

this very day the Assembly adopted the constitution for Bangladesh. It was given effect from the 16th December, 1972 the first anniversary of the 'victory day'.

### ✓ Silent Features of the Constitution of Bangladesh, 1972

1. **Written Constitution** : The Constitution of the Peoples' Republic of Bangladesh is a written document. It was formally adopted by a Constituent Assembly on a specific day (4th Nov. 1972). It contains 153 articles, 1 preamble and 4 Schedules.

2. **Rigid Constitution** : The Constitution of Bangladesh is a rigid one since no provision of it can be amended by ordinary law-making procedure; an amendment can be passed only by votes of not less than two-thirds of the total number of members of parliament.

3. **Preamble** : The Constitution of Bangladesh starts with a preamble which is described as the guiding star of the constitution. This very preamble contains the legal as well as the moral basis of the constitution; it also identifies the objectives and aims of the state<sup>1</sup>

4. **Supremacy of the Constitution** : Constitutional supremacy has been ensured in the constitution of Bangladesh. Because article 7(2) provides that "This constitution is — the supreme law of the Republic and if any other law is inconsistent with this constitution that other law shall, to the extent of the inconsistency, be void."<sup>2</sup>

---

<sup>1</sup> See, further chapter III

<sup>2</sup> See, further chapter IV .



5. Unitary Governmental System : Article 1 of the constitution provides that Bangladesh is a unitary peoples' Republic as opposed to federal republic. Governmental system is a unitary one since all power under the constitution has been centralised to a unitary government ; no division of power has been provided for in the constitutions as is done in federal constitutions.

6. Unicameral Legislature : Article 65 of the constitution provides for a unicameral legislature for Bangladesh. It is only one House to be known as the House of the Nation. Like Indian legislature it is not composed of upper House and lower House. Laws made by the parliament are equally applicable to the whole territory of Bangladesh.

7. Fundamental Principles of State Policy : Article 8 of the constitution provides for four major fundamental principles of state policy. They are (i) Nationalism, (ii) Democracy, (iii) Socialism; and (iv) Secularism. All other principles derived from these four shall also constitute the fundamental principles of state policy.<sup>1</sup>

8. Fundamental Rights : Part-III of the constitution provides for 18 fundamental rights. The enjoyment and enforcement of these rights have been guaranteed in the constitution. The Supreme Court has been invested with the task to protect these rights. No authority can make any law which is inconsistent with the provisions of fundamental rights and any law so made shall, to the extent of such inconsistency, be void.<sup>2</sup>

9. Parliamentary form of Government : The constitution of Bangladesh provided for a Westminster type of parliamentary system. This form of government, in other words, cabinet form of government means that the government is run by a cabinet of Ministers headed by the Prime Minister and the cabinet as a whole has to be responsible to the parliament and can remain in power so long it enjoys the confidence of the majority members of the parliament. President becomes a titular head : the real executive power is exercised by the cabinet. The 1972's constitution of Bangladesh provided, more or less, all the trappings of parliamentary form of government.

<sup>1</sup> See, further chapter V

<sup>2</sup> See, further chapter VI



10. Independence of Judiciary : The constitution of 1972 ensured the independence of judiciary.

Firstly, provision was made that the Chief Justice would be appointed by the president and other justices of the Supreme Court would be appointed after consultation with the Chief Justice (Art. 95). Appointment of subordinate judges and magistrates was also to be exercised with consultation of the Supreme Court.

Secondly, a judge could not be removed from his office except by an order of the President passed pursuant to a resolution of parliament supported by a majority of not less than two-thirds of the total number of members of parliament. Again, the security of tenure of the subordinate judges was vested in the Supreme Court.

Thirdly, it was provided that the remuneration, privileges and other terms and conditions of service of judges could not be varied to their disadvantages and the salaries of the judges were charged upon the Consolidated Fund of the Republic. Again, the control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions was vested in the Supreme Court.<sup>1</sup>

Thus the entire judiciary except some aspects of magistrate's courts was made independent.<sup>2</sup>

11. Ombudsman : Provisions for the establishment of an ombudsman were inserted in article 77. To provide a machinery to overview the activities of civil bureaucracy, to eradicate corruption in the administration and to ensure the responsibility of the government in a more specific way the role of an ombudsman like a citizens defender or watch-dog has been successful in some countries. Though the office has not yet been implemented in Bangladesh, the incorporation in the constitution of such an office reflected the desire of the Awami League to strengthen the functioning of democracy in the country.<sup>3</sup>

12. Responsible Government was not ensured : Though the 1972's constitution of Bangladesh provided for the Westminster type

---

<sup>1</sup> Of course, the independence of lower judiciary as far as it relates to the Magistrate's Courts exercising judicial power was ensured in a colonial manner.

<sup>2</sup> See, details, PP. 308-319

<sup>3</sup> See, further PP. 312-319

<sup>3</sup> See, further chapter XVII



of parliamentary form of government it could not ensure, due to some of its repressive provisions, the conditions of responsible government. A cabinet form of government is directly responsible to the parliament in the sense that the cabinet as a whole has to be accountable to the parliament and an individual minister has to be responsible in respect of his departmental administration. In the constitution of Bangladesh, there is no provision for ensuring the individual responsibility of ministers. Though article 55(3) provides that 'the cabinet shall be collectively responsible to the parliament', this responsibility cannot be ensured in practice due to the barricade created by article 70 of the constitution.

In fine, it can be said that except some weaknesses and drawbacks like the provisions of Article 70, ordinance making power of the president, magistrate's courts, administrative tribunal etc. the constitution of 1972, to a large extent, reflected the aspirations of the people. It was undoubtedly an improved constitution to compare with all the contemporary constitutions of the sub-continent since there was no provision in the constitution for preventive detention, neither there was any provision for emergency and suspension of fundamental rights—two brutal weapons to crush opposition and perpetuate the rule and thereby causing a stumbling block in the way of developing constitutionalism. The constitution, therefore, reflected the avowed purpose of its makers to establish constitutionalism in Bangladesh. But the fruits of the healthy constitution could not be enjoyed by the people of Bangladesh for long. Bangladesh was probably not the right place to have the luxury of such a good constitution. Only after nine months of its life amendments one after another began to inject in it all the undemocratic provisions which will be discussed in the following respective chapters.

### Some Flaws in Constitution Making

#### 1. The Question of Independence of Lower Judiciary