



Constitutional rights versus reality

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THE Constitution of 1972 had upheld preeminence of citizens' fundamental rights. In so doing, it had emphatically declared that all existing laws inconsistent with the fundamental rights, would become void on the commencement of this Constitution. In the same way it also announced that "the state shall not make any law inconsistent with any fundamental rights, and any law so made shall, to the extent of such inconsistency, be void."

Article 26 of the original Constitution had made this significant declaration in light of the article 7 that still announces that "all powers of the Republic belong to the people and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution, which is, as the solemn expression of the will of the people, the supreme law."

Not only that, the constitution of 1972 had left no scope for suspension of any fundamental rights and for preventive detention of any Bangladesh citizen. And in the article 21, it announced that "every person in the service of the Republic has a duty to strive at all times to serve the people."

The true spirit and political philosophy of the original Constitution was to foster the dignity and rights of the country's citizens. People deserved it as their achievement. None gave it as

a gift. Millions of them made supreme sacrifices of their lives for the country's long and cherished independence. And with those tears and blood they have written the history to uphold that people were and still are the source of power to determine the country's future political course. So, none, but only the people are owner of this independent country and all of its power belongs to them.

People had dreamt of a country where their rights and dignity would always be upheld, and never be compromised. Framers of the Constitution had sincerely tried to translate those dreams and expectations in the country's supreme charter by declaring preeminence of their rights. The Constituent Assembly adopted and enacted the Constitution on November 4, 1972 and it took effect from December 16 the same year. It was also a significant achievement to have a constitution within a year of emergence of a new country in the world map.

After 40 years of independence, the reality looks gloomy. Many dreams have already been shattered. People have largely lost many of their rights. It has become a saga of political failure to lead the country towards the right direction. Owners of the country have gradually been made a subject to whims of political leaders who utterly failed to be true representa-

tives of the public.

The citizens' fundamental rights guaranteed by the Constitution lost preeminence due to a number of changes to the Constitution. The changes brought to the Constitution in 1973 introduced the provision for proclamation of state of emergency and suspension of some fundamental rights during the emergency period. The amendment also introduced the provision for preventive detention and later the government enacted the Special Powers Act in 1974 to this end.

Even article 26, which had declared preeminence of fundamental rights, has been amended. It now states that nothing in the article shall apply to any amendment to the constitution made under article 142, which deals with the procedure to amend the constitution.

By proclaiming the state of emergency, the government can now suspend some of the fundamental rights of the citizens such as freedom of movement, freedom of assembly, freedom of association, freedom of thought and conscience and of speech, freedom of profession and occupation and rights to property. Even the government is empowered during the state of emergency to enact any law; regardless of any inconsistency with the citizens' fundamental rights guaranteed by the Constitution. And during the emergency, people are not allowed to

move to the court seeking enforcement of the fundamental rights.

In past years, since the country's independence, people had to suffer a lot. Their fundamental rights were kept suspended for quite a long time, particularly during the regimes of military dictators who ruled the country putting it under the martial law. The military rulers however did not forget that they needed the support of people, who were still the source of all power, to legitimise their regimes. So, they formed political parties, organised elections, constituted parliaments and made the parliaments amend the Constitution to ratify and validate their illegal actions and misdeeds. The way they abused the people's mandate was nothing but a fraud.

The so-called democratically elected political parties-led governments also failed to a large extent to prove them better than the military dictators in many cases. They also abused people's mandate for their own political gains. They also didn't work to make people's rights stronger; they rather worked in some cases to weaken their rights.

Ignoring their oath to preserve, protect and defend the Constitution, they seemed to have engaged in unholy competition to destroy the supreme charter in the name of amendments. As a result, the reality portrays a picture of how people are

now powerless everywhere.

Public servants have now become people's masters. As if lawlessness has now become the rule of law. Presence of syndicates in every sector has been trying to hold people hostage. It has only been possible because of the destruction of the true spirit of the Constitution over the years.

The recent cancellation of the constitutional fifth and seventh amendments by the apex court -- the two amendments that had validated the martial law regimes of Gen Zia, and Gen Ershad -- triggered fresh expectations of restoring the basic spirit of the Constitution of 1972. It was widely expected that this time the parliament would do something extraordinary to regain the glory of the trampled Constitution. The parliamentary special committee on constitutional amendment had also started discussing how to consolidate people's fundamental rights by amending the constitution. But all went in vain. In consultation with the prime minister, the parliamentary body finally came up with some unreasonable proposals and the cabinet approved those. In line with the wishes of the ruling party, the parliament made those proposals part of the Constitution by passing the 15th amendment bill on June 30, 2010.

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With Pakistan signing the historic surrender document on December 16, 1971, a new chapter followed in the life of a liberated Bangladesh, the most significant achievement of which was the adoption and enactment of the Constitution within one year of the country's emergence. In line with the promises of an independent Bangladesh, the Constitution upheld the fundamental rights of the people.