in the second parliament, and passed the Fifth Amendment act ratifying all orders and actions made or taken under martial law proclamations, regulations, orders, etc., during the first martial law regime between August 15, 1975 and April 9, 1979.

"Thus, in enacting the Constitution (Fifth Amendment) Act, 1979, a colourable legislation, a fraud was committed upon the people of Bangladesh," the HC observed in the Fifth Amendment case.

A country without a constitution: 1982-1985

"A Constitution is not the act of a government, but of a people constituting government, and a government without a Constitution is power without right[...] A Constitution is a thing antecedent to a government, and a government is only the creature of a Constitution," said Thomas Paine, one of the founding fathers of the United States.

Hilaire Barnett, reader in law, Queen Mary, University of London, in her famous textbook styled *Constitutional and Administrative Law*, analysed Paine's definition of constitution. She wrote: from this definition, it can be discerned that a constitution is something, which is prior to government, or, as Paine expresses it, 'antecedent' to government, giving legitimacy to the government and defining the powers under which a government may act.

What Paine believed over 200 years ago or eminent British public law expert Hilaire Barnett explained in recent times did not mean enough to a Bangladeshi army general, HM Ershad, to prevent him from seizing state power and suspending the country's Constitution. The then chief of army staff seized state power, overthrowing elected president Abdus Sattar in a military coup and imposed martial law throughout the country on March 24, 1982. He declared himself the CMLA, suspended the Constitution -- the supreme law of the land, dissolved the parliament and the council of ministers appointed by Sattar. He also proclaimed himself commander-in-chief of the armed forces -- a constitutional position always held by an elected president. CMLA Ershad announced that the martial law regulations, orders and instructions to be made by him would be the country's supreme law and sections of other laws inconsistent with them would be void.

Ershad had installed Justice Abul Fazal Mohammad Ahsanuddin Choudhury as the president on March 27, 1982, as if the general had conquered the office of the president. Ahsanuddin did not have any authority as the martial law proclamation categorically said the president would not exercise any power or perform any function without advice and approval of the CMLA.

Ershad vested the executive power in the CMLA through a regulation on April 11, 1982, paving the way for him to exercise power either directly or through people authorised by him. The April 11 regulation also vested legislative powers in the CMLA. He took the authority to revive the Constitution fully or partially. But, if the Constitution was revived, its enforcement was subject to the martial law proclamation, regulations and orders made by the CMLA.

However, the general was not satisfied with the power and office he held. He forced president Ahsanuddin to resign on December 11, 1983 and assumed the office of the president the same day in addition to the post of CMLA.

The Supreme Court ceased to derive any power from the Constitution which was suspended

