Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

State of Human Rights in Bangladesh - 1999

The Plight of Prisoners in Bangladesh

Md. Asaduzzaman for Odhikar

UNLAWFULNESS and criminal behaviour are obstacles to the development of a society and a country; hamper the rule of law and democracy; and adversely affect the movement for peace. To prevent and restrain offenders, the concept of a prison system was introduced by the British colonisers in this sub-continent in the 18th century. At that time, the prison system was used as a means of punishment. Later, the Congress Party demanded a change in the concept of prisons from an 'institute of punishment' to an 'institute of correction'. As a result, the "Prison Reform Committee" was established in 1920 which recommended that prisons should be used as "correctional institutes" rather "punishment institute".

Since then the concept of prisons in this Subcontinent has been realised as " Correctional Institutes"- on paper. However, the practical experience is that the prisons in Bangladesh are no more than punishment institutes, where mental and physical tortures of inmates occur. However, before discussing the prison administration in Bangladesh, Prisoners and Human Rights, we have to know the laws under which the Prison System is governed. Basically, the Prison Act, 1894; the Prisoners Act, 1898; the Jail Code of 1837 are the main laws and regulations which govern the Prison System in Bangladesh to date. The Criminal Procedure Code, The Penal Code, The Police Act, The Civil Procedure Code, The Special Powers Act are broadly exercised in the Prison System in Bangladesh as well.

The Prison Administration:

The Prison Administration is controlled by several government organs. It is housed under the Ministry of Home Affairs but is also controlled by the Ministry of Establishment in respect of the promotion, posting and appointment of the officials. It is operated by the Directorate of Prisons, which includes the Inspector General of Prisons (IG Prisons), Additional and Deputy Inspector Generals of Prisons, Superintendent of Prisons, Jailers, Deputy Jailers etc.

Since November 1977 to 'his day, the Prison Administration in Bangladesh has been handled by members of the Armed Forces - except the period of 1981, during President Sattar's regime. The Bangladesh Prison Administration is an absolutely Civil Administration and the Officers and Staff (Department of Prisons) Recruitment Rules, 1984 provides that the provision of recruitment of the Inspector General of Prisons should be " by Promotion on the basis of merit-cum-seniority from amongst the DIGs of prisons and, if none is found suitable for promotion, by transfer on deputation of a suitable officer holding a post equivalent to the post of Joint Secretary". The qualifications have been laid down in the rules that the Person to be Promoted should be 18 years of service in the Department including 3 years of Service as D.I.G of Prisons.

The Parliamentary Standing Committee on Ministry of Home Affairs recommended, at a meeting of 16 September 1999, that in Clause 3(d) of the said Recruitment Rules of 1984, there should be steps to appoint the Senior Posts of Jail Administration, including the top position, by promoting the departmental officers as per the Recruitment rules. Following the rules one Senior Assistant Secretary of Ministry of Home Affairs vide letter No. 1 E-2/86-Jail-1/164 dated 13.3.97 requested the Secretary of Establishment to withdraw the Present IG Prisons Brig. M. Waliur Rahman Chowdhury within six month. In 1982 the single-member Marshal Law Committee Comprising of Brig. M. Abdul Halim also recommended to recruit the IG Prisons by Promoting the Departmental officers. In spite of all these clear rules and recommendations, the civil administration of prisons is still occupied by Military Personnel in the regime of an elected government .

Prisoners inside the Prison:

A preliminary investigation report by Odhikar: a coalition for human rights, found that the condition of the prisons and their inmates in Bangladesh are deplorable. In all the prisons, specially in the old, ill-equipped ones, over-crowding, poor hygiene, almost non-existent sanitation facilities, lack of proper health care combine with corruption to create a nightmare scenario. Furthermore, inmates are sometimes denied visiting rights or their family is turned away at the jail gate if they are unable to pay bribes. They suffer further humiliation in the fact that within 24 hours their numbers are counted several times.

The problem of overcrowding is mainly due to the delay of holding trial, as the number of under-trial prisoners is very high. Just how bad the situation is in the jails in Bangladesh today can be seen from the table below:

Division	No. of Jails (including the 9 Central Jails)	Actual Capacity	Present Capacity
Dhaka	17	6723	18,102
Rajshahi	16	5100	13,607
Chittagong	11	4307	12591
Khulna	10	3655	10,839
Sylhet	4	1665	3247
Barisal	6	1962	2646
Total	64	23,41?	61,032

There are 16 Thana Jails in all over the country where actual accommodation capacity is only 480 but at present there is no inmate in the Thana Jails. Thus, out of the total of eighty jails in Bangladesh, the District jails and Central jails are appallingly overcrowded, while the thana jails remain empty.

At present 582 of the inmates in Bangladesh's jails are foreigners. Out of this number, 19 are women. These people have either been awarded release orders by the court or have already served their conviction and sentence. Unfortunately, they are rotting inside prison due to technical problems which could be solved easily by the respective governments.

Needless to say, these inmates are passing their days in miserable conditions. There are also many Rohingya women and children in different prisons in the country who are yet to face trial under the Foreigners Act as illegal trespassers.

Annual Budget:

The total annual budget of our Prisons is only Tk.90 crores. Out of this amount, the salaries of the numerous prison staff, the food, clothing and other expenses of over 61 thousand inmates for 365 days are also the inattentiveness of the prison guards. Recently, nine inmates of Sherpur District Jail tried to escape. Two managed to find freedom. Among the others, one was killed. Investigators from Odhikar found that escape had been made simple due to the lapse in security measures.

Number of Women in Bangladesh's Jails

No. of Prisons	Accommodation capacity for Male Prisoners	Accommodation capacity for Female Prisoners	Present Capacity of Male Prisoners	Present Capacity of Female Prisoners
64 Jails including 9 Central Jails	22,362	1051	59,133	1899
16 Thana Jails	400	80	None	None

Different classes of prisoners are kept in separate cells and wards divided into the convicted, the under-trial, the detenu and male and female. This is in accordance to the rules and regulations. However, in spite of all these rules, Odhikar found that some prison officials were abusing the inmates, torturing them in order to extort money. Those prisoners who have money and influence are living in comparatively better conditions. In prison parlance 'division' is translated into 'social standing and esteem'. A person's social standing would determine which 'division' he or she would be placed in. Sometimes, the divisions are determined by a court order. Political, administrative and financial factors also play a role in the determination of division. There are mainly two Divisions in the prison - namely I and II. The elite and financially affluent and high ranking persons are kept in the first division while the rest are kept in the second. It is therefore obvious that from jail gate to prison kitchen, those who can afford bribes can have a comfortable life in the prison.

Prison security in some jails also needs to be questioned. It is not only corruption that is affecting the jail system, but also the inattentiveness of the prison guards. Recently, nine inmates of Sherpur District Jail tried to escape. Two managed to find freedom. Among the others, one was killed. Investigators from Odhikar found that escape had been made simple due to the lapse in security measures.

Conclusion:

Given the above circumstances, it is to be noted that we should develop our prison system to ensure the human rights and fundamental rights of the inmates in the prisons in Bangladesh. They too are citizens of the country and protected by the constitution. In 1980, the Justice Munim Commission Report suggested a total of 180 recommendations necessary to improve prison conditions. Out of this number, only 64 recommendations have been fully executed, 28 partly executed and 88 still to be implemented. According to Odhikar, in addition to these recommendations, the following measures should be taken immediately to improve the prison system and ensure the rights of prisoners:

1. To issue sufficient and substantial annual Budget for the prisons.
2. To construct the Prisons with sufficient accommodation capacity.
3. To ensure immediate sufficient and standard medical, food, clothing and recreation facilities;
4. To improve sanitation and ventilation facilities.
5. To make ensure speedy trials to decrease the number of under trial prisoners.
6. To ensure education, legal awareness and right to work of the inmates.
7. To ensure free visiting rights of relatives.
8. To make the prisons correctional/reformative institutions.
9. To implement parole, probation and after care services.
10. To give proper wages to persons under rigorous imprisonment, for their labour.
11. To ensure the recruitment of the Inspector General of Prisons from a departmental candidate.
12. To try the corrupt officials in the prisons and ensure prisons remain corruption-free.
13. To give proper human rights training to the prison administrators and others concerned and to the prisons as well.

The writer is a Member of the Executive Committee of Odhikar.

Old Violence in New Century

by Child, Women, Relief and You

CWRY, a Human Rights Project has been working on the violence against women and children. This organisation has discovered two out of many distressed violations of human rights cases that have occurred in a span of a week.

On the eve of the new year, besides Bandhan assaulted in TSC, one Shahida (18) - a garments worker while returning to her Kunipara (Tejgaon area) residence from her husband's workplace, came across five men who kidnapped her to Kunipara Balurghat and gang raped her. As she became unconscious, two of the perpetrators took her to Noor Pharmacy. Due to severity of the injury, from there; they finally took her to DMCH. Though she was under treatment there, but CWRY investigators reported that medicare was inadequate.

The second incident is more unfortunate and discouraging as well. Fatima another garments worker was returning home after her night shift overtime duty on 4 January 2000 at about 3 am. On her way, Suman and Yakub forcibly took her to one retired major's empty house and gang raped her. She, with the help of her landlord filed a FIR in the Khilgaon PS.

Due to the precarious law and order situation in this country, we cannot be very optimistic about getting justice on the FIR filed, and case instituted against such heinous crime and terrorism of the medieval age which occurred on the public thoroughfare of a capital in modern days.

CWRY also reported that there are 50 cases of rape pending at the Repression of Women and Children Special Tribunal, and only one is under trial now, while 26 of them are still under the process of framing charges. There are also 26 rape cases of garments workers in the same court.

CWRY is a Human Rights Organisation.

The Pinochet Episode

From UK Correspondent

The preliminary decision of the British Home Secretary Jack Straw to block General Augusto Pinohet's extradition to Spain on medical ground has significant bearings on international movement for human rights. It also raises serious question on the benefit of Pinohet's long stay in the UK without trial. The Home Secretary-accused by some Tory MPs and left wingers of making a political decision to end the Government's embarrassment over the extradition saga-insisted that the "unequivocal and unanimous" conclusion of a medical team "of outstanding national and international reputation" that had examined Mr. Pinochet on January 5 was that "he was at present unfit to stand trial and that no change to that position can be expected."

Sceptics question its validity under international law. By the end of the month, the 82-year-old general is out on bail after Lord Bingham, the Lord Chief Justice, ruled that as a former head of state he is entitled to immunity from prosecution. But almost a month later the Law Lords narrowly overrule that decision, finding the former dictator can face extradition proceedings.

The Implications of the Decision Although it seems that at last the ex-dictator escapes the trial, a few incontestable premises have become firmly established. Treaties and conventions signed so casually between nations can have a binding effect when their powers are invoked by judges Judge Baltazar Garzon who issued the request to the British authority for the arrest of General Pinochet, is still determined not to let the extradition move collapse without a fight. This has been the case with the 1984 Torture Convention. The protection of human rights requires a rather bet er defined structure than the voluntary initiative of a Spanish judge.

If he is not extradited to Spain, he could only face prosecution there or in another country if he travels abroad and is placed under arrest. Technically he could still face criminal charges in Britain, but if he has been declared unfit to stand trial by British medical experts then it is inconceivable that the director of public prosecutions would authorise a prosecution here. The Chilean authorities say it is still possible the general could face trial when he returns home, if the Chilean courts decide to strip him of the immunity he has as a senator for life.

How Sovereign is Our Parliament?

Shamsuddin Choudhury Manik

"SOVEREIGNTY Of Parliament" is incontrovertibly the most popular phrase in the vocabulary of our politicians, irrespective of party lines. There is hardly a day, we do not hear someone belonging to our country's political arena referring to the quoted phrase. Unfortunately this is the singularly identifiable phenomenon which has received most illusive misconception from those who wander around our political spectrum.

Is our Parliament as sovereign as is generally perceived? Is it sovereign at all? Obviously we have to look at the very source whence the doctrine of Sovereignty of Parliament emanated and examine what this concept really connotes and presupposes.

Origin, Basis and Implication of the Theory

Professor A V Dicey, may very aptly be described as the patriarch of the modern theory of Parliamentary Sovereignty, to which our politicians refer days in and days out. It should not, however, escape from our mind that the concept of Sovereignty was thought of even before the revolution of Cromwell and the enactment of the Bill of Rights, by such jurists as Chief Justice Coke of the seventeenth century, and Blackstone. But their idiom of Sovereignty is distinct in character, for obvious reasons, from the one given by A V Dicey.

French theorist Jean-Jacques Rousseau, and Dicey's contemporary theorist John Austin, Hans Kelsen also endeavoured to advance their version on Sovereignty in a different context.

Dicey, in elaborating his theorem of Sovereignty, drew a distinctively visible line between legal and political sovereignty in the same way Chief Justice Coke and Blackstone did during an earlier period, and in doing so Dicey expressed that the legal sovereignty is vested in the Queen in Parliament, while political one remained within the captivity of the people.

Indeed Rousseau, Austin and Lock, based their theory essentially upon the approval and acceptance of the collective will of the people, and hence their propounded concept encompasses the idea of political sovereignty, rather than the legal one of Dicey.

Crown-Parliament Struggle

The concept of Parliamentary Sovereignty, as is prevalent in the United Kingdom in the legal sense, is the product of struggle between the Crown and the Parliament which was preceded by the proclamation issued by Henry VIII and Elizabeth-1, vesting upon English Crown supremacy over all person and causes of the realm and making the Parliament a device to attain that objective. Prior to its victory in the struggle against the crown, crown's claimed inviolable prerogative powers, vide which it ruled the realm, were deemed to be invincible.

Eventually the Bill of Rights in 1689 and the Act of Settlement brought about recognition for the legislative authority of parliament, inclusive of the authority to reverse Crown Prerogatives by Acts of Parliament. The assumption of the aforesaid legislative auth rity initiated the evolution, wh ch, at a later stage, gave rise to the unquestionable pre-eminence of the British Parliament, which is regarded as the cornerstone of the British Constitutional law, and it is that state of unhindered power, on which Dicey wrote his treatise on the Sovereignty of Parliament.

Meaning and Characteristic of Parliamentary Sovereignty

In nutshell, the Sovereignty of Parliament, signifies infinite and untrammelled power and competence of the August Body.

In Dicey's own language "the principle of Parliamentary Sovereignty means neither more, nor less than this, namely, that Parliament thus defined has, under the English Constitution, the right to make or unmake any law whatever, and further, that no perso: or body is recognised by the law of England as having a right to override or set aside the legislation of parliament."

By the time Dicey started to compile his immortal work known as "Law of the Constitution" British Parliament attained so much of unquestionable authority in its legislative sphere that Sir Ivor Jennings said, "Parliament can legally turn a man into a woman, and Sir John Leslie said "Parliament could legislate to have blue eyed babies to death.

The doctrine expounded by Dicey and endorsed by others, pre-conceives a situation where parliament is not bound by or subordinate to any superior law, which may put any embargo on Parliaments unrestrictable authority to legislate.

Britain is a nation where none can point out to any document which can be design ted as the Constitution and hence nothing in Britain exists to limit the legislative power of the Parliament. As Blackstone observed, "True it is that what the parliament doth, no authority on earth can undo."

A modern example of the unequivocal recognition of British Parliament's omnipotence can be traced from the following observation of Lord Reid, made in the case of Pickin-vs-British Railway Board, "In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded in so far as it is contrary to the law of God or the law of nature or natural Justice, but since the Supremacy of Parliament was finally demonstrated by the revolution of 1688, any such idea has become obsolete ...."

Parliamentary Sovereignty-vs-Written Constitution

What transpires from the Dicey's doctrine is that a Parliament is Sovereign only if its legislative competence is not circumscribed by any superior authority.

The position, as it universally stands, is that in a country with a written Constitution Parliament and other state organs are but creations of the Constitution, which defines the line and the ambit within which such Constitution created organs must dwell. The Constitution thereby limits and restricts the power, authority, jurisdiction and competence of all the state organs including that of the Parliament. The power of the Parliament, therefore, under a written constitution, is not, and by its very nature, cannot be unlimited or unrestricted as the same is compartmentalised by the provisions laid down in the inscription that created Parliament.

Such limitation can be best ascertained from the judgement of the US Supreme Court in the celebrated case of Marbury-vs-Maddison, in which, Chief Justice Marshall, ignoring the politicians claim to the contrary, expressed that the Constitution was the "fundamental and paramount law of the nation, that it was the particular duty of the courts to interpret the law that is, 'to say what the laws is.' He concluded by saying "thus the particular phraseology of the Constitution of the United States confirms and strengthens the principle supposed to be essential to all Written Constitutions, that law repugnant to the Constitution is void and that the courts and other departments are bound by that instrument."

Though President Jefferson declared, that the 'design of the fathers' was to establish three independent departments and that to give the judiciary right to review the Acts of the Congress and that of the President, was not only violative of the Constitution, but also that of the doctrine of separation of power, the principles enunciated in Marbury-vs-Maddison have survived the test of time and its validity has remained beyond any question ever since.

Countries other than the United States

The situation in India and some other democracies, is even clearer. Their High Courts are empowered to review Acts of Parliament and declare the same invalid if found to be repugnant to any Constitutional provision. The US Constitution does not give such direct authority to its Supreme Court to declare an Act of Congress void and Chief Justice Marshall assumed such jurisdiction from inference only though the doctrine of "Due Process" is essentially an American Constitutional feature.

The position of a country with a written Constitution other than the United States may be succinctly depicted by quoting some observation by Justice B K Mukherjee who said, "Constitution of India is a written Constitution and though it has adopted many principles of the English Parliamentary system, yet it has not accepted the English doctrine of the absolute Supremacy of Parliament in matters of legislation. In this respect it has followed the American Constitution and other systems modelled on it. ... In India it is the Constitution that is supreme and parliament as well as state legislatures, must not only act within the limits of their respective legislative sphere as demarcated."

The above passages confirm that judicial review is an essential part of Indian Constitutional Law as well.

In the case of Goplan-vs-State of Madras, the Supreme Court of India Stated, "the authority of the Court was to be exercised in such a manner that neither the Parliament nor the Executive can exceed the limits set for them by the Constitution. If they do, the Supreme Court has the power to halt them."

The Supreme Court of India assumed jurisdiction to nullify Acts of Parliament, including Acts to amend the Constitution in a score of other cases like, (1) Keshowananda-vs-Kerala AIR 1973 SC 1461 (2) Indira Gandhi-vs-Raj Narayan AIR 1975 SC 2299 (3) Sampath Kumar-vs-India AIR 1981 SC 386.

The position in other democracies with written constitution is identical as far as the subordination of the Parliament to the Constitution is concerned. In Canada, the British North America Act 1867, which is the Constitution of the Dominion, vested on the Supreme Court the Guardianship of the Constitution and the power on it to interpret the said Act in cases where the question of validity of a Dominion or a Provincial legislation is involved. The position in Australia, New Zealand and other democracies within the old Commonwealth are just the same whose Constitutions were enacted by the Parliament in Westminster.

Reasons of divergence between Britain and other Democracies

The most spectacular divergence between British Parliament and, the Parliament in other democracies are attributable to the distinctive origin of the two system.

In Britain the phrase "Sovereignty of Parliament" is not laid down in any statute, nor could that be, for the ultimate law maker can not confer upon itself the ultimate power. The very foundation of the concept of Sovereignty of Parliament in the UK is, as the legal theorists like Hans Kelsen and Professor Hart Endorse, essentially laid on the acceptance of the same by the judges, (the reason why Hart termed it as the Ultimate Rule of Recognition) Kelsen saw it as an outcome of "Juristic Consciousness." In other words, it is the judges who uphold and reinforce the Sovereignty of Parliament, as the "Basic Norm" of the British Constitution. Sovereignty, is hence a product and is the fundamental rule of the English Common Law, for it is the judges who, in Britain, accept and uphold the Sovereignty of Parliament following the Revolution of 1688.

Lord justice Diplock observed in BBC-vs-Johns (1956 Ch 32), "with the reduction of kings prerogative powers, there came about the correlative rise in the sovereignty of Parliament. From 1688 the Supremacy Parliament over the Crown was established."

The scenario of countries with written constitution stand on an entirely different footing. Such Countries are governed by a supreme law called "Constitution," which were framed either through a procedure known as "autochthonous," as was done in our country by the Constituent Assembly, and by a Convention in Philadelphia in 1787 in the United States or vide a procedure whereby Imperial Parliament, while granting independence or Dominion Status to its colonies, as happened to Canada, Australia, New Zealand, enacted. A body of Rules to become the Constitution of those decolonised Countries.

Does Sovereignty lie with the Supreme Court in a Written System?

Howsoever the written Constitution gets it life, it becomes the Supreme law of the Country, creates all the State organs including the Parliament and the Apex judicial body, and defines their boundaries. All the organs and institutions of the State are necessarily sub-ordinate to the constitution, for it is the Constitution which creates them and says what they can and can not do and hence none is, "Sovereign," as "Sovereignty" necessarily entails unrestricted power to do as it likes. Although Chief Justice Charles Evans Hughes expressed "the constitution is what the judges say it is," he did nevertheless, not refrain from saying "we are under a constitution," by which qualifying observation he negated the idea that the US Supreme Court was Sovereign. Even justice Frankfurter by his remark "Supreme Court is the Constitution" did not mean to say that Sovereignty in the US system lay with the Supreme Court. His remarks was essentially aimed to re-iterate the Guardianship Character of the Supreme Court over its Constitution. Mr. S.C Dash of India, who in his book titled "Constitution of India" tersely opined that the Judges of the Supreme and the High Courts in India make and subscribe an oath and affirmation, before assumption of office to "uphold the constitution and the laws" and that no other functionary of the State, not even the President is administered similar oath. Again he referred to the Guardian Status of the Constitution.

Clearly, neither the Parliament, nor even the Supreme Court, though the Guardianship of the Constitution, is vested upon the latter Organ, can be Sovereign under a written Constitutional regime.

Bangladesh Scenario

The legal position is even more explicit in our Constitution in that our Constitution categorically states in its Article 7(2), "This Constitution is, as the Solemn expression of the People, the Supreme law of the Republic and if any other law is inconsistent with this constitution, that other law shall, to the extent of the inconsistency, be void." Such an objective can be achieved by the express provision of Article 102. Can there be any scope to assert that our Parliament, which is restricted by article 7 from legislating as it likes, be termed as Sovereign? The obvious and only sensible answer would be "No".

Our Supreme Court, and before that, the High Courts and Supreme Court in Pakistan, and even in the olden days, the Federal Court of India on several occasions declared Acts of Parliament and even Constitutional amendment as void. The observations of Chief Justice Badrul Haidar Chowdhury, in the case of Anwar Hossain Chowdhury-vs-Bangladesh, highlighted the position in it's proper perspective by saying, "This topic can now be remedied off by saying that the contention of the Attorney General that our Parliament has got unlimited power is unsound, on the contrary contention of all the counsel appearing for the appellants is grounded on the preamble of our Constitution which even the Parliament can not amend without referring to the people, nor can the Parliament amend Article 8 without referendum. Article-7 stands between the preamble and Article 8 as statute of liberty, supremacy of law and to put in the words of the American judge, quoted by Mr Syed Ishtiq Ahmed, that it is the pole star of our constitution." His Lordship went on to say, "No Parliament can amend it because Parliament is the creation of this Constitution and all powers flow from this Article, namely Article 7."

His Lordship further stated ".....our Parliament is not only a Controlled one but the limitation on legislative capacity of the Parliament is enshrined in such a way that a removal of any plank will bring down the structure itself."

Chief Justice Badrul Haider Chowdhury, citing Dicey, re-iterated that sovereignty of Parliament is a concept of Constitutional Law in the history of England and that concept is fundamentally inconsistent with the nations with inflexible constitution.

Even during Pakistan period, the Supreme Court of Pakistan held in Fazlul Quader Chowdhury-vs-Abdul Huq (18 DCR SC 69) that the constitution vested on the Supreme Court the power and duty to declare an Act of Parliament void even if such an Act is in the form of amending the Constitution.

The Federal Court in British India, declared as ultra vires, a Rule made by the Government under authority granted by Defence of India Act. Indeed the first Chief Justice of the Federal Court of India Sir Maurice Gwyer, while inaugurating the said Court on 1st October 1937 under the provisions of the Government of India Act 1935 declared, "Independent of Governments and Parties, the Court's primary duty is to interpret the Constitution, not with the cold eyes of an anatomist.... ."

Mr. Mahmudul Islam, the Attorney General in office and the author of a comprehensive text book on Constitutional Law of Bangladesh, quoting Chief Justice Marshal and the ratio of the Pakistan Supreme Court's decision in Fazlul Quader Chowdhury-vs-Abdul Huq, (in which the Pakistan Supreme Court declared a purported Constitutional amendment void) stated with reference of Article 102 of our Constitution, in his aforementioned book, that judicial review of laws is implant in any written Constitution providing for a government in which powers of all functionaries are limited and circumscribed by the Constitution.

We do, therefore, have no choice but to live up to the reality, even if we find is difficult to swallow it, that the concept of "Sovereignty of Parliament" is unique to British Constitution only and that the said theory is totally out of order where a written Constitution reigns supreme. In-as much as the Parliament in Bangladesh is subjected to limitation and constraint imposed by the Republic's Constitution and in as much as the Supreme Court has been vested with the power by the said supreme law of the country, to nullify any law passed by the Parliament, clearly Bangladesh stands at per with any other country with a written Constitution where the latter is the supreme law of the land. The principle that parliament under a written constitution can not be sovereign has been affirmed not only by the Judges of the United States or other written-Constitution countries, but also by the Law Lords of the United Kingdom while they sat in the Judicial Committee of the Privy Council to hear appeals from those independent members of the Commonwealth whence appeal still go to the said Council, though it is the same Law Lords who uphold the concept of Sovereignty of British Parliament, when they act in a different forum, i.e. as Judges of the House of Lords, the highest Court of the United Kingdom. The Privy Council has on numerous occasions proclaimed that the "Sovereignty of Parliament" has no place in a country with a Written Constitution.

It does then necessarily follow, that the two concepts namely "Written constitution" and "Parliamentary sovereignty" can not go together, and is a contradiction in terms.

Professor E.C.S Wade Q.C (who edited Dicey's 9th and 10th edition) stating that Dicey himself never claimed his ideas axiomatic, made it clear that it is the doctrine of the Sovereignty of Parliament, which distinguishes the United Kingdom from other Countries which are governed under written Constitutions. By referring to the cases of Liyanage-vs-R, E.G Aptheker-vs-Secretary of State of the USA and Harris-vs-Minister of Interior, he stated, "In a Constitutional system, which accepts judicial review of legislation, an Act of Parliament may be held invalid on variety of grounds....."

The above survey poses the question as to where, in a written Constitution system Sovereignty lies? Mr Justice Mustafa Kamal, while hearing a Constitutional case recently, gave the most appropriate answer by emphasising that none of the three Organs of the state hold the Sovereignty, it is rather the Constitution itself, which alone is Sovereign.

The writer a Barrister-at-law has recently been appointed as the Deputy Attorney General of the Government of Bangladesh.