August 20, 1975, the Constitution continued to remain in force, but was made subject to the martial law proclamation and martial law regulations, which were totally out of the ambit of the Constitution. Thus, the supremacy of the Constitution was fully ignored and it was made subservient to the martial law instruments, starting a legacy of military rule in sovereign democratic Bangladesh.

The then chief justice MA Sayem, who was bound by oath to preserve, protect and defend the Constitution, assumed the office of president on November 6, 1975, by disgracing the Constitution. Two days later he also assumed the powers of chief martial law administrator (CMLA). The first parliament had already been dissolved with effect from November 6, 1975, by the extra-constitutional usurpers of state power. Sayem handed over the office of CMLA to the then chief of army Major General Ziaur Rahman on November 29, 1976, and handed over the presidency to him as well on April 7, 1977.

The HC in the Fifth Amendment verdict observed that it cannot be believed that Khandaker Moshtaque Ahmed, Justice Sayem and Major General Ziaur Rahman did not know that under Article 48 of the Constitution, they were not eligible to become the president of Bangladesh. In defiance and violation of the Constitution, they seized the office of president, the highest position in the republic, by force, thereby apparently committing the offence of sedition.

The verdict also said it cannot be believed that they were not aware that the Constitution or the laws of Bangladesh do not provide for martial law or the office of the CMLA. They in violation of the Constitution merrily assumed such position and continued to issue proclamations of martial law, martial law regulations and the martial law orders as if Bangladesh was a conquered country. They did not stop by grabbing state power by assuming the office of the president; they even began amending the Constitution at will through martial law proclamations.

Changes made to the Constitution in around four years after the August 15, 1975 changeover altered the fundamental principles of state policy, destroyed the secular character of the Constitution and allowed politics based on religion and replaced Bangalee nationalism with Bangladeshi nationalism.

Article 8 of the original Constitution, which speaks of the four fundamental principles of state policy -- nationalism, socialism, democracy and secularism -- was amended with the omission of secularism and insertion of the words "absolute trust and faith in Almighty Allah". The amendment omitted Article 12, which contained secularism and freedom of religion.

Socialism and freedom from exploitation in Articles 9 and 10 were substituted by the concepts of promotion of local government institutions and participation of women in national life. The principle of socialism was also given a new explanation, saying, "socialism would mean economic and social justice."

"These changes were fundamental in nature and changed the very basis of our war for liberation and also defaced the Constitution altogether," the HC observed in its verdict on the Fifth Amendment case. The changes transformed secular Bangladesh into a "theocratic state" and "betrayed one of the dominant causes for the war of liberation of Bangladesh."

Omission of the proviso to Article 38 of the Constitution, which banned politics based on religion, radically altered the nature of political activities in the country. It led to the rise of religion-based political parties, which were Constitutionally banned immediately after the independence for their anti-liberation role.

The Constitutional bar on war criminals convicted under Bangladesh Collaborators (Special Tribunal) Order 1972 from becoming voters and contesting parliamentary elections was also lifted.

Some other fundamental changes to the Constitution were also brought. The preamble to the Constitution was preceded by "Bismillah-ar-Rahman-ar-Rahim" (in the name of Allah, the Beneficent, the Merciful).

The preamble also underwent two changes -- the words "a historic struggle for national liberation" were replaced with "a historic war for national independence", and "nationalism, socialism, democracy and secularism" were replaced with "absolute trust and faith in Almighty Allah, nationalism, democracy and socialism meaning economic and social justice". Justice Kamal observed that the first martial law regime destroyed and damaged some basic features of the Constitution, while also dismantling the effects of the fourth amendment brick by brick.

Ziaur Rahman founded a political party, BNP, which came to power through a general election in 1979 with over a two-third majority