

The legality of the interim government

Analysis from constitutional and international legal perspectives



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The constitutionality of the current interim government of Bangladesh can be analysed from two perspectives: firstly in consonance with Kelsen's Grundnorm theory following a revolution and the drastic change in circumstances that follow, and secondly in light of the present constitution.

The Constitution of the People's Republic of Bangladesh is the supreme law of the land and, as its Article 7 (2) states, it is the solemn expression of the will of the people. Reading as such, along with Kelsen's Grundnorm theory, which enunciates that the law of the land emanates from a Grundnorm or the basic rule that births all other rules found in that legal system, it means that the Grundnorm is the will of the people. The evolution, or change of a Grundnorm, occurs at the instance of a successful revolution. Following the revolutionary events in Bangladesh in the months of July and August in 2024, it is safe to say that both a revolution and a significant shift in the will of the people have occurred.

This shift can be identified through two lenses: i) academic; and ii) political or through the naked eye. From an academic standpoint, the rallying of people against a tyrant regime and the subsequent resignation of the then prime minister is a mark of revolution from a procedural and academic standpoint. In the naked eye, the people flooding the streets in visible jubilation following the fall of the despotic regime as a result of weeks long mass protests, unrest, and bloodshed is an invariable display of the shift of public will—the mark of a successful revolution and the subsequent shift, in other words the creation of a new Grundnorm.

The characterisation of these events as a revolution may be concretised by two key factors: the fact that the prime minister resigned, and that she left for another country in search of refuge. Following her resignation and subsequent departure, the law enforcement agencies, which had done her bidding even till the very last minute of her stay inside the country, were nowhere to be found. Meanwhile the army, which was deployed on the streets, expressed support to the people on the streets. And even more so, as evidence of a successful revolution, two student leaders took seats in the newly formed interim government as representatives of the movement. Furthermore, the formation of the interim government was not based on the will of any particular group of people. It was the collective expression of the representatives of the major political parties in the country,

leaders of the student-led mass uprising, key members of the civil society, etc. that led to the formation of the council of advisers of this interim government.

Hence, in tandem with the legality through the shift and stabilisation of the Grundnorm towards the interim government, and through the application of the effective control theory where all the state's machineries are under effective control of the interim government, this government is not just legal but also constitutional. A successful revolution may lead to changes in the law of a country ("When and why does the Grundnorm change?"; *The Cambridge Law Journal*).

Under the present constitution, for the sake of debate, to entertain Article 57 (3) pertaining to the ability of the prime minister, after resigning, to still hold office until the next prime minister takes office, such application would be null and void given the fact that the prime minister is not present in the country, or at her office following her resignation. Hence, the question of whether she holds office till the next prime minister comes is irrelevant, since she left her office invariably for another country, rendering herself unavailable as opposed to the constitutionally prescribed method of resigning. This created a unique situation which neither happened in our history, nor does our constitution explicitly provide for it. The former prime minister's fleeing from Bangladesh made it practically impossible for her to hold the office till the appointment of her successor. In such a unique situation, which seemingly lays

outside of the periphery of what exists as constitutional law in Bangladesh, it necessitates the actions of the president, and if need be, the collaboration with the chief justice in conjunction with Article 106 of the constitution, in formulating a new interpretation of constitutional principles that deal with the situation and pave a path forward.

There is a misconception that following

parties and the state organs have generally accepted it. Moreover, Articles 57 (3) and 58 (4) of the constitution stipulate that the prime minister and the cabinet of ministers will continue to hold their offices until their successors have entered the offices. The word "successor" is critical as it does not explicitly mandate a new prime minister or a cabinet of ministers to be appointed. From this perspective, their "successors" in the

large—proves this interim government to be the de facto government as well. Moreover, the recognition of the international community—the United Nations as well as various countries—and their willingness to work with this new government is also a very important characteristic of a valid government of a country in this era of modern international law.

This column does not aim to solve all the



Dr Muhammad Yunus takes oath as the chief adviser of the interim government of Bangladesh on August 8, 2024.

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the prime minister's departure from the country either by resignation or otherwise, there was no government in the country, whereas in the absence of the prime minister, the president was still in office, therefore there evidently was a government. The formation of the interim government led by Dr Muhammad Yunus was overseen by the president, which goes in line with the aforementioned constitutional law principle, since the vacuum created by the absence of the prime minister altogether elevates the duties of the president, thus instating this government as legal and *de jure*. Another significant characteristic of this government is that there has been no opposition to the formation and operation of this new government, which clearly shows that the people of Bangladesh including all political

newly formed interim government, which the president appointed after taking the advisory opinion of the Supreme Court, gain legitimacy under the present constitutional scheme too.

In international law, there are two different terms used to describe different governments: *de jure* and *de facto*. *De jure* is recognition by law and *de facto* is control in fact. The president, with the utmost responsibility of the state, swearing in this interim government gives it legality, enunciating it as a *de jure* government, while consequently the effective control of the interim government gained over state machinery—whether it be through the controlling of civil servants, law enforcement agencies or otherwise and through the emphatic and visible support of the people at

problems that have arisen out of the current constitutional crisis, but to raise relevant issues in concordance with the current situation so that they may be penultimately pondered over, researched, articulated and then implemented as suitable concrete solutions in the future. There is no one side taken throughout this text, rather multiple analyses made from a bird's eye view of the situation, taking into consideration the plethora of factors and circumstances relevant to it.

The legality of the present interim government is justified based on both Kelsen's theory and the existing constitutional law of Bangladesh. Thus, this government's legality can be established from jurisprudential, constitutional and international legal perspectives.

Can the interim govt make progress with the CHT Accord?



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The quota reform protests that turned into the anti-discrimination movement of students, followed by the uprising of students and mass people, has caused the downfall of the Sheikh Hasina-led Awami League government. In its aftermath, an interim government has been formed in Bangladesh. The main spirit of the movement was to bring a reform in the state systems through the eradication of discriminatory functioning of the state.

Needless to say, it is the vulnerable and marginalised communities who fall prey to any form of discrimination. In Bangladesh, the Indigenous people living in plainlands and the Chittagong Hill Tracts (CHT) are no exception. It is especially due to the continuous repression of the Indigenous Jumma people for decades that there has been continuing mass movement in the CHT since the 1960s. To bring resolution, the historic CHT Accord was signed in 1997 to ensure a perennial solution to the CHT crisis through peaceful and political means.

After signing the accord, the then Awami League government implemented some of its provisions, but did not go ahead with the implementation of two-thirds of the accord, including the core issues. The provisions that were left unimplemented include: stepping up lawful and administrative measures to preserve the tribal-inhabited feature of the CHT region; devolving the subjects of general administration, law and order, police (local), land management, forest and environment, development of communication system,



The CHT Accord was signed on December 2, 1997.

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etc. to the CHT Regional Council and three hill district councils established under the special governance system within the accord's purview; holding elections to the councils after formulation of election rules and enumeration of the permanent residents of CHT in the electoral roll; formation of a hill police force with the permanent residents of CHT; returning the dispossessed lands of the Jumma people to the owners by settling the land disputes through the CHT Land Dispute Resolution Commission and formulation of

the rules of the commission; and cancellation of all leases of lands given to the non-residents.

They also include withdrawal of all temporary camps, including the "Operation Uttaran"; ensuring proper rehabilitation of the India-returnee Jumma refugees and internally displaced Jumma families after getting back their dispossessed lands; appointment of permanent residents in all

machineries designed to be anti-accord and counterproductive to the interest of the Jumma people have been strengthened. Consequently, it has become a routine for the Jumma people to witness arbitrary arrests, jailing, extrajudicial killings, enforced disappearances and abduction, forceful occupation of lands, forced eviction of people from their own land and homesteads, false cases, communal attacks, arson in houses, violence against women, etc.

The commitment of ensuring the Jumma people's rights given through the signing of the accord was heinously breached by the Hasina-led government. It was a case of extreme deception with the Jumma people. The institutions of CHT Accord Implementation and Monitoring Committee, CHT Land Dispute Resolution Commission, a task force for the rehabilitation of India-returnee Jumma refugees and internally displaced persons, the CHT Regional Council and the three hill district councils were made totally dysfunctional, indeed.

It may be noted that in the case of the CHT Accord's implementation, which was signed without any third party, the CHT Accord Implementation and Monitoring Committee is the only recognised authority acceptable to both the parties, the decisions and recommendations of which are obligatory to both the Bangladesh government and the Parbatya Chattagram Jana Samhati Samiti (PCJSS) as the signatories. But the Hasina-led government didn't undertake any initiative to implement any of the decisions taken in the meetings of the committee. The committee became an institution only in name.

Against this backdrop, for the sake of the implementation of the accord, it is necessary to appoint a competent person for the post of convener of the CHT Accord Implementation and Monitoring Committee by the interim government in consultation with the PCJSS immediately. After the appointment of the convener, the unimplemented provisions of

the accord may be identified in the meetings of the committee. It is most urgent that a time-bound roadmap for the implementation of the unimplemented provisions be adopted in the sessions of the committee. Then the interim government can follow the roadmap to fully implement the accord.

In this case, the crucial role of the Ministry of CHT Affairs is undeniable. During the reign of the Sheikh Hasina government, the ministry was never seen playing a positive role in the matter of the accord's implementation, when it was formed under the provision of the accord. It is hoped that the interim government will undertake proper measures to bring the ministry back on track leading to the full implementation of the accord.

Whenever it comes to the issues of democratic and human rights of the people, the Sheikh Hasina-led government would focus on describing how it was going to uplift the country among the ranks of middle-income countries; it used to conceal its autocratic tendencies and lack of rule of law in the country. Similarly, in the case with CHT, the Hasina-led government used to tell the tale of its development programmes and strived to conceal its failure in implementing the accord and its oppressive actions against the Jumma people. The hill people expect that the interim government will be able to set the state systems on the right path, and make them pro-people, eco-friendly, and friendly to the culture of Indigenous peoples.

It is also hoped that the interim government will be able to realise the discrimination and deprivation of the Jumma people in depth and as a part of the reforms in the state systems, it will take firm steps to end the discrimination existent in the CHT region. Ending the plight of the Jumma people lies in the proper, speedy and fullest implementation of the CHT Accord.