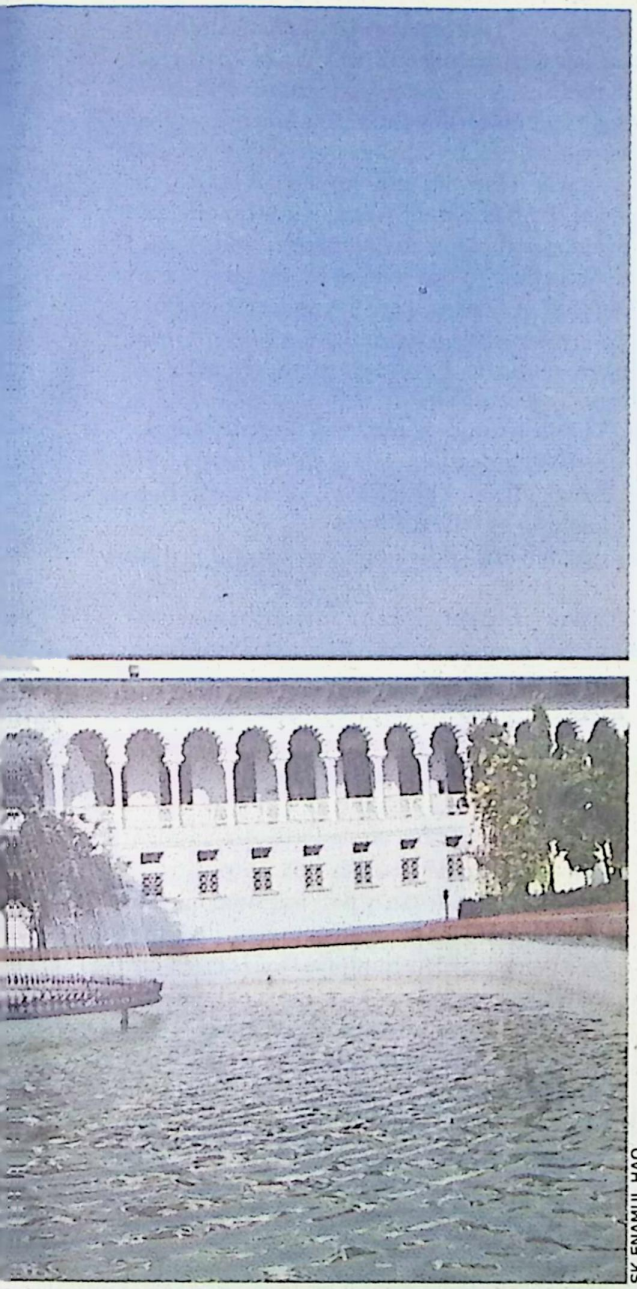


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prisoners were severely beaten by the mob and one of them was killed. So the US government brought charges against Harris and others.

But the Supreme Court in the case of *Harris v the United States* ruled that it is 'unconstitutional' for the federal government to punish individuals for such assaults and murders. The same year, the Supreme Court in the *Civil Rights Cases* also ruled that the Federal Congress did not have the authority to outlaw racial discrimination by individuals as only the State governments have that jurisdiction. The Court also ruled the *Civil Rights Act of 1875* as unconstitutional.

As a result, white supremacists got away with their assaults and discriminations against the African Americans in the southern states, where such crimes were ignored by the State government.

Then in 1896, the Supreme Court in the case of *Plessy v Ferguson* ruled that 'racial segregation' between the blacks and the whites was permissible.

Finally, interpreting the same Constitution, in 1954 the Supreme Court in the case of *Brown vs Board of Education* declared racial segregation and discrimination in public schools unconstitutional.

After another decade, the Congress passed the Civil Rights Act 1964 and the Supreme Court in the case of *Atlanta Motel v United States* held that the Congress had the authority to enact laws to fight discrimination.

It took a century and a Civil War for America to fully comprehend what Lincoln had said about the Judiciary in his 1861 speech -- it's not the institution, it's the arbitrary decisions that fail the people.

Averting arbitrary decisions

To prevent arbitrary decisions, constitutions often specify irrevocable articles. For instance, Article 1 to 3 of the Turkish Constitution and Article 1 and 20 of the German Constitution are specifically marked unalterable.

Our Constitution does not specify any irrevocable article by clause, but articles such as 7(2) and 26(2) rule that the State shall not make any law inconsistent with some provisions. The French Constitution also has similar irrevocable provisions in its Article 89 to prevent monarchy.

An exceptional way is the Basic Structure doctrine pioneered by the Supreme Court of India. In the case of *Kesavananda Bharati v State of Kerala*, the Court held that certain features of the Constitution of India are beyond the limit of the powers of the Legislature and cannot be amended.

The judicial verdict in the case of *Anwar Hussain v Bangladesh*, also known as Bangladesh's Eighth Amendment case, was based on this Basic Structure doctrine.

Ruling against the Eighth Amendment of the Bangladesh Constitution that intended to set up High Court benches outside Dhaka, Justice Shahabuddin Ahmed, held that: 'constituent power', in the sense of power to make a Constitution, belongs to the people alone; to