



Right to Education in Bangladesh: An Appraisal for Constitutional Guarantee

Mohammad Badruzzaman¹ and Md. Nannu Mian²

¹Senior Lecturer, Department of Law, Uttara University, Dhaka, Bangladesh

²Assistant Professor, Department of Law, Uttara University, Dhaka, Bangladesh

Corresponding author: Md. Nannu Mian, Department of Law, Uttara University, Dhaka, Bangladesh.

Email: nannumian@hotmail.com; nannu_llb@yahoo.com

Abstract: Education is a process in developing humans on acquiring knowledge and practicing skills for the intrinsically inherent onward progress of the society. Human development can be categorically ascribed as impossible without education as it has all along been the backbone of the society and the precondition for the proliferation of thriving civilization, hence, 'Education' is recognized as a human right in various international instruments.¹ The Constitution of Bangladesh² declared that education was free and compulsory and also the State shall adopt effective measures for the purpose of establishing a uniform, mass oriented and universal system of education.³ For this purpose, the Education Policy⁴ in Bangladesh has been accordingly passed and the draft of Education Law⁵ is on the way to become an Act. These imply emphasis on education that should be kept in a legal framework to keep pace with the competitive contemporary world. Bangladesh is a stakeholder of those international instruments recognizing education as a human right. Thus, Bangladesh cannot deny the responsibilities attendant in the instruments. Moreover, a constitutional incorporation of education as a Fundamental Principles of the State Policy is an implied obligation to irrevocably recognize it as a Fundamental Right or to give it a constitutional guarantee. Recently, numerous countries, both the East and the West, neighboring countries of Bangladesh recognized education as a right along with a constitutional guarantee because the pursuit of knowledge is obligatory for any individual and in a sense; Bangladesh can be cited as a good example in this regard.

Keywords: Education, Constitution, Recognition, Bangladesh.

1. MEANING AND CONCEPT OF EDUCATION

The UNESCO Convention against Discrimination in Education, 1960, defines education in Article 1(2) as all types and levels of education (including) access to education, the standard and quality of education and the condition under which it is given.⁶ Education may be described as all activities by which a human group transmits among itself and to its descendants a body of knowledge and skills and a moral code to go along with to enable the group to subsist in a civilized manner.⁷ In this sense, education refers to the transmission of knowledge and skills to the society and to a subsequent generation of those knowledge and skills needed to perform tasks of daily living and further passing on the social, cultural, spiritual and philosophical values of the particular community. The wider meaning of education has been recognized in Article.1⁸ as the entire process of social life by means of which individuals and social groups learn to develop consciously within and for the benefit of the national and international communities the whole of their personal capabilities, abilities, skills and knowledge to be fully shared and gainfully used for the betterment of the local and international communities. Another definition has been given as teaching or instructions in particular to the transmission of knowledge for the intellectual development of the whole society in which the educated adults endeavor to transmit their beliefs, culture and other values to their young.⁹ On the other hand, education has been defined as a process of teaching, training and learning, especially, in schools or colleges to improve knowledge and develop skills.¹⁰ From the above discussion, education may be described as a process of learning through which human beings are trained not only to improve but also to upgrade their knowledge regarding all other issues of life and world and to develop skills related to the contemporary time even to the distant future.

2. RIGHT TO EDUCATION

The right to education is a universal entitlement to education, recognized in the International Covenant on Economics, Social and Cultural Rights as a human right that includes the right to a free compulsory primary education for all, an obligation to develop secondary education accessible to all, in particular, by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education, ideally by the progressive introduction of free higher educational policy. The right to education also includes a responsibility to provide basic education for individuals who have not completed their primary education. In addition to access these educational provisions, the right to education encompasses the obligation to rule out discrimination at all levels of the educational system, to set minimum standards and to improve the quality of education as and when the occasion demands.¹¹

2.1 Recognition of the Right to Education in International Instruments

The right to education embodies the principles of the universality, indivisibility and interdependence of all human rights. Thus, the right to education has a particularly close connection with the right to work, to experiment and to invent, the right to health and the right to freedom of expression and information and so on. The right to education in international instruments comprises the dual aspects, namely, i) the development of the individual and, ii) the promotion of mutual respect for human rights. From the classical human rights instruments (e.g. International Bill of Rights) to specific conventions (e.g. Convention against Discrimination in Education, CRC) and other international instruments (UNESCO convention, WCEFA, Dakar), all of which have unequivocally enumerated the irrevocable Right to Education.

2.1.1 The Right to Education in International Bill of Human Rights

Initially, the international Bill of Rights sets the standards of the right to education. The UDHR has set the right spirit and subsequently two operative covenants (ICCPR and ICESCR) have illustrated dimensions of this right. UDHR, in Article-26, enunciated that everyone has the right to education: with these introductory remarks, it has set the following dimensions of the right:

Firstly, education shall be free, at least in the elementary and fundamental stages shall be compulsory so as to equip the humans with a basic knowledge to adequately run one's life. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Secondly, Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. Thirdly, 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, health and mutual prosperity. Fourthly, parents have the prior right to choose the kind of education that shall be given to their children.

Although ICCPR¹² has incorporated some notion of the Right to Education in Article 18(4)¹³ but the right has been explicitly elaborated in Article-13 and-14 of ICESCR in which Article-13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the Right to Education in international human right law¹⁴. The reason it has been considered as the most comprehensive article is because it has facilitated the elaboration of the dimensions laid down by the UDHR. It would not be too excessive if we say the contemporary ideas of the Right to Education have been developed on the basis of Article 13 of the ICESCR. Now the question is, what is in it that makes it so fundamental. As we see that UDHR has indicated the dimensions, like,

free and compulsory elementary and fundamental education, with the emphasis on the technical and vocational education, access to higher education as per the capability and the right to choose particular streams of education. Article-13 has interpreted and added the general requirement as stated in the UDHR wherein the level of education has been clearly classified into primary, secondary (with its different forms) and higher education. The most significant feature of Article 13 is that it has not only mentioned the level of education but also mandated that these levels of education (particularly primary and secondary levels) have to be made not only accessible but also available to one and all. It is clear from the provisions of Article 13(2) that the state is expected to take active steps aimed at implementing the Right to Education. It must utilize the maximum of its available resources to achieve a gloriously comprehensive implementation.

2.1.2 Key Components of Right to Education under ICESCR

The General Comment 1320 on the Right to Education further enunciates the dimensions of the Right to Education may be discussed as follows:

2.1.2.1 Availability – this means the educational institutions operating within the country must be sufficient in quantity. The institutions must have the minimum facilities¹⁵ required for an educational institution. Functioning educational institutions and programmes have to be available in a sufficient quantity within the jurisdiction of the State party.

3.1.2.2 Accessibility - educational institutions and programmes have to be accessible to everyone without discrimination. The notion of accessibility has three overlapping dimensions: Nondiscrimination¹⁶, physical accessibility¹⁷ which literally means either it should be within reach geographically or via modern technology, such as, distance learning, economic accessibility, i.e., education has to be made affordable to one and all.

3.1.2.3 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 parents as well.

3.1.2.4 Adaptability - education has to be flexible so it can be adapted to the needs of various societies and communities and can respond to the needs of students within their diverse social and cultural settings.

2.1.3 Provision in other International Instruments

Apart from these basic tenets of education, other human right instruments¹⁸ have added new dimensions and values to the definition of education, which have considerably contributed to the development of the idea at a universal and intellectual level. The value added by these instruments is that whereas the UDHR and the ICESCR have focused on the Right to Education in general, these instruments have their own social target groups and thus define the Right to Education from specialized perspectives, emphasizing on the special components of the Right to Education according to the special needs of the groups.

2.1.3.1 The Convention against Discrimination in Education (CADE)¹⁹

The CADE in its Articles addresses some specific issues which are inherently important for the effective realization of the Right to Education in respect of special groups of people. The CADE in Article 5 clause (c) contains specific provisions relating to the rights of members of national minorities.²⁰ In respect of people who were deprived of primary education, the CADE mentions on providing a 'basic education', a concept comparable to a 'fundamental education' as distinctly mentioned in the ICESCR article 13 (d). The main distinguishing feature of the CADE is the definition of discrimination in educational aspects. The CADE says that in the case of educational

discrimination, it has a very wide connotation including the internationally recognized prohibited grounds, and has specifically focused on the following particular aspects:

- (1) Depriving any person or group of persons of access to education of any type or at any level; or
- (2) Limiting any person or group of persons to education of an inferior standard; or
- (3) Establishing or maintaining separate educational systems or institutions for persons or groups of persons (except in cases as mentioned in Article 2 of the Convention); or
- (4) Inflicting on any person or group of persons conditions which are incompatible with the dignity of an individual.²¹

2.1.3.2 The Dakar Framework for Action (DFA)²²

Education for All is a global movement led by the UNESCO (United Nations Educational, Scientific and Cultural Organization), aiming to meet the learning needs of all children, youth and adults by 2015. It was first launched in Jomtien, Thailand, in 1990 to bring the benefits of education to “every citizen in every society.”²³ After a decade of slow progress, the international community reaffirmed its commitment to the EFA in Dakar, Senegal, in April and September of 2000 where 189 countries and their partners adopted the two EFA goals that are also Millennium Development Goals (MDGs) in which the Dakar Framework for Action re-affirmed its commitment and identified six key measurable educational goals specifically to meet the learning needs of all children, youth and adults by 2015 as the target year.²⁴

The EFA is important because it is intricately linked to the realization of the MDGs and is complimentary to reciprocally facilitate the realization of each other.²⁵ Achieving the other MDGs, such as improved health, access to clean drinking water, decreasing poverty, and environmental sustainability are critical to achieving the educational

MDGs. In order to evaluate each country's progress with regards to the EFA's goals set in the Dakar Framework for Action, the UNESCO has developed the Education for All Development Index (EDI). It also has the Education for All Global Monitoring Report which is the prime instrument to assess global progress towards achieving the six holistic goals. The Report is funded jointly by the UNESCO and multilateral and bilateral agencies, and benefits from the expertise of an international Advisory Board.²⁶ The latest Global Monitoring Report (2013-2014) was published in May 2014 by the UNESCO. This report shows a change of focus from access to education towards the efficacy of education, especially, what students actually learn and teachers do in schools and is titled "Teaching and Learning: Achieving Quality for All".²⁷ This report not only highlights the need to address the problem of teacher shortage around the world, but also provides strategies to supply the best teachers to ensure the propagation of a good quality education.²⁸

2.1.3.3 Convention on the Rights of the Child (CRC)²⁹

Art. 28 and 29 of the CRC reflect on the Right to Education focusing on the children. Article 28 provides, *inter alia*, that State parties shall ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention. Art. 29 emphasize on an education suitable to the child's individual orientation, values and cultural identity, and enunciate that children must develop respect for the natural environment.³⁰

2.1.3.4 Convention on Elimination of All kinds of Discrimination against Women (CEDAW)³¹

The CEDAW 1989 in Article 10 indicates the points where potential discrimination between men and women may ensue, and stipulates the State parties to take effective measures against it. These areas include equality of access to educational institutions,

same curricula and facilities, elimination of stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation, same opportunities for scholarships, equal opportunities for physical education and special emphasis on family planning and family well-being.

2.1.3.5 The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)³²

The CERD in Art.2 states that the State Parties shall take special and concrete measures in the social, economic, cultural and other fields for the adequate development and protection of certain racial groups or individuals to guarantee the full and equal enjoyment of human rights and fundamental freedoms. It also provides for ensuring without discrimination the enjoyment of certain rights amongst which education is one.³³

2.2 Recognition of Right to Education in National Instruments

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 a FPSP, the Right to Education is not a justifiable right under the constitutional regime of Bangladesh. Art. 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 care³⁴, whereas Art.17 of the Constitution pledges that the State shall adopt effective measures for the purposes: (a) Eestablishing 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.

In pursuance to this guarantee, the State has enacted a number of legislations and policy frameworks along with the Plan of Actions for realizing the Right to Education for the people of Bangladesh. After the independence of Bangladesh, the government formed an educational commission headed by the famous scientist, Dr. Kudrate-e-Khuda, closely followed by five commissions till 2010.

2.2.1 The Compulsory Primary Education Act 1990³⁵

The most remarkable legislation in point is the Compulsory Primary Education Act 1990 (implemented from 1993), which makes primary education free and compulsory for all children in Bangladesh. The 1990s saw a rekindled dedication to the expansion of primary education and as a consequence the Bangladeshi primary educational system experienced a significant enhancement during this period.³⁶ The Compulsory Primary Education Act 1993 makes the five-year primary education program free in all government schools and declared education for girls in rural areas free up to grade eight. It also demands additional interventions, such as, the Female Stipend program, the Food for Education (FFE) program, and most recently, the Primary Education Development Program (PEDP II), a six-year program beginning in the year 2000 which aims to increase access, quality and efficiency throughout the primary education sector.³⁷

2.2.2 The 1979 Interim Education Policy

This policy document emphasized on increased literacy so that the people can be given the opportunity to readily participate in the development of the country. The document established the current educational time oriented framework with the secondary

education consisting of three sub-stages; namely, junior secondary (3 years), secondary (2 years), and higher secondary (2 years). In addition, the document stipulated the following policies: (a) terminal examination will be conducted by the District Education Authorities for all stages of secondary education; (b) vocational, technical, agricultural and medical education will be included and integrated into the secondary and higher secondary education; (c) there will be provision of skill development in any technical subject at junior secondary and secondary levels. With regards to the *Madrasah* education, the 'Interim Education Policy' stipulated that it should be reorganized to ensure its equivalent to the general education in such a way that the '*dakhil*' level would correspond to the secondary and the '*alim*' to a higher secondary education.³⁸

2.2.3 The *Madrasah* Education Ordinance was also issued in 1978³⁹

This Act established the Bangladesh *Madrasah* Education Board for the organisation, regulation, supervision, control, development and improvement of the *Madrasah* education in Bangladesh in accordance with the provisions of this Ordinance.⁴⁰

2.2.4 Financial Management Reform Program (FMRP)

To ensure appropriate financial controls, the Ministry of Education implements a Financial Management Reform Program (FMRP) which is vehemently intended to increase the accountability and the transparency in the use of resources.⁴¹

2.2.5 Moniruzzaman Mia Commission 2003

The commission submitted its report in 2004 and advocated a single-track secondary educational system, wider access to education in rural areas, narrowing down teacher-student ratio, upgrading teacher qualifications, reforming the curricula and teaching methods, and improving the assessment and examination systems at secondary level.

However, attempts at Unitrack education were subsequently stopped by the wide spread movement of the civil society.

2.2.6 The National Education Policy 2010⁴²

The NEP 2010 is a follow up and improved version of the Education Policy 2000.⁴³ This policy has brought some fundamental changes in restructuring the whole educational system: the first major reform is on attendance of a one-year pre-primary school compulsory for children of 5+ years and prohibited the admission test in class 1.⁴⁴ The second major reform appears to be extending the Primary education to Class 8 instead of class 5 by 2018.⁴⁵ This is done with the view of making it easier to continue the education of children from the poor households.⁴⁶ This Policy also puts a bar on any individual or any NGO intending to run the primary education institutions by the obligatory requirement of a permit from the respective authority.⁴⁷ The NEP makes it a vital point that all the educational Streams must study some common compulsory subjects.⁴⁸ It also brings important changes with respect to the examination system and public examination.

2.2.7 The National Education Policy in addressing the Diverse Educational Streams

With regards to re-integrating the diverse educational streams, the NEP attempts to make a very big change by amalgamating the course curricula. Before the NEP 2010, the *Madrasah* students had their own separate curricula and the secular topics received a very poor response. The books on these subjects contained very relevantly important information in comparison to the books prescribed by the Board, and the question papers for the public examinations also varied to a great extent, thus, creating different standards for the same student levels. Under the NEP, all the educational streams will be answering the same type of questions.

2.2.8 Proposed Legal Framework under the Draft Education Act, 2013

Despite of certain limitation, the National Education Policy 2010 has vividly manifested the concept of equality and non-discrimination for all streams of education and proposed unification of the curricula to set common standards for the pupils. The existence of a particular framework sets definite standards for the Government to ensure that the particular right is being appropriately enforced. However, policies often lack the force to be implemented at certain level which is considered as being too ambitious, thus, a definite legislative framework is necessary for the realization of the rights of the people. Therefore, since the declaration of the National Education Policy in 2010, the people of the country were expecting that a fresh legislation would also be in place according to the new education policy, which would basically aim to implement the policy promises and would provide a system of rules to be passed by the Government that would be adhered to by all. In order to ensure that, in 2011, a twenty-member education law drafting committee was formed by the Government. Later in 2012, a nine-member working committee was also declared to prepare the draft of the law.⁴⁹

Finally, the draft of the Education Act, 2013 had been shared on the Education Ministry website in order to get the needed feedback from the people. It has been suggested in the draft of law that compulsory primary education will be up to Class VIII from Class I and Bangla, English, mathematics, religious instruction, moral education, Bangladeshi studies, information technology, science and introduction to the environment will be made compulsory in general schools, *madrassahs* and kindergartens.⁵⁰ Amongst the many dimensions of the Draft Education Act, the efforts to unify the different streams of education into one course can be considered as the core provision. However, the framework set for the unification apparently is the same as the policy suggested. Therefore, the Draft Act also projected the unification through adding up analogous or

equivalent subjects for all educational streams instead of developing a common standard for the students of all educational streams.

3. OBLIGATION OF BANGLADESH AS A STAKEHOLDER⁵¹

The legal obligations of the Government concerning the right to education consist of: (i) the duties found in Article 2.1 of the Covenant⁵²; and (ii) the more specific obligations to recognize, respect, protect and fulfill this and other rights. In turn, the obligation to fulfill incorporates both obligation to facilitate and obligation to provide. Three phrases in Article 2.1 are particularly important for understanding the obligations of the Government to realize fully the rights recognized in the Covenant, including the right to education, namely:

(a) Undertakes to take steps . . . by all appropriate means

In addition to legislative measures, it must also include administrative, judicial, economic, social and educational priorities. State parties are also obliged to develop policies and to set priorities consistent with the Covenant. They are also required to evaluate the progress of such measures and to provide effective legal or other remedies for violations.

(b) To the maximum of its available resources

The obligation of the States is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right to education for every individual in the shortest possible time using the maximum available resources.

(c) To achieve progressively

This obligation “to achieve progressively” must be read in the light of Article 13 of the Covenant. The obligation of progressive realization, moreover, exists independently of any increase in resources. Above all, it requires an effective use of the resources available.

The additional obligations that the Government has to fulfill in order to implement the right to education are:

Firstly, the obligation to respect the right to education which implies that the State must avoid measures that hinder or prevent the enjoyment of the right to education.

Secondly, the obligation to *protect* the right to education which implies that State parties must take measures that prevents third parties from interfering with the enjoyment of the right to education.

Thirdly, the obligation to *fulfill (facilitate)* the right to education implies that the State must take positive measures that enable and assist individuals and communities to enjoy the right to education.

Fourthly, the obligation to *fulfill (provide)* the right to education, wherein as a general rule, State parties are obliged to provide a specific right in the International Covenant on Economic, Social and Cultural Rights when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal.

For more information on the obligations of State, it is highly recommended to refer to the United Nations Committee on Economic, Social and Cultural Rights General Comment No. 13 on the right to education and to General Comment No. 3 on the nature of State parties' obligations.⁵³

4. THE REALIZATION OF THE RIGHT TO EDUCATION IN BANGLADESH

The realization of the Right to Education in Bangladesh can be assessed under the standards set by the former UN Special Rapporteur on the Right to Education, a scheme known as the four "A"s scheme that distinguishes between four interrelated and essential features of education, namely: i) accessibility, ii) availability, iii) adaptability and iv) acceptability.⁵⁴ While analyzing the Right to Education, we shall be discerning the debate between Educations v. Effective Education: how diverse educational streams

in Bangladeshi education affect and are affected by these four criteria of the Right to Education. The World Conference on Education for All has emphasised upon the concept of effective education from the perspectives of 'basic learning needs': these are essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.⁵⁵ In doing so, the study shall also evaluate the system in ensuring human development on these criteria.

5. THE RIGHT TO EDUCATION IN ENSURING HUMAN DEVELOPMENT OF THE CITIZENS OF BANGLADESH

The concept of human development ensues from exploring and flourishing the potentials of an individual to the greatest possible extent. Human development as a dimension of right to self determination has been well recognized in modern human rights jurisprudence as human development constitutes a core element of ensuring the dignity of human entity. The UN Declaration on the Right to Development 1982 defines development as a 'comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population and of all individuals on the basis of their active, free and meaningful participation in the development and in the fair distribution of benefits resulting there from.'⁵⁶

The Right to Education as a human right forms a core element of human dignity and comprises dual aspects: namely, i) the development of the individual, and ii) the promotion of respect for human rights.⁵⁷ The Right to Education operates as an instrument for the Right to Development because the most fundamental aspect of education is that 'education shall be directed to the full development of the human

personality'.⁵⁸ It strengthens the capacity of the individual to participate fully, effectively and responsibly and effectively in a free society in the spirit of understanding peace and tolerance which manifestly means it facilitates to achieve each specific element of the right to development.

Education enables the full development of the human personality and sense of dignity.⁵⁹ From this perspective, the Right to Education in Bangladesh can be said to be realized when available educational scheme operates towards human development. In this sense, it requires much speculation to determine whether the education in Bangladesh (focusing on quantitative success) is efficacious in providing a qualitative education because the Right to Education implies the right to quality education, which should be made vehemently available, accessible, acceptable and adaptable to the needs of learners⁶⁰ which are undeniably needed by the society at home and at large. In drawing conclusions, we can deduce that the Right to Education in Bangladesh is being realised in a way where effective education is not achieved. On the basis of the basic learning needs, the Right to Education as exercised in Bangladesh is seriously lacking in several aspects of ethical moral obligations.

5.1 Literacy, oral expression, numeracy, and problem solving

Literacy has been defined from various perspectives, the most popular one being the ability to read and write one's name.⁶¹ In 2003, the UNESCO proposed a definition of literacy as "Literacy is the ability to identify, understand, interpret, create, communicate and compute using printed and written materials associated with varying contexts." Literacy involves a continuum of learning in enabling individuals to achieve his or her goals, develop his or her knowledge and potentials, and participate fully in the community and wider society.⁶²

The Literacy Assessment Survey 2008 (LAS) gave a comprehensive definition of literacy. In surveying the literacy status of the population, LAS categorized 4 levels of literacy.⁶³ The rate decreased with every level of increasing the determining factors. The study found out that adult literacy rate is strongly correlated with wealth status of the respondent. The higher the wealth score, the higher is the literacy status.⁶⁴ This shows that education in Bangladesh has earned a limited definition even for the State, where the basics of computation and writing one's name is enough, while a full comprehension of texts and applying its content is often left unaddressed.

5.2 Knowledge, skills, values, and attitudes

The knowledge imparted at every level is not recognized at the text level. This is mostly manifested by the admission test procedure followed by the Universities in Bangladesh, where the University authority declines to have enough confidence upon the assessment standard followed in the public examinations. The education is mostly theoretical, leaving the students unprepared for the practical application; human values and ethical education is not emphasized although the curricula have religious studies and the attitudes of the students are not pro-learning rather focused on earning marks in the examinations, which incidentally is becoming popularly and infectiously widespread with the attitude of the majority of the university students.

5.3 To live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions

The Board Curricula students often find themselves studying completely different subjects at the tertiary level; they obtain jobs completely unconnected to their graduation studies, and hence can never apply their classroom education in their practical fields, for instance, the *madrassah* students can favorably find their opportunities either in the mosques, *madrassahs* or Islamic institutions (e.g. Islamic

banks), because very few students actually go for engineering/medical or other professions⁶⁵, while the English medium students make it a point to settle outside Bangladesh. Thus, none of the educational streams can actually participate fully in the development of their own personalities, most cannot improve the quality of their lives directly by their education (especially, the *madrasah* students), and the decisions they make most often have nothing to do with what they study.

Amartya Sen defines development as a process of expanding freedoms that people enjoy.⁶⁶ The core of development is that different kinds of freedom interrelate with one another, and freedom of one type may greatly help in advancing the freedom of other types. Education, as a part of development, ensures that a person can utilize the opportunities he receives, facilitates participation in economic activities that require production, increases political participation by enabling him to read newspapers and communicate with others involved in politics.⁶⁷ Unfortunately and diametrically opposite to the spirits of the Bangladeshi educational policies, the students in Bangladesh do not possess these qualities. Moreover, the diverse streams of education disintegrate the students so that they perceive all these avenues differently: economic opportunity, political participation both have distinct meanings for the three categories of student. Human development is thus a fragmented process in Bangladesh.

From all these aspects, one may reasonably deduce that the Right to Education in Bangladesh is not being realized in its proper sense and full potential as it can be readily seen that it has little effect on human development as an end result of the educational process in the developmental stage.

5.4 Diverse Streams of Education (Sense of Disintegration)

Another unexpected aspect of segregation peculiar to the Board curriculum emanates as a consequence of (subject based) educational streamlining of students. There is no

uniform line of demarcation according to which the students are grouped as it merely depends upon the institution's policy, where in some institutions, it is the student's choice to determine which discipline of study he wishes to pursue, in which case the institution does not consider the choice best for the child because sometimes, a child opts for a particular discipline (mostly on the basis of popular perception or popular preference for a particular discipline erroneously but glorifying recommended by parents or friends) that overwhelms his/her capacity.

On the other hand, some institutions divide the students on the basis of their performance in Class VIII public examinations, and those topping the list get preference to study in the science group. This is a popular trend in Bangladesh in which the Science group has been established as a group comprising the best and most meticulous students, whereas the commerce and the humanity students are considered to be weaker in mental capacity. Such diverse practice has considerable impact over the psyche of the students. This practice invokes in them the sense of classification amongst their counterparts: they assume that some subjects are better than the others, thus, in order to be a good student s/he must study that subject, even if it is exceeding his/her capacity, or even if s/he does not enjoy the subject. The alternative policy of deciding by the institutions is also questionable since it deprives the students of their freedom of choice in pursuing their individual academic interests and creates a sense of discrimination by pointing out some are 'better' than the rest. They see their classmates and friends who have been studying with them for a long time are being put to another group because they are either better or not good enough to study with them. This has a considerably adverse impact on their tender psyche.

6. SOME PRECEDENTS AND INSPIRATIONS FOR US TO BE OBLIGED BY CONSTITUTIONAL GUARANTEE⁶⁸

The right to education has been accepted as a fundamental right along with a constitutional guarantee in Article-17 of the Constitution of Nepal.⁶⁹ It states that; (i) each community shall have the right to get a basic education in their mother tongue as provided for in the law; (ii) every citizen shall have the right to a free education from the state up to the secondary level as provided for in the law; (iii) each community residing in Nepal shall have the right to preserve and promote its language, script, culture, civility and heritage.

According to the Constitution of Maldives⁷⁰, the right to education is the fundamental right of the citizens of Maldives. It says that; (i) everyone has the right to education without discrimination of any kind; (ii) primary and secondary education shall be freely provided by the state. It is imperative on the parents and the state to provide children with the primary and secondary education. Opportunities for higher education's shall be generally accessible to all citizens as education shall strive to inculcate obedience to Islam, instill love for Islam, foster respect for human rights, and promote understanding, tolerance and friendship among all people.

In 2002, the Indian Government incorporated the right to education in its constitution as a fundamental right of the citizens through Article -21A, mentioning that the state shall provide free and compulsory education to all children between the ages of six and fourteen years in such manner as the state may, by law, determine. This constitutional obligation came into force through passing of the Right of Children to Free and Compulsory Education (RTE) Act, 2009, and was a historic moment for the children of India.

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. The Right to Education Act has three major obligations that require adequate funding provisions, namely; (i) recruit and deploy teachers at 30:1 student-teacher ratio in every school within six months of notification; (ii) neighborhood schools of specified quality for every child within three years of notification; (iii) all teachers to be trained to a national norm within five years of notification.

The present Government is committed to undertake structural reforms that are expected to bring significant improvements in the education sector. The commitment was made on May 31, 2010 after approval of the National Education Policy, which says that primary education will be free for all and compulsory up to class-VIII and stipends would be given to students on the basis of results in class V.

In addition to this, Article-8(2) of the Constitution says that the fundamental principles of the state policy shall be fundamental to the governance of the state and shall be a guide to the interpretation of the Constitution and other laws and for making of laws of Bangladesh.

The perspective educational plan of Bangladesh 2010-2021 says: "Education is directly linked to the building of a dynamic economy, an efficient system of governance and secular democracy and an enlightened progressive society. Illiteracy and democracy cannot run side by side. Recent experiences of developing countries suggest that successful implementation of population policies, such as, delayed marriage and child birth, and reduction in family size, depends to a great extent upon successful education of girls. Education, health, nutrition, family size and employment tightly reinforce one another."

The specific objective of this plan regarding education is to eliminate illiteracy by 2014 and attain 100% enrolment in the 12th class by 2021 with gender parity addressing the dropout problem at the primary and secondary levels. It is planned to implement the National Education Policy by 2019, while the nation has an international commitment to reach EFA and MDGs goals by 2015.

Above all, 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.

7. CONCLUSION ALONG WITH RECOMMENDATIONS

The ICESCR⁷¹ embodies a dynamic element of the Right to Education that realization of the right to education does not stop when a certain level has been reached. At present, the State has taken certain steps towards accelerating the realization of the Right to Education and for that purpose the different streams of education are being appreciated and formally recognized. Thus, the diverse educational streams are being promoted

because the State has a perception that accommodating more students through different educational streams will increase the quality and quantity of literate people, as opposed to the fewly educated, who would contribute towards the national development in the near future.

As seen from the above discussion, the perception currently prevalent is that the State has succeeded at a commendable stage in realizing the Right to Education. However, the understanding of the Right to Education must be redefined. The problems ensuing from diverse educational streams must be addressed not only at the primary level but also at the secondary and tertiary levels. In doing so, the following propositions may be considered:

1. The right to education must be recognized as a justifiable fundamental right by the Constitution of the People's Republic of Bangladesh.
2. The definition of education and literacy must be reorganized according to the current international standards as propounded by ICESCR and UNESCO.
3. The Right to Education Act must be enacted without unnecessary adornments but with necessary amendments.
4. The policy of efficacy of reintegrating the diverse educational streams in the primary level by amalgamating the curricula should be reconsidered. In the case of the *Madrasah* students having their specific syllabuses, they will be unnecessarily burdened with extra subjects whereas the students of the Board curricula do not have to study the subjects taught in the *Madrasah* and English medium students get the education in which the essential intrinsic Bangladeshi perspective is mostly absent.
5. Another pertinent question is whether unifying the syllabus can ultimately solve the problem of disintegrated society. For this, the Government can decide on a uniform syllabus specifying the topics for each class. The curricula will focus on the learning targets, i.e., what the students should learn after passing that particular class.

6. The evaluation system must be harmonized. This does not mean the question papers must be uniform, rather that the assessment criteria (the skills which will be judged by the examinations) must be uniform. This will remove the hindrance should the students choose to study different educational disciplines at the higher level.
7. The four basic components of the Right to Education (the four 'A's approach) must be incorporated and appreciated while making any policy and plan of action on education.
8. The popular notion that certain schools are for people with certain socio-economic background must be impartially addressed. The schools must be made accessible and adaptable. The stereotyping of institutions must be removed by providing equal infrastructural and financial opportunities.

The Human Rights recognized by the world communities and organizations have put in their utmost efforts to implement them for better growth and development of human's evolution. The organizations including the United Nations desire that all State parties and communities should take proper initiatives at national, regional and international levels to implement them by different mechanisms. When food, shelter, clothing, education and medical cares are ignored, human advancement is impossible and thus all other rights become meaningless indeed, and are especially so in the case of Bangladesh, where the rights guaranteed constitutionally are meaningless to the uneducated and illiterate people rather, to them, these are nothing but discriminative luxuries. Since the child does not get food properly, remains deprived from the right education, she/he will ultimately suffer from paralysis of knowledge for the whole life mainly due to the closing of the door of education to them. He remains in the society as an animal-like creation, lacks of knowledge and conscience without any specific aim in life. In consequence, he cannot give anything to himself, family, let alone to the society. At once he becomes the liability of the society instead of being an asset. However, he cannot realize it and finally, being parents at an early stage will ensue another

generation towards a gloomy and darker future. In a short time frame with the increase of population, serious social problems will definitely erupt in the process of competing with other phenomena of the society. Civil and Political rights to such people bear no significance and message as these entities remain unknown to them. It is hard to logically imagine that in the century of high technological advancement and after forty-four years of independence, we can still find that more than half the number of the students in Bangladeshi schools drops out due to one corroborative reason or another. Ultimately these students will become the liability of the nation and the State and they produce problems at the rate of a geometrical progression as a result of which the society has to bear from generation to generation the liabilities arising there from. In this evaluation, the fundamental rights guaranteed in our constitution bear no meaning unless or until our generation is grown up with educated attributes and civilities.

Education is the bridge of all other rights. Keeping a generation uneducated while granting them with thousands of rights is a worthless effort to progressively develop the life standard of humans unless or until the right to education is ensured and guaranteed for all. All other rights, except education, bear little importance in the evolution of the peoples' conscience and ability. Education is a kind of right which makes a clear path to make all other rights in real entity automatically conceivable. Though this right is not guaranteed yet by our law and constitution, peoples' opinion and demand may become undeniable to the Government to take proper steps to guarantee this right constitutionally and amend the constitution thereby accordingly. Having such a vast population in a country like Bangladesh, if at least one right that could be guaranteed constitutionally, that right should be education which may ensure the realization of all other rights for the future generation.

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- ¹. In Article- 26 of Universal Declaration of Human Rights (UDHR), 1948, Under Article- 13 of International Covenant on Economic, Social and Cultural Rights (ICESCR) etc.
 - ². Under Article-17 of the Constitution of Peoples Republic of Bangladesh, says- “Free and compulsory education: The state shall adopt effective measures for (i) 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 the society and producing properly trained and motivated citizens to serve these needs; (c) removing illiteracy within such time as may be determined by law.”
 - ³. Ibid.
 - ⁴. National Education Policy, 2010.
 - ⁵. The Draft Education Act, 2013.
 - ⁶. Beiter, Klaus Dieter (2005); the Protection of the Right to Education by International Law. p.19.
 - ⁷. Ibid.
 - ⁸. UNESCO’s 1974 recommendation concerning education for international understanding, co-operation and peace and education relating to human rights and fundamental freedom.
 - ⁹. European Court of Human Rights.
 - ¹⁰. Oxford Dictionary (2001), 6th Edit. P. 401.
 - ¹¹. www.wikipedia.com>>dated:31st March, 2015.
 - ¹². International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).
 - ¹³. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.
 - ¹⁴. UNESCO and ECOSOC ‘Right to Education: Scope and Implementation’ (General Comment 13 on the right to education (Art.13 of the International Covenant on Economic, Social and Cultural Rights)⁴ <unesdoc.unesco.org/images/0013/001331/133113e.pdf> accessed 1 May 2015.
 - ¹⁵. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also

require facilities such as a library, computer facilities and information technology, Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (1st edn, Cambridge University Press, New York 2010) 254.

¹⁶. Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds. Cited in: CESCR General Comment No. 13: The Right to Education (Art. 13) (adopted on 8 December 1999).

¹⁷. Ibid.

¹⁸. For a brief list of the instruments, please visit: [_http://www.unescobkk.org/education/right to education/rights-basedapproach-to-education/right-to-education-in-international-instruments/](http://www.unescobkk.org/education/right%20to%20education/rights-basedapproach-to-education/right-to-education-in-international-instruments/).

¹⁹. Adopted 14 December 1960, entered into force 22 May 1962.

²⁰. It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however: That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty; (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and (iii) That attendance at such schools is optional.

²¹. Convention against Discrimination in Education 1960 (adopted 14 December 1960, entered into force 22 May 1962) (CADE) article 1(1).

²². Text adopted by the World Education Forum Dakar, Senegal, 26-28 April 2000

²³ .World Bank, 'Education for All (EFA)' <[http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/0,,contentMDK:20374062~menu PK:540090~pagePK:148956~piPK:216618~theSitePK:282386,00.html](http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/0,,contentMDK:20374062~menuPK:540090~pagePK:148956~piPK:216618~theSitePK:282386,00.html)> accessed 4 April 2015

²⁴. The six goals are- 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 by 50 percent, Goal 5: Achieve gender parity by 2005, gender equality by 2015, Goal 6: Improve the quality of education.

²⁵ .UN, 'Education For All' (Resources for Speakers on Global Issues) <<http://www.un.org/en/globalissues/briefingpapers/efa/>> accessed 4 April 2015.

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28. Niaz Asadullah, 'Quality education for all' The Daily Star (Dhaka 11 February 2014)

<<http://www.thedailystar.net/quality-education-for-all/94e0f06fdc8dfe25346c8e5a103a34ff>>.

29. Adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3 (CRC)

30. Article 29 of the CRC enunciates that State Parties agree that the education of the child shall be directed to:(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

31. (Adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

32. Adopted 7 March 1966, entered into force 4 January 1969, 660 UNTS 195 (CERD).

33. Article 5 (e)(v); Ibid.

34. The Constitution of the People's Republic of Bangladesh (adopted 4 November 1972, entered into force 16 December 1972) article 15

35. Act No. 27 of 1990

36. BANBEIS and MWCA, 'Report on Primary Education in Bangladesh: Challenges and Successes' (To be delivered at the third Summit on South Asian Development hosted by: South Asian Society for Regional Cooperation (SAARC) 4

<<http://ih.stanford.edu/rosenfield/resources/Primary%20Education%20in%20Bangladesh.pdf> > accessed 3 April 2015

³⁷. Ibid.

³⁸. Rahman, M. Mustafizur, M. Izham, M. Hamzah, T. Subahan M. Meerah and Rahman, Mizan, 'Secondary Education in Bangladesh: History and Contextual Perspectives' (2002) 7.

³⁹. Act No. IX of 1978

⁴⁰. Sec.3(1); Ibid.

⁴¹. Government of Bangladesh, 'Policies and Guidelines of Ministry of Education' www.moedu.gov.bd/old/edu_system__edu_policy.htm accessed 4 March 2015

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⁴³. Muhammad Jafor Iqbal, 'An Easy Guide to the National Education Policy' Daily Prothom Alo (Dhaka 4 November 2010) <<http://www.somewhereinblog.net/blog/rshahriar/29037893>> accessed 4 June 2014

⁴⁴. Government of Bangladesh, (n 51) 4.

⁴⁵. Supra, note at, 6.

⁴⁶. Muhammad Jafor Iqbal, p.52.

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⁴⁹. Khaled, Khandaker Lutful, 'How far the Draft Education Law 2013 is inclined to protect citizen's right to education' (Action aid, Dhaka 2013)1 <<http://www.actionaid.org/bangladesh/publications/how-far-draft-education-law-2013-inclined-protect-citizens-right-education>>.

⁵⁰. Oli Md. Abdullah Chowdhury, 'Right to education: Still not ensured' The Daily Star (Dhaka 3 September 2013) <<http://archive.thedailystar.net/beta2/news/right-to-education-still-not-ensured/>> accessed 5 February 2015

⁵¹. These obligations are mainly from The Special Rapporteurs (Special Procedures) of the Human Rights Council of the United Nations.

⁵². ICESCR,1966.

⁵³. Supra, note at 51.

⁵⁴. This scheme has been used for the first time by the then UN Special Rapporteur on the right to education, Katarina Tomasevski, in her preliminary report. See UN Doc. E/CN.4/1999/49, chapter II, cited in Fons Coomans, 'Identifying the Key Elements of the Right to Education: A Focus on Its Core Content' <<http://www.crin.org/docs/Coomans-CoreContent-Right%20to%20EducationCRC.pdf>> accessed 9 April 2015

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- ⁵⁹. Ibid.
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