

**CONSTITUTIONAL ANALYSIS**

# BANGABANDHU on the Constitution

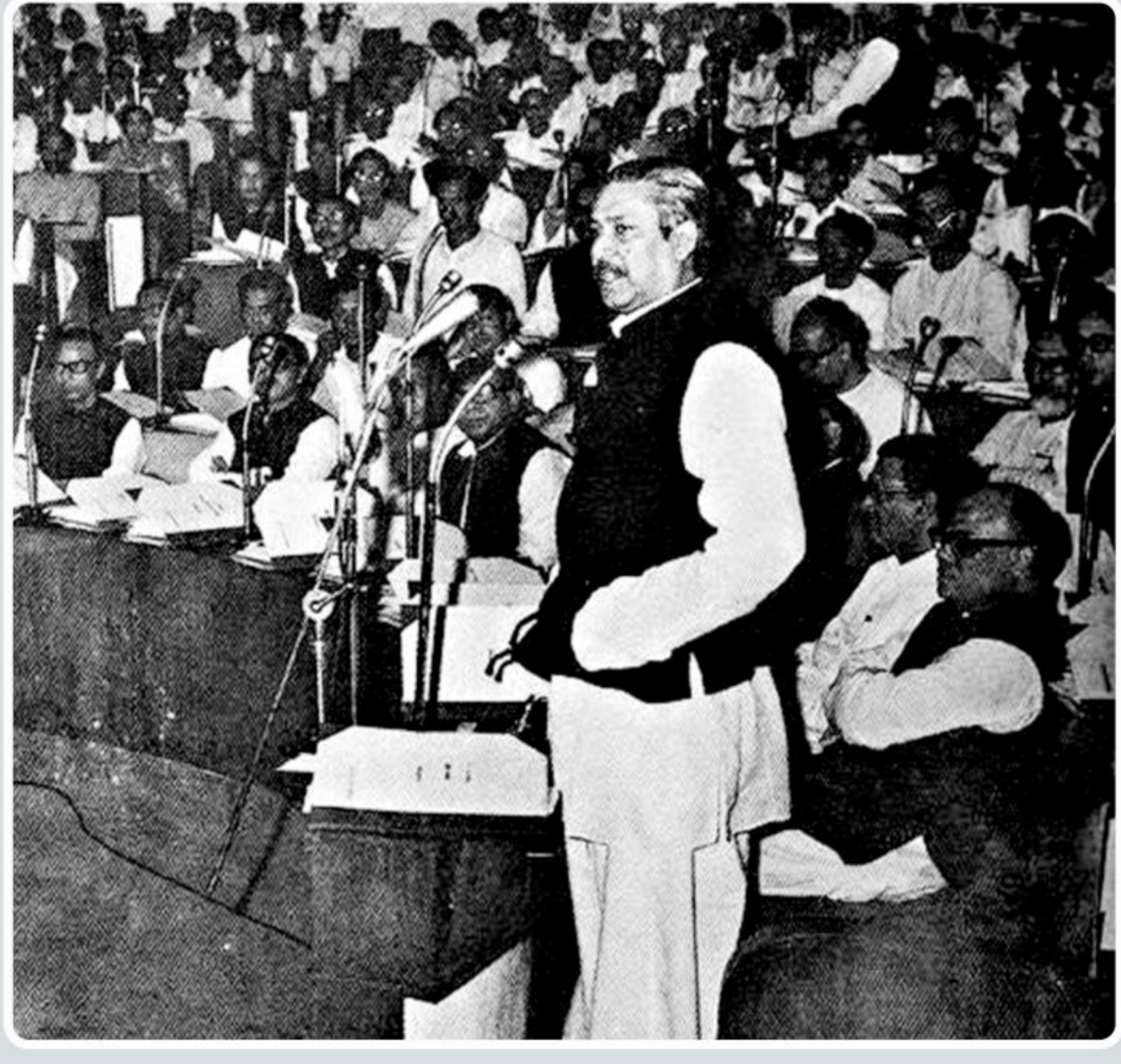
**ANISUR RAHMAN**  
 It was 12 October 1972. Bangabandhu Sheikh Mujibur Rahman took the floor to talk about the [draft] Constitution for newly independent state – Bangladesh. The morning session of the Constituent Assembly was chaired by Mahmudullah. He just replaced Shah Abdul Hamid, the first Speaker of the Constituent

Constitution Drafting Committee, headed by Dr. Kamal Hossain, took 72 days to draft the Constitution – much less time than India and Pakistan took – and therefore, got praise from Bangabandhu. He was, on the one hand, overwhelmed to write a Constitution for a nascent state; on the other hand, he was disconsolate in regards to the genocide committed by the Pakistani military. He put the members of the

of the people of East Pakistan, was denied to be a state language in the proposed 1948 Constitution of Pakistan. People, mostly students sacrificed their blood to establish the status of their mother tongue as the state language.” Bangabandhu informed the house of the political upheavals of his days: “in 1954 the legitimate government of AK Fazlul Huq was dismissed to eliminate the leaderships from East Bengal. With

a Constitution with the blood of those martyrs. But why, and what for this Constitution? “A state without a Constitution is like a boat without oarsman,” said Bangabandhu. “In the Constitution” he continued, “both rights and duties of the people will be written down”. He then sought to explain the fundamental principles on which the edifice of the Constitution was to build on – Bangalee nationalism, democracy, socialism, and secularism.

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For him, the culture, the tradition and the sky of Bengal formed the “Bangalee Nationalism”. People’s right to choose their representative was the keystone for democracy to him, “I believe in democracy, I believe in the people’s right to vote”, said Bangabandhu. “We believe that there will be no social disparity here”, he continued, “the capitalist class will no longer be allowed to oppress the people of this country; the people of this country cannot live their lives without socialism. That is why the economy will be socialistic.” – The ‘Third World Charismat’ reiterated. To him, secularism was not the absence of religion in the state, it was the absence of state-religion instead. For him, it was a platform for religious groups to live together with their respective beliefs. Secularism was to understand inclusion, unlike exclusion of religion from the state: “Secularism does not mean the absence of religions. Muslim, Hindu, Buddhist, Christian will perform their own religion. None will be allowed to suppress other’s religion. The people of Bengal never liked religious overpowering.” However, he warned that religion cannot be used for political gain. “I believe that the people of Bengal will reject those who would try to use religion for political gain,” Bangabandhu reiterated.

Assembly. Hamid, the eldest parliamentarian, was elected as the first Speaker in the first meeting of the Constituent Assembly on 10 April 1972. The session was presided over by Mawlana Abdur Rashid Tarkabagish. His was a speech based on the [political] experiences that he went through. The draft was yet to place on the table for general discussion. The

Constituent Assembly in mind of the struggle that led to the independence, and of the people who sacrificed their lives for the independence since 1952. For Bangabandhu, independence of Bangladesh was an outcome of long struggle, unlike nine-month war. The struggle began with the legitimate demand for Bangla as a ‘state language’ for Pakistan. “Bangla, the mother tongue

many others fellows, I was arrested. Then came the 1958 movement for self-governance, which turned to a mass movement in 1969 against the Agartala Conspiracy. Then 1971. In all movements, Bangalee had to sacrifice their blood.” To Bangabandhu, the independence came out with the blood of the millions of people, and the Constituent Assembly was going to write

To Bangabandhu, Constitution was the directions for the future generations. For him, the Constitution of Bangladesh was written by the blood of the martyrs.

**THE WRITER IS A PH.D. CANDIDATE AT THE NATIONAL UNIVERSITY OF SINGAPORE (NUS). THIS SPEECH IS BASED ON THE SPEECH OF BANGABANDHU SHEIKH MUJIBUR RAHMAN DELIVERED IN THE CONSTITUENT ASSEMBLY 1972.**

**YOUR ADVOCATE**

*This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.*

**Query:**  
 I am a resident of Dhaka. In my locality there are several motor workshops, garages, welding factories and construction sites. I have noticed that majority of the workers working in these places are kids, of 10-14 years. Moreover, the working conditions and the nature of work in my opinion are very dangerous and risky even for an adult, let alone for such kids. This is something that is not done behind closed doors rather the same is clearly visible by all. I wonder is it the absence of any law or other barbaric mentality that is responsible.

**Tarek Rahman Dhaka**  
**Response:**  
 I would like to thank you for raising concerns regarding such an important issue. The issue of child labour has been a topic of serious concern.

In Bangladesh, laws regulating the employment of adolescents and prohibition of child labour have been codified under the Bangladesh Labour Act 2006 (BLA) (and its subsequent amendments) in conjunction with the Bangladesh Labour Rules 2015 (BLR). The Government has also introduced National Child Labour Elimination Policy 2010 to make meaningful changes in the lives of the children by withdrawing them from all forms of hazardous child labour. As per section 2(8) of BLA an adolescent means a person who is between the age of 14 to 18 years, and anyone below the age of 14 years is deemed to be a child as per section 2(63) of BLA. Under section 34 no child (below the age of 14) shall be employed or permitted to work in any occupation or establishment. However, as provided under section 44 a child who has completed 12 years of age, may be employed in such a light work which is not dangerous to his health and development or shall not interfere with his education. In light of such, it is submitted that labour by the children, who are between the age of 12 and 14 years in certain circumstances are



allowed. The laws related to engaging adolescent has to be followed.

On the other hand, under sections 34, 36 and 37 an adolescent may be employed if he has a certificate of fitness provided by a registered practitioner and that he carries a token with reference to such certificate. As per sections 39 and 40 no adolescent shall be employed in relation to any machinery while in motion or to work between moving part or between the fixed and moving parts of such machinery. Additionally, no adolescent shall work at any machine unless he has been fully instructed, trained and adequately supervised. Such prohibition also extends to underground or underwater work. An adolescent shall only be engaged in light work not endangering health or interfering with his education. The Government may from time to time publish lists of dangerous work in which the adolescents cannot be engaged.

As per section 41, no adolescent shall be allowed to work in any factory or mine for more than 5 hours in any day and 30 hours in a week and including overtime such shall not exceed 36 hours in a week. For any other establishment, he shall not work more than 7 hours in a day and 42 hours in a week and including overtime such shall not exceed 48 hours in a week. Furthermore, adolescents are not allowed to work between the hours of 7PM and 7AM.

The above discussion may be summarised as, any child below the age of 12 is prohibited from any sort of work. Child between the age of 12 to 14 under circumstances where the work does not hamper his health, safety and education may be allowed to engage in light work. Finally, adolescents between the age of 14 to below 18 are allowed to work under curtailed working hours and for such employment which are not hazardous as recognised by law and/or may be stipulated by the Government from time to time.

Despite such regulation, it is apparent that children of all ages are regularly seen to be working in dangerous and hazardous situations at various working environments. The society and the State seemed to have turned a blind eye towards them. These children are also encouraged by their families to take up such dangerous work and leave their schools in order to put in extra hours in the hopes of earning extra pay. I would also like to point out that domestic workers are not regulated by BLA and majority of such workers are children who are carrying works that are not suitable to children of that age. Time has really come when we all shall act to stop illegal child labour.

**FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.**

**LAW EVENT**

## IHL moot held at Dhaka

In order to nurture and facilitate the journey of young legal minds into the complex realm of international humanitarian law, a National Moot Court Competition was successfully held at the Canadian University of Bangladesh from 20-22 October, 2016. Jointly organized by the Bangladesh chapter of the Asian Society of International Law (AsianSIL Bangladesh) and the Canadian University of Bangladesh, the competition was participated by 23 law schools from public and private universities across the country. Usually, International Committee of the Red Cross (ICRC) organises this competition regularly after the name of Henry Dunant, the founder of the Red Cross movement and last year, the 11th Henry Dunant Memorial Moot competition was organised jointly by the ICRC and the AsianSIL Bangladesh. Due to unavoidable circumstances, ICRC was quite unable to sponsor the competition this year and therefore, decided not to organise this event. Considering the enthusiasm of young law students of both public and private universities, the AsianSIL Bangladesh took the initiative to organise the competition and the Canadian University of Bangladesh, a newly launched private university, extended their generous supports to this

end. Accordingly, this competition is not a part of the series of national rounds organised by the ICRC and thus not the 12th one. However, the organisers decided to pay tribute to the founder of the ICRC and hence, the moot competition was dedicated to the memory of Henry Dunant.



After the phases of long intense mooting, University of Chittagong emerged as the champion and State University of Bangladesh became the runner up. Psmhe Wadud from University of Dhaka bagged the Best

Advocate (Best Mooter) award and Ms. Tyaba Tasmin of East West University won the Best Researcher award. Northern University won the Best Memorial award. A special judges’ bench comprised of Mr. Justice Hasan Foez Siddiqui, Hon’ble Judge of the Appellate Division of the Supreme Court and

adjudicated the Final Round. Besides, Hon’ble judges of the High Court Division presided over several rounds of the competition. The valedictory session was chaired by Mr. Chowdhury Nafees Sarafat, Chairman of the Board of Trustees, Canadian University of Bangladesh. Mr. Justice Hasan Foez Siddiqui, Chairman of the Judicial Service Commission, was present as the chief guest. Professor Dr. Borhan Uddin Khan, Chairman of the Department of Law, University of Dhaka and the President of AsianSIL Bangladesh and Professor Dr. James Gomes, Pro-Vice Chancellor of Canadian University of Bangladesh along with the other judges of the final round were also present as special guests. In their remarks, the speakers emphasised the importance of ‘learning by doing’ or practical legal education. The depth of research of the participants in the competition was highly praised by the judges of the final round, and suggestions for further improvements in the whole legal academic movement were also made. The programme ended with vote of thanks from Professor Dr. Md. Nazmuzzaman Bhuian, Vice President of AsianSIL Bangladesh.

**FROM LAW DESK.**

**LAW NEWS**

## Let's end impunity, protect journalists

The UN General Assembly proclaimed 2 November as the ‘International Day to End Impunity for Crimes against Journalists’ (IDEI) in 2013. The Day is to celebrate committing the implement of specific measures countering the present culture of impunity. The date was chosen in commemoration of the assassination of two French journalists in Mali on 2 November 2013. Attacks and violence against journalists and media workers are seen as a threat to freedom of the press. The UN Member States are urged to do their best to combat violence against journalists and media workers, to ensure accountability, bring to justice perpetrators of crimes, and ensure that victims have access to appropriate remedies.

The UN advocates for a safe and enabling environment for journalists to perform their work independently and without undue interference. The UN’s focus on impunity stems from the worrying situation that only one in ten cases committed against media workers over the past decade has led to a conviction. This impunity emboldens the perpetrators of the crimes and at the same time impunity breeds impunity and feeds into a vicious cycle. According to the UNESCO Director-General’s 2014 Report on the Safety of Journalists and the Danger of Impunity, less than seven percent of the 593 cases of killings of journalists from 2006-2013 have been resolved. A quarter of these cases are considered as “ongoing” referring to their continued investigations over the

various stages of the judicial system. In 60 percent of the cases, no information on the judicial process was made available to UNESCO notwithstanding the Director-General’s requests for such. When attacks on journalists remain unpunished, a very negative message is sent that reporting the “embarrassing truth” or “unwanted opinions” will get ordinary people in trouble. Furthermore, society loses confidence in its own judiciary system which is meant to protect everyone from attacks on their rights. Perpetrators of crimes against journalists are thus emboldened when they realize they can attack their targets without ever facing justice.

**COMPILED BY LAW DESK (SOURCE: UNESCO.ORG).**

