suggestions for tolerance and due respect for human rights of the minority group.

1.3 Research questions

1. What are the problems faced by minority group in Bangladesh?
2. How can our constitution protect minority rights?
3. Whether existing laws are sufficient to protect minority rights?

1.4 Research methodology

Methodology refers back to the numerous strategies followed through a researcher in carrying out the research in addition to the good judgment, motives or intent at the back of them. If the other hand deals, in its literal sense, with the characteristics methods, the principles on which method operates and the standard governing the selection and application.

Qualitative research is to be followed in analytical way. On this type the researcher has to apply statistics or records already available and examine them to make an important evolution of the cloth. It includes the in- depth study and assessment of the available records in a try to provide an explanation for complicated phenomenon. Both primary and secondary sources have been utilized while conducting this research. The sources include relevant statutory provisions, case laws in different jurisdiction, reviewing literatures focused on Protection of minority rights issues e.g., Journals, articles, reports and newspapers and searching the internet and interviewing university professors and professionals.

I have followed APA Referencing Style (6th edition) for in text and also in a reference list .

1.5 Literature Review

The literature I have followed to construct my Research paper is Dr Kamalesh Kumar Wadhwa's book named Minority Safeguards in India . Dr Kamalesh Kumar Wadhwa has lucidly discussed these safeguards for the minorities in his book Minority Safeguards in India. He has examined the problem in historical perspective and has built up his analysis on the basis of official and non-official reports of the committees, conferences and study groups constituted before and after independence to investigate the problem. My research paper differs from his book. Because The author has taken great care to provide a clear analysis of the relevant clauses in the constitution and has given a detailed account of the structure created to safeguard the minorities in India. However, Dr Wadhwa fails to make a critical evaluation of the functioning of this structure. The author has not provided a clear analysis on other group of minority community except Muslim community. The author has not provided any recommendation for proving their life style and functioning structure. Dr Kamalesh Kumar Wadhwa has examined the problem in historical

perspective and has built up his analysis on the basis of official and non-official reports of the committees. But he has not dealt with the all matter of their community. He should examine the basic problem of these safeguards for the minorities. Nevertheless, the book is an excellent contribution towards national debate that is now taking place on the subject. It is also a well-documented contribution to the growing literature on the minorities in India. Here the another thing, The literature I have followed to construct my Research paper is John David Skrentny. John D. Skrentny's Book named 'The minority Right Regulation'

USA citizens started out latest underway

-coming to marvel, John D. Serenity uncovered the associations

for all time modified the face of American politics.

Composing for the most part from a radical viewpoint, Skrentny presents the authoritative account of the minority rights insurgency of the 1960s and 1970s. Utilizing investigate and documented materials, as well as interviews with policymakers, he scrutinizes a wide cluster of respectful rights approaches, government enactment, and court choices with respect to African Americans, white ethnics, ladies, gays and lesbians, the impaired, American Indians, Hispanics, and Asian Americans. The writers had done a great job in this book. They wrote about the minority groups during the early 1970s when the minority rights were underway. And John Skrentny cautiously files felony with surprisingly small open discourse for eras African- Americans battled for correspondence,

1.6 Rationale of the study

In the modern global, there might no longer be a single country without minority and ethnic groups. And, there might be only a few nations unfastened from non secular and ethnic violence. Within the international, nearly all of the nations non secular identities which vary from majority network. Within the South Asian location, every day its various populace, conflicts and violence have become a phenomenon. The issues of the South Asian location may be attributed every day the uneven monetary improvement, colonial and put up-colonial guidelines of the government in

addition to non secular. The principle goal of this paper is daily perceive the violation in opposition to the minorities and its effect at the socioeconomic reputation of minorities.

The keys rational of my study are given below:

1. For Rights and fundamental freedom
2. Political and social stability and progress of a State.
3. To implement a comprehensive strategy including education programmers and
4. reforms to bring about qualitative progress in the political sphere.

Chapter Two: The concept of Minority: Meaning and Classification

Minorities in any country remain a vulnerable component of a society. Minority communities are never considered as one of the integral parts of the country by majority community. In advanced countries, Minorities are relatively better than in developing countries and enjoying all rights equally with majority people. In the south Asian scenario, the majority population always tries to impose their values, cultures, religion, language etc, on the Minorities. Bangladesh is also not exception to this. Instead of trying to improve their pathetic conditions, their issues are merely politicized and nothing substantive is being done for the improvement of their socioeconomic status.

2.1 Minority: The concept

The term “Minority” cannot be for effective purpose explained simply by elaborating the word in its literal sense. Generally the minority is thought of as the opposite of the majority . In democratic societies, it is based on the numerical ratio to the population as a whole in a definite place. But in international law the term “Minority” is commonly used in more narrow sense. It has come to refer to a particular kind of group , which differs from the dominant group within the state.

From a scientific point of view , the term “ Minority” includes many elements , which are variable both in content and in degree of predominance .

2.2 Meaning of Minorities

During the period of the league of Nation the permanent court of international Justice gave its interpretation concerning the term “Minority” “ in its exhortatory opinion. Accordingly (Minorities are the people) living in given country or locality , having a race religion, language and traditions of their own and United by this identity of race , religion, language and traditions in a sentiment of solidarity , with a view to protect their traditions, keeping from of worship , ensuring the directions and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.

The PCJ had another event to deal with the question of Minority in connection with the minority school in Albania.

With the birth of the United Nations the concept of Minority came to be covered by the concept of Human Rights and fundamental freedoms. The United Nations charter and the Declaration of Human Rights did not mention specifically the question of Minorities . No attempt was made to define these groups in any special manner.

The issues of defining the time period minority has never been an impediment to the drawing up of the several international treaties containing provision at the rights of positive groups of the population to conserve their traditions and use their own language.

Pledge on Gracious and Political Rights came into drive. The Covenant on Gracious and Political Rights. Article 27 of belonging to the minorities: In those States in which ethnic, devout and etymological minorities exist, people having a place to such minorities should not be the right, in community with other individuals of their gather, to appreciate their possess culture, to declare and hone their claim religion, or to utilize their claim dialect. I Have been bestowed on the

1. To appreciate their possess culture,
2. To declare and hone their claim religion, or
3. To utilize their possess dialect.

not afforded to minority groups as such, but rather to persons belonging to minorities. The covenant itself does not give any more detailed explanation apart from setting forth that it consider only

linguistic minorities is that they form stable units with a renowned degree of historical continuation. Not each and every group of people may claim to be a minority. To belong to an ethnic or linguistic community is a distinction mark, which pervades the entire existence of an individual and cannot easily be changed at will. In the case of pious minorities the degree of stability is less pronounced, because everyone is free to leave the community in which he was born and to join another group of his preference. Although frequently minorities remain engaged in certain geographical areas, they may also live largely effuse among the majority of the population. The diffused minorities are also protected under Article 27. It should not be overlooked, furthermore, that lack of territorial connection between members of a minority may be the direct result of measures of oppression which took place in the past. Minorities do not only enjoy the protection of Article 27. In a country bound by ICCPR or by an analogous regional instrument and

respecting the obligations started there under, only few problems remain unsettled. In particular and freedom of association. Define areas of autonomy safeguarded against Government thrusting with generally enable minorities to preserve and maintain their own identities. The inhibition of discrimination prevents measures, which directly aims at placing minorities in an unfavourable position as compared with the remainder of the population. Within the modern nation State, however, minorities are structurally and permanently put in danger by forces of cultural comparison. It is this threat which Art.27 seeks to combat.

2.3 Distinctive Features of Minorities

A minority institution is a sub ordinate social institution. Its participant go through negative aspect due to prejudice and discrimination. Those can also consist of dissociation and repression.

- 1) The participant of minority organization has their personal physics, tradition, dialect and so on. Which the dominant institution holds in low dignity. The institution typically has prominent traits.
- 2) The contribution of minority institution pick out themselves as a part of the institution. there may be an in institution feeling of loyalty.
- 3) Membership of minority organization is usually now not willful. It's by the way of start.
- 4) Club of minority group have strong bonds of brotherhood and usually consider in endogamy v those members display a sense of cohesion closer to maintaining their tradition, faith and language (Chandra 1985, p 32).No doubt, the question has so often been complicated by a desire on the part of some government to constrict or clarify the definition of minority. In many states minority is not recognized as existing in their territory, and they think that no international obligation arises for them in relation to protection of minorities. But it is hoped that states shall be sincere in their acceptance of the idea of international protection of minorities and show a firm determination to observe the principles narrated in Art 27 of the United Nations Covenant on Civil and Political Rights (Chandra 1985, p 16)

2.4 Classification of Minorities Practically

Only those groups, which represent a considerable portion often population of state, are usually referred to as minority. But in so many ways that it is not possible to group them in one general classification only. The member of minority groups must be classified on the basis of different

standard. In order to achieve true characterizations of any particular minority, identity, desirable protection, it will be necessary to examine its existence on the basis of various Classification

2.4.1 Classification from a quantitative viewpoint from a quantitative factor of view

Minorities can be classified according to the variety of individual covered in the minority as compared to the size of the primary institution or to that of the remainder of the populace. Usually the time period minority has ascertained numerical importance: It is commonly refers to smaller wide variety of individual than the range covered inside the remainder of the populace

2.4.2 Classification from the viewpoint of contiguity in some instances the populace of a specific area is composed almost entirely of men and women belonging to a minority. In different cases the minority stocks a area or place, to a extra or lesser degree with the main group. Measured by means of criterion of contiguity, the subsequent kinds of minority may be outstanding:

1. A minority which constitutes truly or nearly the handiest populace of phase of the country
2. A minority which constitutes the biggest part of the populace of a segment of the nation.
3. A minority settled in a segment of the United States of America, which constitutes only a smaller part of the population of that phase.
4. A minority the individuals of which stay partly in a phase of the country. And partly scattered for the duration of the remainder of the territory
5. A minority that is settled in numerous distinct sections of the country, however in different portion in each segment
6. A minority that's scattered through the whole country and
7. A minority, which lives partially in the country and partly out of doors territory. The participants of every of these sort of minorities are path of entitled to non discrimination remedy, especially in admire of rights and freedoms set forth within the popular announcement of Human Rights

2.4.3 Classification from the viewpoint of citizenship

From the sociological point of view of the National Characteristics of the state

An important distinction can be drowning among the following forms of minorities:

Minorities beneath the jurisdiction of a state that's mainly the embodiment of the national characteristics of the main organization; and minorities beneath the jurisdiction of a country which isn't recognized with anyone country however which occupies a impartial role above herbal and cultural variations

Taking as any other criterion the entire or partial inclusion of the minority within the country, the subsequent forms of minorities may be prominent Minorities forming elements of a group that's divided among the jurisdiction of numerous states and minority that's absolutely covered inside the territorial jurisdiction of a nation.

Chapter: 3: Minority Rights in National Laws

3.1 Minority rights in Bangladesh

Minorities in any nations continue to be a susceptible element of a society. Minority groups are in no way taken into consideration as one of the vital components of the nation via majority network. In superior nations, minorities are incredibly better than in growing nations and taking part in all rights similarly with majority human beings. Within the South Asian situation, most of the folks people perpetually makes an attempt to impose their values, cultures, faith, language, and lots of others, at the minorities. Bangladesh is likewise not an exception to the present. Rather than looking to enhance their pathetic situations, their problems are simply politicized and not anything significant is being accomplished for the development of their socioeconomic reputation. It's far more important to enter the foundation reasons of why the majority and minority human beings have opposed approach

3.2 Constitutional provision for Minority Groups

The constitution of Bangladesh deals with various provision for protecting minority rights in Bangladesh. Article 27 deals with the provision of 'the Principle of equality'. This article states that 'every citizen of Bangladesh shall be equal before the law'. Article 28 states that no shall be discriminated on the grounds of the grounds of religion, race, caste, sex, or place or any other reasons.

Article 29 deals with the special provision for the development of any backward sections of the citizens of Bangladesh.

On the other hand all these equality clauses become meaningless when anybody goes through Articles 8(1), 8(1A), 2A or Article 25(2). All these highly discriminatory articles for the minorities were not in the original Constitution of Bangladesh.

Chapter 4: Findings, Recommendation and conclusion

The situation of Minorities in Bangladesh is a human rights issue . Status of Minorities all over the world has demonstrated a pattern of discrimination and insecurity I. Bangladesh is no exception . However, the example of Minorities in Bangladesh has a typical trend (shaha,1198,pp.5)

Overall situation of the Minorities in Bangladesh will not improve unless total fundamental rights laid down in the country Constitution as well as by United Nations Human Rights Declaration are not implemented. Without the political will of the government , it would be different to see a society of racial harmony .

4 Findings

Findings of the study are given below

1. Misuse of Political Power

The minority people are most of the Time face various type of risk for the misuse of power of the political party. They most of the time forcibly take their land, house and other types of property.

1. Lack of Education

The minority groups are not so much literate. Very often they are deprive from primary education for various types of violations. And they have not proper knowledge about modern life.

2. Lack of Job opportunities

The people of minority groups are facings various types of problem. They do not get proper job opportunities for that reason they are main economic purpose is cultivation. They cultivate different types of crops at hills.

3. Lack of proper management

The people of minority groups are remain in vulnerable situation in our country. For lack of proper management, they do not improve themselves.

4. Lack of Governmental initiative

Our government does not take any specific initiative for developing this minority group. The government should take proper and specific steps for developing their position in our country.

4.1 Recommend

The specific challenges facing adivashi people in extreme poverty remind us of the importance of policy making that is nuanced and sensitive to the particular social and economic constraints of different groups. At least for those extreme poor adivashi people, policies designed to link them to the mainstream of Bangladesh's development initiatives will be fundamental for them to lift themselves out of extreme poverty.

Our government should taken necessary steps by adopting specific provision for protecting their rights. And the government should provide them better facilities in respect of education as well jobs

4.2 Conclusion

The situation of Minorities in Bangladesh is a human rights issue. Statues of Minorities all over the world have demonstrated a pattern of discrimination and insecurity. Bangladesh is no expectation. However the example of Minorities in Bangladesh is a typical trend.

The seeds of violation against the Minorities community are inherent within the structure of the modern system and majoritarian democracy, which led to the dehumanization of the politics and turned human beings into vote banks and constituents. Lack of accountability and transparency of the country machinery only makes the situation worse. Bangladesh ought to recognize the plurality of it's culture and people. Unfortunately, civil society has the major and the most important role to play in this respect. A politically and humanely conscious citizenry can provide the best safeguard for it's own security by compelling the government to democratize itself and make it people oriented. Then on- recognition of Minority rights and Minority existence through the country projects. Bangladesh as a Bengali Muslim-dominated country which shrinks the space for the Minorities to exists as distinct communities with their one customary rights, beliefs, culture and ways of life. On the hand, then existence of laws and provision privileging the majority outs the Minorities Ina vulnerable position. The Democracy remains an illusion for the. Minorities in

Bangladesh . In the name of the majoritarian rule or the democracy they have been marginalized politically, as well as culturally. We have to uproot this religious fascism from our soil if we care for our language , culture and ethos. It is time that our politicians take cognizance of the fact that Bangladeshis not homogeneous state, rather it is a multi national state , and this reality ought to be incorporated into the Constitution. We must practice a culture of tolerance and respect for others.

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