

BANGLADESH'S GENESIS: REREADING THE PROCLAMATION OF INDEPENDENCE AT ITS 50

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ABSTRACT

Bangladesh emerged as an independent country in 1971 through a liberation war against Pakistan. On 26 March 1971, Bangladesh's founding father Bangabandhu declared independence following an unjust and treacherous war that was levied upon the Bangladeshi people by the Pakistani authorities. Two weeks later Bangladesh made the declaration official on 10 April 1971 through the representatives who earlier got elected in the 1970 general election. The representatives assembled in Mujibnagar, Meherpur on 17 April 1971 and formed themselves into a Constituent Assembly to endorse the 26 March Declaration of Independence made by Bangabandhu. In that sense, the proclamation furnishes the legal basis of Bangladesh's emergence both from a national and international viewpoint. It has served as the first Constitution of Bangladesh and been a source of constitutional jurisprudence as well as a beacon of principles of international law relating to the unilateral declaration of independence, self-determination and recognition. However, the glowing document has arguably remained under-researched, and Bangladesh is yet to champion the ideas enshrined in this Proclamation. This paper considers the Proclamation from three distinct yet interrelated viewpoints i.e. international law, constitutional law and national building to revive its significance at a time when Bangladesh is celebrating the 50th year of its independence.

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I. INTRODUCTION

This article gets its origin from the paper I presented at a Bangladesh Institute of Law and International Affairs (BILIA) seminar on 10 April 2021 commemorating the 50 years of the adoption of Bangladesh's Proclamation of Independence in the presence of its author M Amir-Ul Islam. I took it as an honour to speak before him on such a solemn occasion and dedicated the paper to Mr Islam, one of our finest constitutional minds. I recalled Thomas Jefferson who regretfully declined to attend the fiftieth-anniversary celebration of the American Declaration of Independence in June 1826. Jefferson, however, reiterated his lifelong pledge to the natural rights principles of the Declaration:

“The kind invitation I receive from you, on the part of the citizens of the city of Washington, to be present with them at their celebration of the fiftieth anniversary of American Independence, as one of the surviving signers of an instrument pregnant with our own, and the fate of the world is most flattering to myself and heightened by the honourable accompaniment proposed for the comfort of such a journey.

May it be to the world, what I believe it will be, (to some parts sooner, to others later, but finally to all) the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves and to assume the blessings and security of self-government.”¹

Jefferson's fervent commitment to the natural rights of the people to be self-governed is evinced by this last public letter written by him, and so was the case when he drafted the Declaration. Amir-Ul Islam was seemingly influenced by the thoughts and philosophy of Jefferson.² Who had known that Jefferson's words would appear so relevant a hundred forty-five years later for a 'people'—the Bengalees—to establish their right to become a nation? In Jeffersonian sage, the American Declaration was an 'instrument pregnant with our own and the *fate of the world*'.³ As Bangladesh Proclamation turns fifty, it offers a great opportunity to examine the original philosophy

¹ Douglas, G. S., *To Secure These Rights: The Declaration of Independence and Constitutional Interpretation*, New York University Press, 1995, at p. 87.

² Billah, S. M. M. and Parven, K., “Proclamation of Independence: The Unsung Document on the Way of Constitutionalism in Bangladesh” 5(3)(2005) *Bangladesh Journal of National and Foreign Affairs*, at p.70.

³ *ibid.*, at p. 87.

of the Proclamation and its present-day significance not only from a comparative perspective but also from a varied standpoint of national and international law.

The Bangladesh government was formed on 10 April 1971 and took oath at a remote mango orchard of Meherpur on 17 April 1971 which on-spot got the name 'Mujibnagar' after Sheikh Mujibur Rahman by Prime Minister Tajuddin Ahmed.⁴ The elected representatives formed themselves into a Constituent Assembly (CA) adopting the Proclamation of Independence for Bangladesh (PI).⁵ This was the culmination of the Bengalees' long-cherished dream to become the master of their destiny. Therefore, they expressed their unanimity of mind through the PI. The Proclamation endorsed Bangabandhu Sheikh Mujibur Rahman's declaration of independence made on 26 March 1971 in response to the Pakistani authority's imposition of an 'unjust and treacherous war' on the Bengalees.⁶ As such, the Bangladeshi lawmakers gave a retrospective effect of the Proclamation from 26 March 1971.⁷ The PI established a *de jure* government of Bangladesh to take care of Bangladesh's immediate needs including the conduct of the war. It attained a constitutional sanctity and introduced the new country to the world as a "Sovereign Peoples' Republic".⁸

The PI bears significance from diverse standpoints. It not only carries historical implications but also addresses the legitimacy question of Bangladesh's emergence. In the post-independence setting, it helped shape Bangladesh's constitutional jurisprudence. However, the document receives less credit and draws less scholastic attention than it deserves from the viewpoint of international law and constitutional jurisprudence.

⁴ Islam, M. A., "The Independent Government Certainly Started from Mujibnagar", *Prothom Alo English*, April 17, 2021.

⁵ The Proclamation on the point at para 9 reads as follows: "We the elected representatives of the people of Bangladesh, as honour bound by the mandate given to us by the people of Bangladesh whose will is supreme duly constituted ourselves into a Constituent Assembly."

⁶ Proclamation of Independence, para 5 & 6.

⁷ In the immediate 2nd line from the last, the Proclamation says, "We further resolve that this Proclamation of Independence shall be deemed to have come into effect from 26th day of March 1971."

⁸ *supra* note 6, para 11.