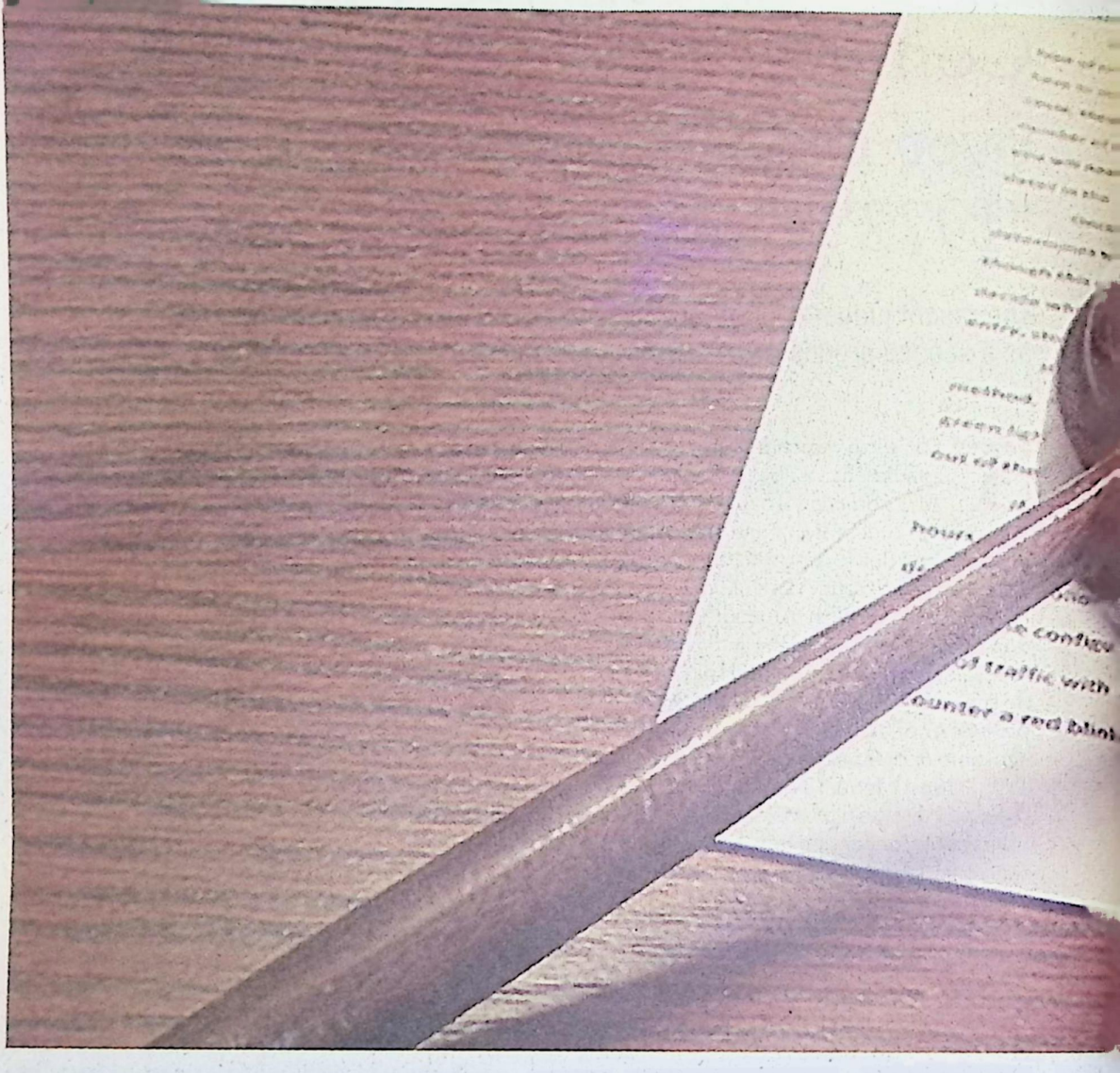


along with Article 26, means the state cannot curtail or circumscribe the provisions of the Constitution concerning fundamental rights of the citizens by amending the Constitution. In contrast, Article 142, as altered by the second amendment, denotes that this could be done by constitutional amendment! The question might be raised as to which version of Article 142 the High Court Division of the Supreme Court has sought to reinstate in the Constitution. The Appellate Division as well has not yet addressed this lacuna, although it has been pointed out earlier in the news media.

The Supreme Court judgment therefore lacks precision and clarity. Its translation into the Constitution requires "legislative" analysis which cannot be done by the Law Ministry being a part of the executive branch of the government. As reported in the daily *Prothom Alo* on October 11, 2010, the way the Law Ministry has explained the ramifications of the judgment and the manner in which the Law Commission has endorsed it has already been found erroneous. For example, the recent Law Ministry report on interpretation of the Fifth Amendment judgment has suggested the revival of Article 44 and 102(1) in the light of the Fourth Amendment, not according to the 1972 Constitution. As the *Prothom Alo* report commented, that would mean destroying the very authority of the High Court itself by dint of which it has given the Fifth Amendment judgment! Surely, the High Court could be the last institution which would agree with such erroneous interpretation of its own judgment. Further, the said report has reportedly suggested that the amendment of Article 116 was declared illegal by the High Court Division, but was approved by the Appellate Division. The reality is, the Appellate Division has not