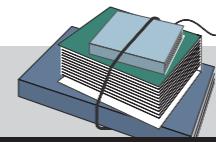




REVIEWING the views



LAW week



Framing of Bangladesh Constitution: Some unsettled questions

TAPOS KUMAR DAS

OVER the years after gaining independence the people of Bangladesh have witnessed an unhappy and inconsistent constitutional journey. For two times comprising of a considerable length of fourteen years they have undergone the military dictatorship. During this time the constitution of Bangladesh has been ruptured for reasons and without reasons. So the original constitution of 1972 lost its original character. But surprisingly it appears that the people of this country are easily convinced by any appearance of the constitution. The reasons may be manifold. But the most fundamental reason for this indifference is the absence of any visible, convincing, authoritative and written document about the ideology of the provisions of the original constitution. Absence of such document has prompted the successive rulers to alter the basic structure of the constitution.

Constitution of Bangladesh is the most fundamental and sacred document of our country. It is expected that all citizens should know it, because it is not only the solemn expression of the will of the people but also the highest law of the land and the people of Bangladesh are constitutionally pledge bound to defend, protect and safeguard the constitution. The second generation, like us of independent Bangladesh, are not happy only knowing the provisions of the constitution, but also want to know the history of its framing and philosophy behind adoption of every Article therein. Sometimes, it is argued that preamble of a constitution explains its underlying principles. It is the legal as well as the moral basis of the constitution. It is the guiding star of the objectives and aims of the state. But merely going through this preamble a layman will struggle to understand the philosophy of the constitution. Some details and accessible articulations were necessary from the framers of the constitution to make the people understand the philosophy behind it.

The history of the framing of the constitution that we often come across through some unauthoritative sources may precisely be described as follows:

The formal Proclamation of Independence of Bangladesh was

drafted and adopted on April 10, 1971 and the Revolutionary Government took oath on April 17, 1971. On January 11, 1972 Bangabandhu Sheikh Mujibur Rahman issued the Provisional Constitution of Bangladesh Order in pursuant of which, the Constituent Assembly of Bangladesh Order was issued on March 22, 1972. The Constituent Assembly was entrusted with the only responsibility of making a constitution for Bangladesh.

The Constituent Assembly in its first session of April 10, 1972 formed a Constitution Drafting Committee consisting of 34 members under the Chairmanship of Dr. Kamal Hossain. The Committee invited suggestions from all sections of people and received 98 memorandums. After 74 meetings the Drafting Committee finalised the draft constitution. Dr. Kamal Hossain introduced the draft in the constituent assembly on October 12, 1972 and general discussions on the draft were held from October 19 to November 3, 1972. After general discussion 163 amendment proposals were received among which 84 proposals were adopted. The Constitution of Bangladesh was adopted on November 4, 1972 and it was made effective from December 16, 1972. In short this is the history of framing of Bangladesh constitution, which in a nutshell is provided by Md. Abdul Halim in his book *Constitution, Constitutional Law and Politics: Bangladesh Perspective, Dhaka, Third Edition 2006 Page 33-39*. And it is one of the informative and accessible books with reference to the evolution of constitutionalism in Bangladesh.

There are some other books on constitutional law written by different authors. But none of them provides any conspicuous information concerning the history of drafting and philosophical background of our constitution. To pick up an example, *Constitutional Law of Bangladesh, BILIA, Dhaka, 1995* written by former Attorney General Mahmudul Islam is considered to be the most authoritative book ever written on Bangladesh constitution. But it seems that the book is unexpectedly silent on the history of drafting of the constitution which has blurred the widespread acclamation of the book. A careful perusal of the history provided briefly above, will expose some

shortcomings of the information concerning history of framing of our constitution.

The drafting committee of the constitution was consisted of 34 members, but most of us do not know the names of all of them. At best our information confirms the

also kept unknown.

The philosophy behind adoption of "Fundamental Principles of State Policy" and "Fundamental Rights" have been mentioned by Dr. Kamal Hossain in different seminars; to mention one, in the *British Bangla Law Week 1999*, which was

providing inclusion of emergency provision, suspension of fundamental rights, preventive detention and 4th amendment providing one party government system, restrictions on publication of newspapers other than major four national dailies). Many writers on constitutional law explained the reasoning of these amendments according to their whim. But Dr. Kamal Hossain, who fashioned these amendments, never gave us any conspicuous idea, particularly in any written document, explaining the acute necessity of these amendments.

Just after the adoption of Indian constitution Dr. B. R. Ambedkar, its Chief architect, made a lot of articulations explaining rational reasoning of adoption of different Articles. Even he categorically explained the rights of different (first, second and third) generations. So, it can be contented that Dr. Kamal Hossain, who is the legend of our constitution drafting, owes a moral responsibility to inform the countrymen in detail, the history of drafting and philosophical background of different important and controversial Articles of our constitution. Most probably he is the only eligible person to inform the countrymen the real intention of the framers behind each and every Article of the constitution.

What we see in case of international conventions like Charter of the United Nations; Universal Declaration of Human Rights; International Covenant on Civil and Political Rights *et cetera*? The drafting history of each of these conventions has been kept recorded in minute details. When, where and by whom initiative was taken; number, places, dates and duration of meetings; substances of proposals made by every member states; substances of amendments proposed by every state on draft conventions; reasons of rejection and adoption of amendments on draft convention; philosophy behind the conventions; even the volume of papers used in drafting; number of helping hands all have been preserved systematically. These records have not only the evidentiary value, but also are satisfying curiosity of researchers.

The similar state of affairs and genuineness can be observed in

case of adoption of constitution of different countries, but unfortunately Bangladesh is lagging behind in this type of race. It is apprehended that all the documents have been lost in course of time. Especially the 98 memoranda that were received from different segments of people, are not available in the parliamentary storage. This can be testified from Barrister Abdul Halim's concern. In his book (*Constitution, Constitutional Law and Politics: Bangladesh Perspective, Dhaka, and Third Edition 2006 Page 33-39*) Barrister Halim has mentioned that he had made an effort to collect the raw documents from Record Book of the Constituent Assembly, but he did not find any of them. Because during the time of shifting from Constituent Assembly to present parliament, a large number of documents have been buried in the cold storage.

Though the framers of our constitution were successful in producing a good constitution within a remarkably short time, there is absence of information concerning the history of drafting of the constitution. That is why even after thirty-four years of commencement, we don't know the history of framing of our constitution in detail. The extent we know it, can merely serve the purpose of competing in a public examination. It is far behind from grasping the ideology of the state, upon which the whole edifice of the country is built. Nevertheless, time has not totally flown away. Dr. Kamal Hossain, Barrister Amir-Ul-Islam, Suranji Sen Gupta and some other framers of our constitution are still alive. Either they themselves can articulate the history and philosophy behind the constitution or can help the articulation by sharing their memory, experience and knowledge. If the dogma behind the constitution is clear to us, there will be diminutive confusion pertaining to the intention and dream of the framers of the constitution. Dr. Kamal Hossain, the indispensable name of our constitutional history, will remain ever salutary, if he leads us to know in full the history of framing of our constitution.

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Bangabhaban now houses acting, resting presidents

This is how it was supposed to be... upon returning from Singapore, President Iajuddin Ahmed would automatically take the charge of the country's presidency and Acting President Jamiruddin Sircar would go back to being the speaker of the parliament. The day before the president's return from Singapore on June 20, some senior policymakers had taken exactly the above decision, which was approved by Prime Minister Khaleda Zia, highly placed sources in the government said. But the scene changed dramatically overnight. Some other ministers and an influential adviser, on the same night that the decision was taken, prodded by an "aspirant of presidency" (readers can easily guess), held a meeting and planned that the acting president should continue in his post for longer and resumption of the president's office by Iajuddin should be delayed. One of the arguments was that the acting president should continue in his post longer to provide the ruling BNP with enough time and opportunity to execute its plan to replace the president. The ministers, who had initially taken the decision that Iajuddin would resume his duty upon his return from Singapore, were stunned by the sudden change in the decision, sources said. "The government could have replaced the president through proper steps without getting into the nasty controversy that is now haunting it," a very senior policy maker of the government told The Daily Star. *The Daily Star, June 25*.

MP Pintu sues Prothom Alo editor, publisher for defamation

A Dhaka court issued summons upon the editor and the publisher of the daily Prothom Alo to appear before it following a defamation case filed by the ruling BNP lawmaker Nasiruddin Ahmed Pintu. The lawmaker along with a huge number of his activists appeared before the Chief Metropolitan Magistrate's (CMM) Court and filed the case accusing the daily's editor Matiur Rahman and publisher Mahfuz Anam of publishing defamatory stories in the daily at different dates. After the hearing, Metropolitan Magistrate Mohammad Mizanur Rahman recorded statement, took the complaint into cognisance and issued the summons. In his complaint, Pintu mentioned that the daily published a news item titled "Agitation in the Leather Technology College at Hazaribagh, local lawmaker Pintu took police to the college and beat the students" on June 12. On June 14, the daily published another news headlined "Pintu has a project of Tk 1 crore for a road construction razing over 200 graves of the Azimpur Graveyard but Dhaka City Corporation knows nothing". The next day the daily run the news titled "Mayor's stay order on a road construction of Azimpur Graveyard," the complainant added. These news stories were false and intended to undermine him politically and socially, Pintu said. *The Daily Star, June 26*.

'Spies' posted in jails to watch corruption

The Prisons Directorate introduced 'spies' in prisons across the country to monitor 'corrupt' jail staff and unlawful activities in 66 jails. The move already managed to give rise to strong resentment among the jail staff. Senior jail officials said the introduction of 'spy jail guards' is in breach of the country's jail code and 'unprecedented' in the country's history. "This is a clear violation of the jail code and a design to create a dual administration in the prisons," a senior jail superintendent said, on condition of anonymity, adding that these 'spy jail guards' are not only defying orders of their superiors but also humiliating them by issuing orders of their own. But the Prisons Directorate said the move was necessary for developing the prison system's own reporting mechanism to watch 'what is actually happening in the prisons'. Noting that corruption permeates every nook and cranny of the department, Inspector General (Prisons) Brigadier General Zakir Hossain said, "I've initiated a process to root out corruption which has earned a bad reputation for the whole department. I need my own reporting system to get the job done." Talking to the members of the Diplomatic Correspondents Association of Bangladesh (DCAB) at state guesthouse Padma over a lunch, Morshed reminded that diplomacy is not bilateral or tripartite bargaining and main functions of diplomats are to strengthen the relations and increase trade and economic cooperation among the countries. He further said that as all diplomats here are accredited bilaterally, there is no scope for grouping or floating a platform. "If they have anything to say, the only window for them is the foreign ministry," he added. The foreign minister said the government and the opposition parties should know the rules of business, so that the foreign diplomats cannot interfere in domestic affairs. Morshed also said it has become a tendency that "we depend on others for protecting our interests, it is not correct, we will have to protect our interests ourselves." *The Daily Star, June 27*.

FM accuses diplomats of violating norm

Foreign Minister M Morshed Khan criticised foreign diplomats severely for violating diplomatic norms and poking nose into Bangladesh's internal affairs of politics, election and system of government. "This is beyond diplomatic niceties," he said adding, "there is internationally recognised diplomatic norms and practices, but sometimes we find breach of that and that's why we have reacted sternly." Talking to the members of the Diplomatic Correspondents Association of Bangladesh (DCAB) at state guesthouse Padma over a lunch, Morshed reminded that diplomacy is not bilateral or tripartite bargaining and main functions of diplomats are to strengthen the relations and increase trade and economic cooperation among the countries. He further said that as all diplomats here are accredited bilaterally, there is no scope for grouping or floating a platform. "If they have anything to say, the only window for them is the foreign ministry," he added. The foreign minister said the government and the opposition parties should know the rules of business, so that the foreign diplomats cannot interfere in domestic affairs. Morshed also said it has become a tendency that "we depend on others for protecting our interests, it is not correct, we will have to protect our interests ourselves." *The Daily Star, June 28*.

LAW campaign



CAMPAIGN FOR CONTROL ARMS 1 million faces, 1 message, delivered to the UN

A million people have now joined the Control Arms campaign, and the petition is being delivered to Kofi Annan, Secretary General of the UN, at the UN Small Arms Review Conference in New York.



SOURCE: CONTROL ARMS.ORG

Julis Arile, the millionth person to add their face to the Million Faces petition for tougher arms controls presented the UN Secretary-General, Kofi Annan with the petition on the first day of the United Nations Small Arms Review Conference. Also present at the handover ceremony are from left, Irene Khan, Secretary-General of Amnesty International, Rebecca Peters, Director of IANSA and Jeremy Hobbs, Director of Oxfam International on behalf of the Control Arms campaign.

event

Domestic violence: In search of a legal framework

Women are customarily treated as inferior members of society. The life of many women in Bangladesh continues to be dominated by a patriarchal social system. Studies show that nearly half of all Bangladeshi women are subjected to domestic violence. Despite the disturbing statistics, the reportage of incidents of domestic violence remains remarkably low. This is due to the fact that domestic violence in Bangladesh is largely considered as private matter. As a result, Bangladeshi women subjected to domestic violence are in a very vulnerable position: seeking justice can often lead to further abuse.

Sadru Hasan Majumdar, Project Coordinator of BNWLA shared his experience on a dialogue meeting of dissemination of research on domestic violence, which was held at BILIA auditorium on June 21. The research study shows that discrimination against women and girls starts from the very birth of a girl child and it is largely rooted into our traditional culture and social practices. Lack of proper laws and their implementation perpetuates women's subjugation to men and makes them more susceptible to repression leading to violence. The shame and stigma, the trauma and humiliation inflicted upon women and children through any such happening forgoes a long lasting adverse effect in the lives of the victims, which may in some cases end up in their mental and physical disorder leaving little hopes for their survival. Moreover, acute poverty also restricts their access to justice systems.

According to the study domestic relationship however viewed as relation between husband wife, father, mother, daughter, son and

other who lives with a family for one or more than one years. But in cases of paying guest who live within the same roof does not comprise the relationship. It has been viewed that physical demarcation is needed to develop definition of family. The members residing in abroad do not come within family rather those living under the same roof come within the definition of family.

The study identified different factors that perpetuate domestic violence

Cultural

- Gender specific socialization
- Cultural definition of appropriate sex role
- Expectation of roles within relationships
- Belief in the inherent superiority of male
- Values that give men proprietary rights over women and girls
- Notion of the family as private sphere and under male control
- Customs of marriage (bride price, dowry)
- Acceptability of violence as a mean to resolve conflicts

Economic

- Women's economic dependence on men
- Limited access to cash or credit
- Discriminatory laws and practices regarding inheritance, property rights, maintenance etc.
- Limited access and opportunities to employment in formal and informal sector
- Limited access to education and training
- Limited social mobility and segregation

Political

- Under representation of women in power structures
- Violence against women not taken seriously
- Women Policy that does not reflect aspiration women
- Advocate Salma Ali, executive director of BNWLA gave her welcome speech while Nasreen



Begum, Joint Secretary, Ministry of Law, Justice and parliamentary affairs were present as chair person at the dialogue meeting. Honorable judges of Women and Child Repression and Prevention Tribunal Mr. Mojibul Kamal, Ms. Nurunnahar and Ms. Monowara Begum shared their views regarding domestic violence and pointed out different problems they usually faces while trying any offence like violence against women. Supreme Court lawyer Barrister Sara Hossain, Dr.

Faustina Parreira also spoke at the discussion meeting. All the participants discussed about different possible ways to find the root cause of domestic violence and how to eliminate it from the society. The participants agreed upon that a separate legislation is urgent to address domestic violence and hence a combined effort is needed for ensuring access to justice to the millions of silent victims.

Law Desk

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