

BOOKS

An Authoritative Commentary on Constitution

MR Mahmudul Islam, Senior Advocate, Supreme Court, has gathered a very rich experience in his busy chambers dealing with Constitutional cases since the commencement of the Constitution of Bangladesh on 16 December 1972. He has grown with the Constitution and has, from the Bar, made his own contribution in the development of the Constitutional Law of Bangladesh.

Constitutional Law of Bangladesh
Author: Mahmudul Islam
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appropriate cases from these jurisdictions. The Table serves as a mirror reflecting the author's depth of scholarship and erudition. This also makes the book an excellent academic work for a comparative study of Constitutional law.

Although we are about to cross nearly a quarter of a century after independence, constitutional law in Bangladesh has not developed because of frequent extra constitutional adventurism in capturing power by force, resulting in the suspension or subordination of the Constitution to extra-Constitutional powers. After the drastic amendments made to the Constitution by the Fourth Amendment, more amendments were made during the Martial Law that followed even though the Constitution was suspended. This Martial Law lasted for four years, and the Constitution was revived toward the end of 1979. The revival saw a new Martial Law device of ratifying the Martial Law and all that went with it and the amendments to the Constitution. This was the new brand of martial law jurisprudence which was Bangladesh's own. The Constitutional rule was short lived as the incumbent president was assassinated on 30 May 1981 and within four months of the election of the new president another Martial Law was declared, which ended only with the passing of the Seventh Amendment in November 1986 in line with the Fifth Amendment. The author has noted all these in the first Chapter of the book. The very considered and studied conclusion of the author that all these three amendments are unconstitutional (para 4.69) is an interesting and thought provoking one. These amendments were not challenged before the Court and this is an exercise which is yet to be made before the Supreme Court. Persons ag-

grieved by these amendments will hopefully come forward to have the constitutionality of these amendments tested.

As mentioned before, because of the vicissitudes of the Constitution, constitutional law did not develop as much as it ought to have within the time span of a little more than two decades. During the years of its uninterrupted continuity since 1986, there has been a blossoming of constitutional precedents. The spurt was provided by the judgment on the Eighth Amendment case. The Eighth Amendment judgment was a catalytic event, apart from being a milestone in constitutional law. An amendment of the Constitution itself was declared ultra vires the Constitution. This was a shot in the arm, and reinvigorated the hope and trust in constitutionalism and the power of judicial review of the Supreme Court. The author has carefully and critically analysed the Eight Amendment Judgment. (Paras 4.57 to 4.67).

Fundamental rights and their enforcement by the Supreme Court against legislative and administrative invasions of these rights find pride of place in the book. Each of these rights, have been carefully analysed and precedents from other jurisdictions and some from our own have been used to explain the constitutional provisions. The right to protection of law (Article 31) is a fundamental right guaranteed under our Constitution but, not in the Constitution of India and has never been in the Constitution of Pakistan.

The author on examination of fundamental rights and particularly the one in Art 31 has arrived at a conclusion which is of great importance and will be epoch-making if one day the Supreme Court agrees with this conclusion. The author says: "Art 31 finding its place in

Constitutional Law of Bangladesh

Part III and not speaking about procedure only cannot be taken to be an incorporation of both substantive and procedural 'due process' as is known in the American jurisdiction and the expression 'law' must mean, reasonable and non-arbitrary law in both substantive and procedural aspects. (Para 2.98)

The Appellate Division of the Supreme Court in a recent case has gone so far as to observe that Art 31 is "the analogue of the US due process" (44 DLR (AD) 111). The point was not mooted and therefore an authoritative interpretation is yet to be given. I have always held the same view regarding Article 31 and agree with the reasoning of the author as quoted below:

"The Constitution in Art 26 (2) mandates that the State (which includes parliament) shall not make a law inconsistent with the provisions of Part III and includes the provision of Art 31 in Part III. This entrenchment must be given a meaning. As such Art 31 must be read as guaranteeing a fundamental right and as a limitation on the power of Parliament in the enactment of laws. If the expression 'in accordance with law' is interpreted to mean any law passed by parliament, Art 31 will cease to be a fundamental right as such an interpretation takes away the

entrenchment on the power of Parliament which is the essence of a fundamental right and such an interpretation will make a non-sense (sic) of the entrenchment by Art.26." (Para 2.98)

The author has further strengthened his conclusion by relying on the case from Singapore decided by the Privy Council (Ong Ah Chuan vs Public Prosecutor (1981) AC 67).

The Constitutional provisions relating to the Executive, Legislature, Judiciary and Election and Civil Services have been analysed in four different chapters. In so far as the Executive is concerned the author's analyses reveals that in matter of the Ordinance making power of the President, the position of the President under our Constitution is different his position under the Indian or Pakistani Constitutions. Under these latter Constitutions the President is a part of the Parliament, whereas under the Bangladesh Constitution the President is not a part of Parliament. This has led the author to infer that the "satisfaction" of the President for the need to make an Ordinance or for declaration of emergency is as justiciable as any other exercise of a conditional executive power. Further, according to the author, an Ordinance would be liable to challenge on grounds of mala fide or collateral purposes, whereas an Act of Parliament cannot be so challenged, because once Parliament is competent to legislate, the motive behind the enactment is irrelevant. These are weighty reasonings, and the peculiarity of our Constitution as noted herein cannot be lost sight of. The Supreme Court has yet to rule authoritatively on this point.

In the Chapter relating to "Legislature" Parliamentary Privileges have been specially dealt with and critically analysed. Members of Parliament will find the book interesting and of great value to them. I have no hesitation in recommending the book to them as well.

Reviewed by **Syed Ishtiaq Ahmed**

ENTERTAINMENT

TELEVISION

Arabian Nights: Genie Forgives the Trader's Crime



ger of death' from the saved. **Story of Fisherman and the Genie**

A very poor fisherman has a principle of throwing his fishing net only four times in the waters of the river and accept whatever the catch as his destiny.

His children and wife have never had a complete meal. He prays to the river to give him so much wealth so as to enjoy all the pleasures of the finest foods — for him and his hungry family.

In the first throw a carcass of a donkey is pulled up in the net. The second time a trunk containing a human skeleton. And the third time some rocks.

In desperation he throws his net into the river for the last time and pulls out a brass bottle.

As soon as he breaks the seal of Hazrat Suleman — the prophet of all natal world — A huge genie towering into the sky appears.

Genie to kill the Fisherman: Instead of thanking the fisherman for saving him, the genie asks the fisherman to choose the mode of his death — since he was locked up in the bottle for 300 years and nobody rescued him, he decided that anybody who saves him now will get death as a reward.

Episode 14 on BTV today (Friday) at 8:30 pm.

The Crystal Maze

Episode 14 on BTV today (Friday) at 9:05 am.

off her head immediately.

At that moment a huge crystal chandelier falls on the Sultan.

Shehzade at the danger of her life saves the Sultan.

Sultan cannot believe that someone whose life he was about to take — saved his life.

Princess Shehzade took advantage of the situation and started narrating a story where the saviour is himself in dan-

Dark Justice: "Urban Renewal"

A Kickboxing match where contestants deliberately fight to the death, Nick (Ramy Zada) sends Gibs (Clayton Prince)

undercover to oqtrap the fight's promoter.

Episode 15 on BTV on 23.4.95 (Sunday) at 9:00 pm.

TIME TRAX: "One On One"

Sahmbi (Peter Donat) invents a way to control men's minds and tries to sell it to unscrupulous businessmen. He plans to use it on Darien (Dale

Midkiff) as proof that it works.

Episode 20 on BTV on 26.4.95 (Wednesday) at 9:00 pm.

Zee TV up with New Serials

ZEE TV has added more variety to its track of entertainment from this month with soap, *Hasratein* and sitcom *Hum Paanch*, both beginning April 4 last, says a press release.

late first wife and two from his present wife Bina. Bina Mathur (Shoma Anand) is the content housewife obviously siding her five daughters, sometimes to

Mathur's embarrassment. **Time : Original: 9 PM (Tuesday) Repeat : 11:30 PM (Thursday)**

Viewing Video

by **Lenin Gani**

WHEN five terrorists take the Wolfe household hostage only one person can save them — 11-year-old Stuart (Mickey Lebeau).

Stuart's father Conrad (George Shannon) is a top government official who is in the possession of an important formula the criminals would like to get their hands on.

What they didn't bargain for was Stuart's resourcefulness. The whiz kid jams the computer containing the vital info with a near impregnable code. Then he goes about getting rid of them — one by one while the whole time, his family fears for his safety.

Playing Dangerous has may be introduced the viewer to yet another Macaulay Culkin.



NAME	ENGLISH TYPE	CAST
1. Quiz Show (Dir: Robert Redford)	(Drama)	John Tuatuaao Rob Morrow Ralph Fiennes Chevy Chase/ Jonathan Taylor Thron
2. Man Of the House	(Comedy)	Jackie Chan
3. Rumble In The Bronx	(Action)	Robert Davi/ Steven Bauer
4. Priscilla Queen Of The Desert	(Comedy)	Mike Lebeau/ David Keith Miller George Shannon Christopher Lambert
5. Codename: The Silencer	(Action)	Stella Stevens
6. Playing Dangerous	(Action)	Corbin Benson Adrian Pasdar Ray Wise Brad Johnson Craig Sheffer/ Meg Tilly
7. The Hunted	(Thriller)	
8. House Call	(Horror)	
9. The Granny	(Horror)	
10. Cronos	(Sci-fi)	
11. Space Rangers	(Action)	
12. Fist of Glory	(Western)	
13. Ghost Brigade	(Action)	
14. Dominion	(Drama)	
15. Sleep With Me	(Children's Adv)	
16. Goldy III	(Rom/Act)	Amir Khan/ Mamta Kulkarni Akshay Kumar/ Karishma Kapoor

Source: Film Fair Video and other clubs.

MUSIC

A Roving Pianist with a Message of Peace

by **Fayza Haq**

"The more influences you can bring together in music the more interesting it gets," says American pianist John Ferguson, who played for Dhaka audiences recently, and begins every morning by listening to Indian "ragas".



JOHAN Ferguson, who is a widely travelled pianist, whose work takes him to various parts of USA, Europe and the East, specially with his work "American Voices" (which presents typically American culture to Eastern Europe) spoke to "The Daily Star" at the USIS, having completed a radio recording, the day after he arrived in Bangladesh on

American I come from a place where there is a mixture of cultures. I naturally welcome such combination of sources of music. Ragtime and jazz had such origins too.

"I believe the more influences you can bring together the more interesting the music gets e.g. George Greshwin comes from a Jewish Background in Russia and he

ing band music with African syncopation. In this form Scott Joplin, who was an original writer and composer, and Eubie Blake are my favourite composers, and as for the choice player, I will again have to say it is Eubie Blake, who lived to be 100 and was playing until he died in 1983. When I was younger I saw him on television and heard his concerts."

Asked his reasons for having a passion for ragtime John explained, "It's a joyful and fun type music. To me it is typically American and captures the spirit of the South where I was born. I also like it because I can simply read it off the page."

He plays both alone and at concerts, with others — enjoying both. "But in some ways I prefer to play alone when I have absolute and direct contact with the audience. I like to talk with my audience and to be the only one on stage. Also I definitely prefer to play live. I like the spontaneity and the improvisation that goes with it," he confides.

Giving his reasons for playing a number of pieces of George Gershwin at Dhaka, both at the Goethe Institut and the American International School, John said, "He is definitely a great American composer who brought together a world of music of jazz, Broadway and other genres of contemporary classical music. He was a pianist and his music is really suited to the piano; it feels good to play it and the audiences loved it. It always results in a successful and fun programme. The audiences in Europe are specially enthusiastic about Gershwin."

Elaborating his choice for being based in Holland, near the Hague and Amsterdam he explained, "It is easy for me to reach out to the Eastern European countries from there. Due to politics, there wasn't much of American music there between World War II and 1990. I try to reach out to Eastern Germany, Poland, and the Czech republic. I have been doing this through the project 'American Voices' for the past five years.

"I enjoy doing work-shop programmes with young musicians. I go into the music schools and work with the piano students. In the high-schools I give lecture concerts about American music."

Going into details about the financial aspect of his pet project, John added that he is helped both by the American government and the local ministries of culture in places that he tours, such as the city of Goerlitz (E. Germany).

Dwelling on his three-week stay in India and Nepal, last year, John informed me, "I heard a lot of eastern music, specially in S India in Mysore. This was Karnatic music. I met a lady there, the director of the music school who played Karnatic music on the piano. So my first exposure to eastern music was when it was played on a western instrument. This lady taught me lot about the ragas and I went back with a number of cassettes, which I listen to every day. In fact, I begin each morning with Asian music."

Giving his impressions of the subcontinent, the 36-year-old bachelor pianist, who said that he has no time to make a home at one place and so he is rooted down, remarked "I live on a farm in Holland and so naturally I am used to seeing animals. Yet it surprised me to see how animals could mix in

the streets of the subcontinent with people, cars and transportation of various types like rickshaws and bicycles carrying bamboos. The other thing I liked was the climate and the smell of the different flowers all through out the year. I also find the people there extremely friendly and open. But they were isolated from the western tradition of music. In my neighbourhood in the Hague (Holland) we have a theatre that specializes in non-western music, from Asia, Africa and S America. There were only 20 people in the audience at a recent concert, who applauded but did not understand. I felt the case was the same with my listeners in Nepal and S India."

Touching on how the people from the east could sympathize more with modern western music, John said, "It is by listening to the radio and cassettes and by watching films. You really have to have the desire to learn."

Asked if video, rock and pop culture were marring the youth's taste for music he commented, "Coming from the west you have to admit that popular culture has triumphed. If you complained about that you would be a bit of a spoilt sport. But this does not mean that classical culture is destroyed. Yet there are composers who are trying to bring together these different cultures. One has to admit it is impossible for classical musicians to be as popular as Madonna or Prince."

Speaking about his favourite pianists John said, "Poland produces pianists who have a feel for popular music and I like them best. Russia produces fabulous pianists but they seldom have a sense of humour. I like American ones too."

"The most important thing is to love music and to love the instrument that you are playing. My teacher Nadia Boulanger taught us 'Do it if it is the only thing you want to do'."

John's most memorable experience of his travels was when a group of very young orphans in Calcutta played Mozart for him in a stifling atmosphere with biting mosquitoes. As for Bangladesh, he said that despite the negative image conveyed by the media in the west, he found its people well-educated, energetic and even dynamic.



April 5 last. He was dressed casually, and spoke in a gentle self-effacing manner. This was even though he has studied music in places like Paris and Geneva, after his masters from Texas, and has two C.Ds to his credit.

Asked if he believed if eastern and western music could be combined successfully, John immediately replied, "I shall play a piece at my concerts which is such a combination. This is not done very often. It is by Alan Hovhaness and is called 'Do You Remember the Last Silence?' Hovhaness writes a lot of music based on his Armenian background and he is also influenced by the fact that his wife is from Madras. This piece is based on Hindu mythology. The minimalist composers like Philip Glass, Steven Reich and John Adams are influenced by Asian Music. This has become very popular in the past 20 years. It uses small motifs which are repeated over and over again (ostinatos). The idea evolves into something bigger and then gets reduced. This is obviously a recent style in contemporary music. Being an