



BILIA LECTURE SERIES –LECTURE 09

**“Nation Building and the Constitution: A  
Comparative Analysis of Bangladesh and  
Indian Experiences”**

**BILIA Auditorium**

(Distant Participation via Online Platform)

**26 November 2021 (Friday), 05:00 P.M. (BST)**

Bangladesh Institute of Law and International Affairs (BILIA)



**Bangladesh Institute of Law and International Affairs (BILIA)**

*The First Think Tank Organization of Bangladesh*

## Nation Building and the Constitution: A Comparative Analysis of Bangladesh and Indian Experiences



In celebration of 50 years of Independence of Bangladesh, a series of lecture has been initiated by Bangladesh Institute of law and International Affairs (BILIA). The ninth lecture of this series titled “*Nation Building and the Constitution: A Comparative Analysis of Bangladesh and Indian Experiences*” was held on 26 November, 2021, Friday at 5:00 p.m at BILIA auditorium. The lecture coincided with the Constitution Day of India. Distant participants also joined the lecture virtually through Zoom video conferencing. **Dr. Dipu Moni, MP**, Honourable Minister, Ministry of Education, the People’s Republic of Bangladesh was the Chief Guest of the program. **H.E. Vikram Kumar Doraiswami**, High Commissioner of India to Bangladesh was the Guest of Honour and **Barrister M. Amir-Ul Islam**, Chairman, BILIA, presided over the event. The keynote speech was delivered by **Professor Dr. Sarkar Ali Akkas**, Dean and Chairman, Faculty of Law, Jagannath University. The designated discussants were **Barrister Tania Amir**, Senior Advocate, Supreme Court of Bangladesh, and **Dr. Arghya Sengupta**, Research Director, Vidhi

Centre for Legal Policy, India. The lecture started with the welcome speech by **Professor Dr. Mizanur Rahman, Director, BILIA.**

### **Welcome Speech:**



The welcome speech was delivered by Professor Dr. Mizanur Rahman, where he expressed his heartfelt gratitude to all the distinguished guests and participants. In his speech, he briefly stated numerous reasons why BILIA is organizing a seminar, especially on this Constitution Day of India. One of which is that various existing Constitutions were analyzed back then while constructing the Constitution of Bangladesh. He further stated that since we also drew from Indian experiences the concept of Constitutional state making and nation-building, this is of academic interest and of practical significance for a country that is still in the process of nation and state-building.

### **Keynote Speech:**



The keynote speaker of the event, **Professor Dr. Sarkar Ali Akkas**, Dean and Chairman, Faculty of Law, Jagannath University, presented a paper titled “**Nation Building and the Constitution: A Comparative Analysis of Bangladesh and Indian Experiences**” keeping similarity to the theme of the lecture. The keynote presenter mentioned with due honour that Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation, provided the political leadership for the Independence of Bangladesh in 1971. Professor Akkas in the introduction of the paper delves into the discussion of history from 10th January, 1972 till the day of the assassination of the father of the nation on 15th August, 1975, where almost every day, a major policy decision was undertaken or a new service initiated or a new institution was built.

According to Professor Akkas there were numerous phases of the development of the Constitution of Bangladesh. The Proclamation of Independence issued on 10 April, 1971 by the elected representatives of the people of Bangladesh served as the Interim Constitution of Bangladesh. It confirmed the Declaration of Independence made by Bangabandhu Sheikh Mujibur Rahman on 26 March 1971 and declared him as the President.

Professor Akkas further said that the role of the Constitution in nation building is reflected in our Constitution; The Constitution of Bangladesh starts with a preamble which contains the legal as well as the moral basis of the Constitution. He further mentioned that the preamble also declares Bangladesh to be a ‘sovereign People’s Republic’. He mentioned an important feature of the Constitution; that is constitution gives recognition to the principle of sovereignty of the people of Bangladesh. The ‘basic concept underlying the sovereignty of the people is that the entire body politics becomes a trustee for the discharge of sovereign functions’. He also added that the concept of ‘constitutional supremacy’ has been adopted in the Constitution of Bangladesh and in this regard, Art. 7(2) of the Constitution clearly declares that the ‘Constitution is, as the solemn expression of the will of the people and the supreme law of the Republic. Under the provisions of Art. 7 of the Constitution of Bangladesh ‘all the legislative, executive and judicial powers conferred’ on the parliament, executive and judiciary ‘respectively are constitutionally the powers of the people themselves. He also confirmed that the various functionaries and institutions created by the Constitution exercise not their own inherent powers’ but the ‘powers of the people on terms expressed by the Constitution.

On the other hand the process of nation building in India can be traced from her time of independence. He articulated that after India achieved independence on 15 August 1947, the dream of the Constitution makers was to have a viable model of governance that would best serve the nation keeping the primacy of the people. The Constitution of India defined India as a union of states, with single uniform citizenship, common unified electorate, duly and freely elected representative government, a federal polity with emphasis upon a strong centre, a secular state providing to all its citizens without any discrimination of caste, color, creed, religion, place of birth, sex, etc. The role of the Constitution of India is reflected through Welfare State; Supremacy

of the Constitution; Integrity and Unity; Sovereignty of the People; Secularism, Justice, Liberty, Equality and Fraternity; Respect for Diversity and Minority Rights; National Identity; Responsible Government; Fundamental Rights; Directive Principles of the State Policy; Independent Judiciary etc.

### Comments by Designated Discussants:



**Barrister Tania Amir**, Senior Advocate of the Supreme Court of Bangladesh, started her speech by thanking the keynote speaker of the event, Professor Dr. Sarkar Ali Akkas for his presentation and for making a lucid comparison highlighting the structures of the Constitutions of Bangladesh and India. Barrister Tania Amir then proceeded with her speech by highlighting some of the interesting developments and features of both Constitutions of India and Bangladesh.

At first, she emphasized that Bangladesh is the first and only nation under the leadership of Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation that has successfully exercised the right of self-determination and pledged our support to the family of Nations and progressive aspirations of the humankind. Any other nation that tried to exercise the right was called secessionists, terrorists. While addressing the Constitution of Bangladesh, she further said that it is a matter of honour to have the drafter of the Proclamation of Independence, Barrister Amir-Ul Islam, in the event. The proclamation of Independence is considered the genesis of the Constitution. Barrister Tania Amir highlighted the cooperation through Constitutional mechanisms of both the countries and flourishing through this friendly cooperation within the framework of International Law. She said that without the support of the then Prime Minister of India, Srimoti Indira Gandhi, it would have been challenging for the two countries to forge an alliance. The relationship was such that Tajuddin Ahmed, Our first Prime Minister, made it abundantly clear that it was going to be a partnership of two co-equals and that we sought

support for our struggle of freedom.. She claimed that it was our Independence, War of Liberation, not the Indo-Pak war. She discussed that those were successful negotiations by virtue of which Bangladesh was born. The Government of Bangladesh took oath on 17th April 1971 and the Proclamation of Independence came into existence, one week before 10th April 1971. This document was the first Constitution of the Republic of Bangladesh until the Constitution of 1972 was promulgated. This document acted as the birth certificate of Bangladesh, through which treaties were signed with India and received sovereign recognition from the rest of the world. She added that the first Constitution, the Proclamation of Independence, is the genesis of the Constitution.

Moreover, she shed light on an important fact, i.e., often, the first Government of Bangladesh is referred to as the interim Government/*Probashi Shorkar* and this statement was absolutely incorrect. It was the first Government of Bangladesh which continued till 1973 and all the other Governments so far are the successors to the first Government of Bangladesh. In furtherance to that, she pointed out that the Constitution is the solemn will and expression of the people. She raised a question about the right to self-determination and how it started. She said that it started because we declared ourselves as the sovereign people. We gifted ourselves- the Proclamation of Independence and the Constitution. She also said that though there is a slight difference between the historical backgrounds of the creation of these two nations, the most remarkable similarity between these two Constitutions is that both have made their people sovereign. She also mentioned that our Constitution is an Autochthonous Constitution which means that we are the authors of our own Constitution; there is no other superior power. Mistakenly, both the governments of Bangladesh and India are referred to as the Westminster style of Government. She requested everyone not to refer to Bangladesh as a Westminster style of Government because sovereignty belongs to the parliament in such systems and the parliament can do just about anything. Since we have the doctrine of basic structure in South Asia, parliament cannot make any law as it chooses. If the legislature or parliament passes any law violating the basic structure, it is automatically void. In explaining the term “Basic Structure”, she said that constitutional governance was derailed in the name of the amendment. But in the name of the amendment, no one can destroy the Constitution. The check and balance provided by the Constitutions of South Asia do not appear to be in the jurisprudence of Westminster style of Government. And the principle of the doctrine of basic structure has spread, which started from Dhaka High Court in the case *Abdul Haque vs. Fazlul Quader Chowdhury* and borrowed by Indian Supreme Court in *Kesavananda Bharati vs State of Kerala* . Again, we borrowed it and applied it in the case of the 8th Amendment judgment. She said that Bangladesh is unique in two ways: 1. we are the only country that has been born based on the right of self-determination. 2. The doctrine of the basic structure.

In the end, she also mentioned that by some recent events of communal violence that took place in Bangladesh, it is quite clear that one of the four basic pillars of the Constitution of Bangladesh that is “Secularism,” is under challenge. She raised the question of whether inserting Article 2A in our Constitution demolishes our basic structure of the Constitution, which is the Preamble and Article 12 of the Constitution? Ms. Amir concluded her remarks by proposing that we should all work together to uphold and defend the basic structure of the Constitution and end outbreaks of communal violence occurring in both countries. She also added that the friendship between Bangladesh and India is strong at the government-to-government level and at the professional and jurisprudential level. And at last, she said, “We not only share an ancient civilization, but we also share the same poet who is the author of our respective national anthems, Kobi Guru Rabindranath Tagore.”



**Dr. Arghya Sengupta**, one of the designated discussants of the lecture, delivered his speech by replying to a question raised by Professor Dr. Mizanur Rahman, which is, “Do we build the nation first, and then we make the state or do we have a state first, and then we build the nation or the two processes go simultaneously?” Dr. Sengupta replied that the nation comes first, then the concept of the state. He said that the memory of the collective struggles keeps us going as a nation. The Constitution is a reminder of where we came from and that spirit sustains us over time. In further explaining the concept, he said that it is not a holy book that contains God's words that are to be followed by the people of the country. He further highlighted that beauty of the Constitution lies in the fact that is never frozen in time. He said that secularism prevalent in the Constitutional texts would ultimately prevail in both countries. He then discussed three stories as to how Constitution was sustained in India. The stories were related to, firstly, the role of Parliament in evolving the Constitution of India, secondly, the Courts and thirdly, the He

stated that the Constitution could not be a document to be improved upon by the lawyers and judges only. Rather, to truly shape a nation, the people must safeguard the nation's values. He ended his speech by saying that it is the duty of the people to safeguard and protect the Constitution as it is too precious to leave it simply to the lawyers and courts of law.

### Remarks by the Guest of Honour:



While delivering the speech of the Guest of Honour, **H.E. Vikram Kumar Doraiswami**, High Commissioner of India to Bangladesh, thanked BILIA for organising an event celebrating the Constitution Day of India. He further informed that, the day has been observed in India by reading the preamble of the Constitution. He also added that preamble of a Constitution sets the basic structure, basic intention, basic driving purpose and motivation for Constitution writers and recognizes the goals that the Constitution sets out for the public. To understand the country and its governance, it is necessary to read the preamble of the Constitution. According to H.E. Mr Doraiswami, the Constitutions of both Bangladesh and India have contributed in the world politics and jurisprudence largely. As a civil servant he pointed out some well-known core facts of their constitutional experience. From his point of view this was a unique attempt of recently freed colonized country to come up with something that would define and include every member of very diverse country. He also added that India is a country that came out of a very difficult colonial experience of deprivation of two hundred years and an era of violence. All these events make the experience of writing the Constitution very special. In this context he added that the writing of Bangladesh Constitution was an exercise of great courage because it was the first proclamation of independence of a country like Bangladesh that had worked so hard and was once brutalized by an occupy. It denotes a great achievement.



Coming back to his previous discussion Mr. Doraiswami recommended that the provisions of the Constitutions should be made understandable to the general people. It is because the young people should understand why there is a Constitution and how it matters to them. In his speech he upheld his observation regarding the context of making Constitution, the judiciary and its role and suggested the human involvement to give effect to any Constitution. He also emphasized on common law effects and conventions to support the implementation of Constitutional mandate.

Mentioning a quote from Justice A.R Venkatachalapathy, Mr Doraiswami said that Constitutional documents might be lofty and elevating in their exultation, but it does not work by themselves. In the context of basic structure, he mentioned some of the basic structures of Indian Constitution such as pluralism, fraternity, secularism and even a degree of egalitarianism because he believes without those pillars of Constitution it would not be feasible to start constructing a country. He focused on another important point that is Constitution must be interpreted in the light of spirit and concept and not solely by its exact words. By mentioning Justice Philip Franklin on this issue he said that Constitutional law cannot be confined to mere words of Constitution disregarding the laws. He also added that the Constitution is to be interpreted through practice and through legal interpretation. The purpose of doing so is to enable the past to join in future without creating strife in present.

H.E. Mr Doraiswami also mentioned that the culture of Constitutionalism needs to develop in society and in politics. He suggested not leaving the responsibility to the courts and lawyers for ensuring the Constitutionalism rather he believes that it is the duty of the citizens of our country. In his speech H.E. Mr Doraiswami said that Dr B.R. Ambedkar, Father of the Indian Constitution, has told at the constituent assembly that “at first we must hold our Constitutional method for achieving our social and economic objective which has been a key aspect of being Constitutional states and Constitutional democratic goals that both the countries are set for them”. Mentioning the friendship of Bangladesh and India he said that 50 years of bilateral friendship gives us the opportunity to look into what we can do together rather to look back in past to see what we could have done . He quickly added that they have been working with Bangladesh judiciary including with the intention of offering an opportunity at their national judicial academy for Bangladesh judicial officers to work with them at their training institute. Further he added that software has been installed for automatic translation of judgments in Bangla. He also mentioned that India is looking forward to expand its partnership to ensure online access to Supreme Court of India data and judgment records because exchange of judgment is very important part of jurisprudence. He ended his speech by saying that wisdom does not lie within border. Wisdom is everywhere and wise knows how to consult from everywhere.

## Remarks by the Chief Guest:



**H.E. Dr. Dipu Moni**, MP, Honourable Minister, Ministry of Education, Government of Bangladesh graced the event as the Chief Guest. She started her discourse by thanking BILIA for arranging such a wonderful discussion program in celebration of the Constitution Day of India. Mentioning the Constitution as the supreme law of the country she claimed that there is a difference between the appearances of Bangladesh Constitution and Indian Constitution. On the debate of nation building she mentioned one of the press conferences that was attended by Bangabandhu Sheikh Mujibur Rahman on 30<sup>th</sup> May, 1952 at Karachi where Bangabandhu said that Constitution is the charter of the rights of the people of a free country and bangalee has open mind to receive the best from the other countries of the world to emulate in our soil as a free independent sovereign country.

About the formation of Constitution Dr. Dipu Moni pointed out that our Constitution, in real sense, is the will of the people throughout our history and our Constitution is the embodiment of that will. If we can embrace the secular culture of our country, then the Bengali nation will be recognized as a modern nation in the modern world.

On a discourse of secularism Dr. Dipu Moni emphasized on formation of a secular state. Moreover, she said that the concept of State Nation was introduced by the Father of the Nation Bangabandhu Sheikh Mujibur Rahman, way before the independence of Bangladesh. She read out a few speeches of Bangabandhu that were made during different courses of the political history of Bangladesh. And said that Bangabandhu believed in the concepts of Nationalism, Socialism, Democracy and most importantly Secularism that were introduced as the fundamental principles of our Constitution. According to Dr. Dipu Moni, India has successfully accomplished its target towards Constitutional provisions whereas Bangladesh is still on her way.

## Concluding Remarks by the Chair:



**Barrister M. Amir-Ul Islam** delivered the concluding speech of the lecture as the chair of the session. He started his speech by emphasizing the question raised by Prof Akkas as to how the Constitution helped in nation-building and said that most people consider the Constitution the book of the law, but it is actually not only a legal document but also a document of the society. He added that to have a vibrant and healthy society, we must address and go deep into the phenomenon we are experiencing nowadays. According to Barrister Islam, the Nation Building does not solely depend on the Constitution; rather, the commitment of the People to the values enshrined in the Constitution, which can be disseminated through the education system. At the end, he said that we need to produce proper citizens with human values and education is the key for achieving this.

### Appreciation:

Professor Dr. Mizanur Rahman, Director, Bangladesh Institute of Law and International affairs (BILIA), expressed his wholehearted gratitude to the keynote speaker Professor Dr. Sarkar Ali Akkas, and the designated discussants Barrister Tania Amir and Dr. Arghya Sengupta. He also thanked Guest of Honour H.E. Vikram Kumar Doraiswami, Chief Guest H.E. Dr. Dipu Moni, and the Chairman of BILIA, Barrister M. Amir-Ul Islam, for gracing the event with their presence. He also announced that BILIA would organize monthly lectures as a part of a series every month celebrating the 50 years of Independence and hoped to get a similar response from the participants on the upcoming events.