

## **On the Inner Contradictions in our Constitutional Texts**

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Constitution is the supreme law and sacred document for every country. It contains the basic values and ideals of a nation. It is a document where the nation accommodates its even contradictory trusts and ideals. But at the time of accommodation the text of the constitution has to maintain a harmony among the articles and its wordings. Bangladesh adopted its constitution in the year 1972 after liberation war of 1971. Theoretically the Constitution of Bangladesh is revolutionary in nature. Our Constitutional journey started by deifying the Pakistani constitutional processes. At the time of its inception the Constitution of Bangladesh was said to be a very progressive and almost a flawless constitution. But as time goes the Constitution has to absorb as many as 17 (seventeen) amendments and of those some were highly contradictory with the spirit of the Constitution. These abrupt changes sometimes even disrupted the functioning of the constitutional journey. In this study I have examined the contradictions of the text regarding harmony of the wordings and spirit. Here I have examined the text by using empirical and qualitative method of research. This study has two wings (i) contradictions within the text and (ii) contradictions based on the spirit.

1. If we carefully examine the text of our constitution, both Bangla and English, we can find some anomaly regarding wordings of the text.

- a) Our linguistic experts, upon study of the text of the Bangla version of the Constitution, have shown that the time has come to improvise the language to keep the constitution modern<sup>1</sup>. This contentions of the linguistic experts on modernization of the language is not fully supportable specially on the point of meaning. Because after inception of the constitution no contradiction arises regarding meaning of the words of the Bangla text, rather the higher court appreciated the uniqueness of the Bangla text in their decisions<sup>2</sup>. But spelling of the Bangla text may reviewed to make it up-to-date.
- b) The constitution of Bangladesh declares that the state language of the country shall be 'Bangli'. This declaration came from the spirit laid by the language movement of 1952 which was one of the basics of our freedom fight. When the constitution was enacted in the year 1972 the word 'Bengali' was used instead of 'Bangla' in the article 3 and article 153 of the Constitution. Several years after the enactment of the Constitution, parliament has taken an initiative to use word 'Bangla' instead of the word 'Bengali' through the 8<sup>th</sup> amendment of the Constitution<sup>3</sup>. Unfortunately, at the time of amendment the word 'Bangla' was inserted only in the article 3 of the Constitution and article 153 still bearing the word 'Bengali'<sup>4</sup>. This is an example of flawed legislative drafting and unfortunate lack of responsibility of everyone relating to the bill. Moreover, the real unfortunate thing is, after the said amendment there are several amending acts have been passed by the parliament, but this discrepancy never addressed.
- c) That another contradiction is visible on the point of meaning between Bangla text and English text. We may see Article 59 for instance<sup>5</sup>; where term local government has been used in English text and 'স্থানীয় শাসন' has been used for Bangla text. But the inner meaning of local government and 'স্থানীয় শাসন' is not same.

2. The other proposition of the study is that there are several theoretical contradictions regarding harmony of the articles of the Constitution, which may be termed as contradictions upon spirit.

- a) The first one is about the State religion mentioned in the Constitution. According to the provision of the Constitution, 'Islam' is the State religion for our country though the people of other religions are equally free to observe their religious rituals. However, this State religion concept was not in the original Constitution; but it has been inserted by 8<sup>th</sup> amendment. That had been challenged by the conscious citizens but turned down by the Hon'ble Court on technical ground. In spite of judicial settlement one thing is still prevalent that in presence of a State religion whether the concept of secularism mentioned in the article 12 of the Constitution prevailed in its true meaning. On the other hand article 2A is clearly contradictory with the part III of the Constitution, specially with articles 27 and 28. This contradiction on spirit may someday cause trouble.
- b) The article 7B declares "Notwithstanding anything contained in article 142 of the Constitution, the preamble, all articles of Part I, all articles of Part II, subject to the provisions of Part IXA all articles of Part III, and the provisions of articles relating to the basic structures of the Constitution including article 150 of Part XI shall not be amendable by way of insertion, modification, substitution, repeal or by any other means." Nothing wrong in it as it declares some basic structure of the constitution and we have already adopted basic structure in our constitution by way of adjudication. But Article 142 has confirmed unfettered power of amendment to the legislator with a special majority and this unfettered power of amendment has not been barred by inserting any clause in to the article 142 regarding amendment of the certain parts of the Constitution. Keeping Article 142 untouched and putting bar on the amending power of the parliament through other articles may create constitutional debate in future. Parliament derived its amending power from article 142 not from any other articles of the constitution and this may ignite debate in future constitutional adjudication.
- c) The article 48 of the constitution ultimately vested all powers to the executive specially on chief executive of the state and the same possibly undermined the other stake holders of the state power.
- d) Article 70 of the constitution is a dilemma for the democratic spirit of the constitution and also contradicts with the fundamental state policy regarding democracy. But this article in otherwise works to keep a statuesque on floor crossing. To remove the dilemma we have to think about a mechanism which can enable us to make a harmony between fundamental state policy regarding democracy and article 70 of the constitution.
- e) Time has come to reassess the issue relating to fundamental state policy as our state is approaching its 50 years of independence. How far our state step forward towards the goal envisaged in this part. This part is not enforceable by any court though we have one exception in this regard <sup>6</sup>.

### **In lieu of conclusion**

This article is an academic exercise on the constitutional text and spirit from a reverse angle which usually we do not do. But for the shake of research on constitution this avenue is to open.

References:

1. Shakhawat Ansari, *The Constitution of Bangladesh: Proposal for linguistic amendment* (Dhaka: Mukto Budhi Prokash).
2. DLR 27 (1975) AD P.61, DLR 30 (1978) HC P.144
3. Eight Amendment Act 1988, Act No.XXX of 1988
4. Article 153 of the Constitution of the People's Republic of Bangladesh
5. Article 59 of the Constitution of the People's Republic of Bangladesh