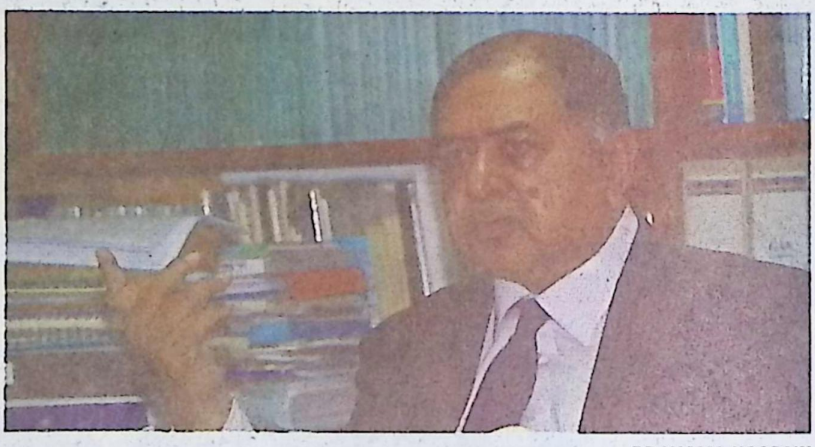
On the occasion of Constitution Day (November 4), **DR KAMAL HOSSAIN** *-- one of the architects of the Constitution of Bangladesh -- takes the stand as* **KAJALIE SHEHREEN ISLAM** *questions him about the failure to realise the dreams and aspirations woven into it 38 years ago.*



STAR PHOTO

DR KAMAL HOSSAIN

On Realising OurConstitutional Dreams

FORUM: *How do you view the recent developments regarding the courts' ruling of the fifth and seventh amendments to the Constitution illegal and void?*

Kamal Hossain (KH): The developments are not recent as such. The Constitution was written in 1972. The extraordinary events and violent and extra-constitutional interventions of 1975 had assailed this Constitution using martial law proclamations to change it. The first major correction that took place was by High Court judgement in 2005 whereby the martial law decrees embodied in the so-called fifth amendment were declared void; 'so-called', because martial law cannot make amendments. The character of martial law is that it is intended to deal with some emergency or special situation and therefore it is said that the doctrine of necessity authorises measures to deal with that emergency or situation. Changing the basic principles of the Constitution cannot be treated as an emergency or a special situation calling for immediate action, there was no necessity.

A fundamental principle of constitutionalism is that it is adopted on the basis of the will of the people and acquires the character of fundamental law. The supremacy of the Constitution arises from the fact that it derives its legitimacy from the will of the people. This is set out in Article 7 of our Constitution in clear terms. The constitutionality of this amendment was tested in the High Court and the 2005 judgement held that the fifth amendment was unconstitutional. When the matter was put before the Court, the Court acknowledged its responsibility to uphold the supremacy of the Constitution. This is a very important development.

FORUM: *How did it feel to be one of the architects of the supreme law of the land and how does it feel now, almost 40 years later?*

KH: The experience of making of the Constitution, in the Constitution Drafting Committee and in the Assembly itself, might be described as "the ecstasy of constitution making", in which all of us shared the exhilaration of translating our dreams into the text of the Constitution. What was to follow was the harnessing of our national energies to make this Constitution work and to achieve the goals which we had set out in it.

Today, we can only lament that the dreams, woven into the text of the Constitution are yet to be translated into reality. Pandit Jawaharlul Nehru, in response to a question once put to him about the greatest difficulty since independence, had said, "creating a just state by just means, perhaps creating a secular state in a religious country". So many decades later, these words have a strong contemporary ring in our own society.

FORUM: *Where did we go wrong?*

KH: The years since making of the Constitution experienced assaults upon the Constitution. The cataclysmic events of 1975 led to the establishment of authoritarian martial law regimes. These led effectively to the disempowerment of people; the paralysis of democratic institutions such as parliament and an accountable administration, responsive to public needs and the public interest; and the