

A 'new constitution' and my discontents



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Since the fall of the Awami League government, we have been debating prospects of transitioning into a new republic with a new constitution. With the inception of the Jatiyo Nagorik Party (JNP), the debates and discussions are now taking a definite shape. We now have several concrete arguments with time—and alongside, the discontents too.

One argument is that the 1972 constitution-making episode was elitist and dominated by one party. It is quite a fair criticism that resonates with many feminist, Marxist scholars about virtually any constitution of the world. However, it is not clear whether any constitution-making episode can stand blameless on this count.

Studies on constitutionalism have always been saturated with discussions on how dominant political parties' ideologies influence constitution building—be it a one-party, authoritarian, or a liberal-democratic state. In appraising the one-party dominance over the 1972 constitution-making episode, we must consider the historical contingencies too, characterised by the Liberation War, its antecedents and political aftermath, the need for post-war reconstruction and solidification of a constitutional identity. Some say that the constituent assembly members were elected under the Legal Framework Order (LFO) 1970 of the erstwhile Pakistan, and hence, the constitution they drafted needs to be replaced with a new one. However, it must be noted that following the constitutional subversion facilitated by Ayub Khan, the LFO came as a remarkable political win, posing one concrete opportunity for democratic transition. Therefore, the significance

of the moment within which the LFO came into being cannot be overstated.

Pertinently, the Proclamation of Independence (which we all agree to be our first constitution) as adopted on April 10, 1971 (with retrospective effect from the March 26, 1971), the representatives elected in the 1970 elections constituted themselves into a "Constituent Assembly" for drafting a constitution for an independent Bangladesh.

Following the war, the Provisional Constitution of Bangladesh Order of 1972 further defined the same elected representatives as the "Constituent Assembly" who, in fact, later drafted and adopted the existing constitution of Bangladesh. While the JNP vows to protect the ideals of *shammo, manobik*

morjada, and shamajik shubichar (that were categorically enshrined in the Proclamation of Independence), the process of adopting a new constitution as laid down in the same document cannot be ignored. If we adopt historiographical lenses, then the immense political significance of 1970 elections and its aftermath can also not be downplayed as that

seemingly stems from their political vision for a "second republic", won't claims about their dominance, at least in terms of steering the process, be legitimate too?

To simplify matters, some propose having a parliament act as a constituent assembly (put in place through simultaneous elections). Such an arrangement

be tenable because of the systemic inequalities that exist and because women as a group do not have the political capital as such. Indeed, for those who are left out of the process, a constitution making episode will always look "exclusionary," "elitist," and dominated by "others," and because constitutions are only imperfect ideological settlements that only a sustainable culture of democracy can carry forward.

Another key argument is that the existing constitution is "fascistic." Authoritarianism or fascism is an indefensible political vision, a conscious governance choice, and an inanimate constitution cannot be blamed for that unless it explicitly provides for one-party rule or authoritarianism. In many authoritarian or paternalist countries, apparently good reading constitutions are kept simply as tools of window dressing. The democratic subversion in the post-independence Bangladesh was facilitated by a series of constitutional amendments, which irreparably whittled down constitutional checks and balances (e.g. fourth constitutional amendment), subverted the constitutional mandate of democratic rule (e.g. fifth and seventh constitutional amendments), and monopolised a static constitutional narrative and thereby contributed to democratic backsliding (e.g. fifteenth constitutional amendment). But these were not amendments—not the constitution itself. The Awami League government, time and again, co-opted constitution-based rhetorics while remaining authoritarian, but that is a classic example of abusing the constitution, not of "using" one. Instances of abusing the constitution were prominent during other military and non-military regimes too. Indeed, blaming the constitution for explaining the political follies and calling for its replacement without addressing its political understructure is quite enervated and does not align with the vigour and acumen that our youth shows otherwise.

While arguing for a new republic, the JNP often refers to France, which I do not think offers a useful,

appropriate example for our context. A cardinal yet uncomplicated rule of adopting constitutional experiences is that we cannot transplant an idea without accounting for the overarching politico-cultural contexts. Indeed, transplanting an 1852 idea into a 2025 postcolonial independent country sounds perversely counterintuitive as there are literally no parallels that we can draw to begin a sensible comparison (other than the fact that France opted for a second republic).

Pertinently, contemporary instances only show how new constitution making episodes can potentially bring in disunity, violence, and instabilities. We do have the inspiring instance of South Africa, which chose to undo its constitutional order rooted in apartheid, racialised political and governance structure, and explicit electoral discrimination against the non-Whites. What do we seek to undo? Persistent culture of rights violations, authoritarian governance, and democratic deficit? But the existing constitution permits/ endorses none of these. Certainly, state powers could be better organised and less concentrated in the existing constitution, but that does not make the entire constitution expendable and does not necessitate making an entirely new one. Finally, any new constitution will not be entirely "new" as such unless we opt for something other than a liberal democratic constitutional order. In fact, some scholars suggest that the very idea of replacing an old constitution with a new one is a "myth" and is only possible in theory. In practice, there will always be constitutional/legal continuity. A so-called new constitution will perhaps only arrange things in a different order, expand on or restrict certain rights, and may dilute some commitments. What troubles me is the idea of going over the entire process all over again, of deepening and entrenching divisions, producing new binaries, reinforcing the existing ones, and so on. And the people who lie in the fringes and the margins will not be able to withstand that.



FILE VISUAL: ANWAR SOHEL

The colonial legacy in our digital infrastructure

How Bangladesh and the Global South remain trapped in digital dependence



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The history of colonialism is often understood as a physical phenomenon: the subjugation of nations, the extraction of resources, and the imposition of foreign systems of governance. However, in the 21st century, colonialism has evolved into something more subtle yet equally pervasive—digital colonialism. This form of control is exerted not through military force but through the dominance of digital infrastructure, platform economies, and the manipulation of data flows. In this new era, countries in the Global South, including Bangladesh, find themselves in a state of structural dependence on the technological and regulatory frameworks imposed by the Global North. The consequences of this dependency affect economic development and even fundamental rights such as freedom of expression and privacy.

At the heart of this modern form of colonialism is the concentration of digital power. Big Tech corporations, predominantly based in the United States and China, dictate the architecture of the digital world. Platforms such as Facebook, Google, Amazon, and Microsoft do not just dominate markets; they also control the information ecosystem itself. Data, the new economic resource, is extracted from users in the Global South, processed in data centres located abroad, and monetised without significant benefit to the originating country. This is eerily similar to the economic model of historical colonialism, where raw materials were taken from the colonies, refined in imperial centres, and sold back to the colonies at a profit.

The digital divide and the Global South's digital rights dilemma
The term digital divide is commonly used to describe disparities in internet access between different regions of the world. However, the divide is no longer simply about connectivity; it is about control, governance, and agency over digital resources. Bangladesh has made impressive strides in digital expansion, with internet penetration now exceeding 50 percent of the population (Bangladesh Telecommunication Regulatory Commission, 2023). However, this connectivity does not necessarily translate into empowerment. Instead, much of the country's digital economy operates under the influence of foreign platforms,

which dictate the rules of engagement.

Unlike the European Union, which has imposed strong data protection regulations through the General Data Protection Regulation, Bangladesh lacks a comprehensive legal framework to protect user data from exploitation. In the absence of such protections, the personal data of millions of Bangladeshis is harvested and monetised by global tech firms with little oversight or accountability. Moreover, without a robust policy framework, local users are vulnerable to unauthorised government surveillance, misuse of personal data by both state agencies and private corporations, and a complete lack of legal recourse in cases of data breaches or privacy violations.

The case of Facebook's Free Basics initiative illustrates how such dependencies can be exploited. Initially promoted as a way to bring free internet to underserved populations, Free Basics was ultimately banned in India for violating net neutrality laws. Nevertheless, the programme continues to operate in Bangladesh and over 60 other countries, giving Facebook disproportionate control over the digital experiences of millions of users (Kwet, 2019).

There is also a troubling lack of regulatory power over content moderation. Digital platforms enforce content policies developed in the United States or Europe, which often fail to account for the political and cultural nuances of the Global South. Reports have shown that moderation efforts on platforms such as Facebook and YouTube are highly inconsistent, with harmful and inflammatory content often left unchecked in non-Western contexts (Digital Rights Foundation, 2022).

Meanwhile, governments in the Global South, including Bangladesh, have leveraged these platforms to suppress dissent, request user data, and exert control over digital narratives, creating a paradox where local authorities may lack power over Big Tech but still exploit digital platforms to advance state surveillance.

The Global South's digital sovereignty dilemma

Digital sovereignty—the ability of a nation to control its own digital destiny—is increasingly at risk in the Global South. Unlike Europe, which has exercised regulatory power through the Brussels Effect, and China, which

has pursued state-driven digital expansion through the Beijing Effect, most developing countries remain passive recipients of external digital governance models. The EU's regulatory influence has been particularly significant, shaping global discussions on data privacy, competition law, and artificial intelligence. The Digital Markets Act and the Digital Services Act have introduced strict rules on platform accountability,

indigenous digital alternatives. Policies such as the Digital Personal Data Protection Act, 2023 and the regulation of digital lending platforms demonstrate India's intent to assert control over its own digital space. By contrast, Bangladesh lacks a clear strategic direction in digital governance. Existing laws, such as the now-repealed Digital Security Act and the draft Cyber Protection Ordinance, focus more on controlling online speech than

inadequate response to misinformation and hate speech in Myanmar—which contributed to real-world violence—is a stark reminder of the dangers of weak digital governance.

Furthermore, automated decision-making systems, powered by AI-driven algorithms, have become integral to digital platforms but remain largely unregulated in Bangladesh. These systems dictate everything from job recruitment and credit scoring to content recommendations, often reinforcing existing biases. Without robust legal mechanisms to challenge discriminatory algorithmic outcomes, users in Bangladesh and other Global South nations remain at the mercy of opaque, profit-driven tech policies.

Reclaiming digital futures: The path forward

The battle against digital colonialism is not just about resisting foreign dominance; it is about building self-sustaining digital ecosystems that prioritise local needs. To achieve this, Bangladesh and other Global South nations must adopt a multi-pronged approach that includes regulatory reforms, technological investments, and regional cooperation.

Developing local digital infrastructure is essential. Investments in domestic data centres, cloud services, and locally owned digital platforms can reduce reliance on foreign tech giants. At the same time, stronger data protection laws are needed to prevent the unchecked extraction of personal information. Bangladesh must move beyond restrictive internet laws and instead focus on comprehensive privacy legislation that aligns with both international human rights standards and the country's own digital development goals.

The country must also modernise its competition laws to reflect the realities of digital markets. Establishing clear regulatory frameworks on data governance, enforcing accountability for algorithmic biases, and fostering transparency in AI-driven decision-making can ensure fairer digital participation.

Finally, digital literacy must be prioritised. Citizens must be equipped with the knowledge and skills to understand how their data is used, how algorithms shape their online experiences, and how they can exercise greater control over their digital rights.

Digital colonialism is the defining technological struggle of our time. Bangladesh must move beyond passive participation in the digital economy and assert its own models of governance, economic participation, and technological innovation. This is not merely a question of infrastructure but of sovereignty, democracy, and the fundamental right to shape one's own digital future. The time for action is now.



Digital colonialism is exerted through the dominance of digital infrastructure, platform economies, and the manipulation of data flows.

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aiming to curb monopolistic practices and enhance consumer protection (Larsen, 2022). However, these laws are designed primarily with European users in mind, with limited applicability to nations that lack the institutional capacity to enforce similar measures.

China, on the other hand, has pursued a more direct approach to digital sovereignty, promoting its own technological ecosystem through the Digital Silk Road initiative. By exporting surveillance technologies, telecommunications infrastructure, and AI-driven governance tools, China has created an alternative model of digital governance that appeals to many developing nations seeking to escape Western regulatory dominance. Huawei, for instance, has built significant portions of Bangladesh's digital infrastructure, including 4G and 5G networks (Digital China Initiative, 2023). While these partnerships offer technological benefits, they also raise concerns about state surveillance and overreliance on Chinese technology.

India has emerged as a third major player, seeking to balance digital sovereignty with economic openness. The so-called Delhi Effect has been defined by India's efforts to regulate foreign tech companies while promoting

on ensuring data sovereignty or platform accountability.

Antitrust laws and the struggle for digital accountability

Another critical aspect of digital colonialism is the absence of strong antitrust laws to counterbalance the power of tech firms over users. While the EU and the US have recently intensified their scrutiny of digital monopolies, much of the Global South remains vulnerable to unchecked data extraction, algorithmic biases, and lax enforcement of digital accountability. The Bangladesh Competition Act, 2012 was designed to prevent anti-competitive practices but has proven inadequate in addressing the unique challenges posed by digital markets.

This outdated framework has allowed tech companies to operate with little to no accountability, often abusing monopolistic powers and practices. The absence of stringent regulations means that companies can harvest vast amounts of personal data without user consent, exploit algorithmic biases that disproportionately affect marginalised groups, and avoid legal consequences for failing to moderate harmful content. The case of Facebook's