

Event Report



Celebrating **50** Years of Independence | BILIA LECTURE SERIES
Lecture 3 | Mujibnagar Government : The Birth of the Republic
মুজিবনগর সরকার : প্রজাতন্ত্রের জন্মসনদ

| Date & Time

29th May 2021
Saturday 4.00pm

| Zoom Link

For Registration visit : <http://www.biliabd.org/>

| Welcome Address

Prof. Dr. Mizanur Rahman
Director, Bangladesh Institute of Law and International Affairs (BILIA)

| Keynote Paper

Mr. Justice A.H.M. Shamsuddin Chowdhury
Former Justice, Appellate Division, Supreme Court of Bangladesh

| Panel Discussion

Mr. A M Amin Uddin
Attorney General for Bangladesh

| Prof. Dr. Mohammad Fayek Uzzaman

Former Vice-Chancellor, Khulna University

| Chair

Barrister M. Amir-UI Islam
Chairman, Bangladesh Institute of Law and International Affairs (BILIA)



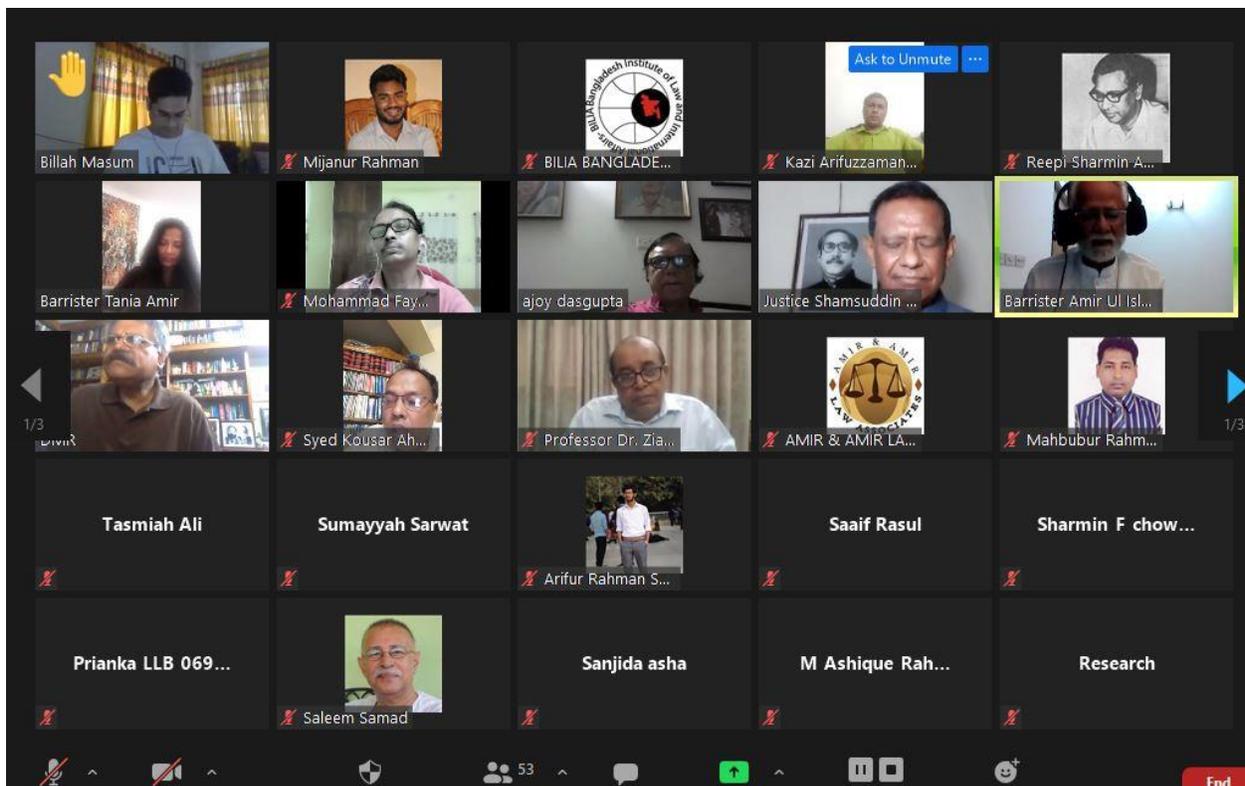
Bangladesh Institute of Law and International Affairs (BILIA)

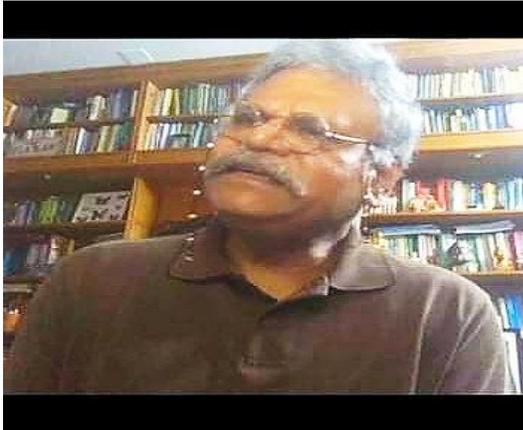
Celebrating 50 years of Independence: BILIA Lecture Series

LECTURE 3

MUJIBNAGAR GOVERNMENT: THE BIRTH OF THE REPUBLIC

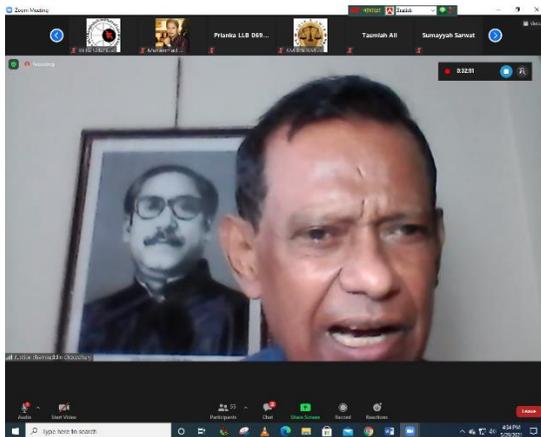
Though unsung, April 10 is one of the most significant national days in Bangladesh. On this very day in 1971, following the declaration of independence, Bangladesh formed their first government and thereby fulfilled all the criteria of a free and sovereign 'State' according to the provisions of international law. On this historic occasion, Bangladesh Institute of Law and International Affairs (BILIA) organized a lecture session on 'Mujibnagar Government: the Birth of the Republic' which was held on 29th May of 2021. This was the third lecture of the series initiated by BILIA in celebration of the golden jubilee of the independence of Bangladesh and was held virtually through the zoom platform.





Welcome Address

In his welcome address, **Prof. Dr. Mizanur Rahman**, Director, BILIA, greeted the participants and conveyed his gratitude to the keynote speaker, panel discussants, the honourable chair, and other guests present at the event. Then he explained the context of selecting this topic. He said that the formation of the Mujibnagar Government in April 1971 was one of the greatest milestones in our national struggle for freedom. Unfortunately, even after five decades of independence, this extraordinary episode of history has not been well-documented and well-researched. He hoped this lecture will provoke a renewed interest in the issue.



Keynote Speech

The Keynote speaker of the session was **Mr. Justice Shamsuddin Chowdhury**, former judge, Appellate Division, Supreme Court of Bangladesh. He, at first, shared his *Joy Bangla* greetings with Barrister M Amirul Islam, the honorable Chairman of the Bangladesh Institute of Law and International Affairs (BILIA) and other guests.

At the beginning of his lecture, Mr. Justice Chowdhury opined that 10th April is one of the Red Letter Days in the national life of Bangladeshi people. On that date, the independent and sovereign “country” of Bangladesh assumed “statehood” as per the definition proffered by international law, by being able to set up a Government. That day is of effulgence importance as Bangladesh was declared as a People’s Republic by none other than those who were the duly elected representatives of the entire population, he added.

In conformity with the mandate people showered upon the elected representatives, they first transformed themselves as the Constituent Assembly. Then the Constituent Assembly proceeded to establish the First Government of Bangladesh with total unanimity, with Bangabandhu as the President of the Republic and Syed Nazrul Islam as the Vice President. They also conferred upon Bangabandhu the power to appoint the Prime Minister, other ministers, as well as all the executive and legislative powers to enable the newly formed Government to steer the affairs of the Republic lawfully and efficiently. Soon after the Government was formed, Vice President Syed Nazrul Islam promulgated *Laws Continuance Enforcement Order 1971* to make applicable with necessary changes, all the laws that existed within the territorial boundary of Bangladesh on 25th March 1971. In their wisdom, they made their decisions, Orders, and actions, retrospectively effective from 26th March 1971 so that no time gap could spring between the Declaration of Independence and the formation of the Government, which stands as an essential criterion for “statehood” under international law, added Mr. Justice Chowdhury.

In his argument in favour of the Republic, Mr. Justice Chowdhury referred to Professor L.F.L. Oppenheim who drew a distinction between a “Country” and a “State” based on the presence and absence of the Government (*International Law: A Treatise*, Volume One, Eighth Edition.) He also stated that Article 1 of the *Montevideo Convention* of 1933 stipulates that a state as a person of international law should possess four criteria, namely (1) a permanent population (2) a defined territory (3) government and (4) capacity to enter into relations with other states. Professor Oppenheim opined that “A state proper—in contradiction to colonies—is in existence when the people are settled in a country under its own government”.

In the same vein, Professor Brownlie stated that “the shortest definition of a state for present purposes is perhaps a stable political community supporting a legal order in a certain area, the existence of an effective government with centralized administrative and legislative organs. Professor Higgins also echoed identical views.

And hence, in his argument, it is not difficult to affirm that the elected representatives of Bangladesh brought the country within the concept of “statehood” as defined in the international law, both conventional and customary, by transforming themselves into the Constituent

Assembly and setting up the First Government after declaring the country as a People's Republic and conferring upon the Government requisite powers. Such achievement of statehood paved the country's way to be accorded with diplomatic recognition by various countries and the membership of the United Nations Organisation. As a result of achieving the statehood, many countries in the world exhibited de facto recognition to Bangladesh and allowed her agents to set up offices, to travel to those countries for the purpose to lobby, to allow them to meet their officials, to receive representations from them, even before de jure recognition was accorded by them, India and Bhutan. Even the United Nations Organisation allowed Bangladeshi delegates' access to its offices and officials due to this statehood by forming the government, said Mr. Justice Chowdhury.

Not only that, parliaments in various countries including India and the UK adopted resolutions in favour of Bangladesh, condemning Pakistani orchestrated acts of genocide in Bangladesh. The World Bank's consortium for Aid to Pakistan, while meeting in Paris, received Bangladeshi lobbyists and stopped aid to Pakistan after perusing their representation.

It is worth-mentioning that around the same time, an entity called Biafra also decided to become independent and staged a war for liberation from Nigeria. Biafra's move ended in a fiasco. Because the world community treated Biafra's move as a cessation movement rather than a war of liberation, because, unlike Bangladesh, Biafra failed to set up a government with a mandate from its people.

Mr. Justice Chowdhury also mentioned that the formation of the First Government also engendered prolifically and prodigious consequences in the Constitutional progression of Bangladesh. While Pakistan took nearly nine years, and India took two and a half years to frame their constitutions, Bangladesh's constitution was ready in only nine months, which was universally recognized as one of the best and infallible constitutions in the world. That was possible because the foundational structure for the Constitution was laid down through the Proclamation of Independence. In this respect, it is worth noting that our Supreme Court described the Proclamation as the genesis of the constitution, as observed by a Division Bench of the High Court Division presided over by His Lordship Mr Justice ABM Khairul Haque and comprising his Lordship Mr. Justice Momtaz Uddin Ahmed, in the case of *Dr. M A Salam v The government of Bangladesh*, (reported in Bangladesh Law Times, 18th volume).

In *Anwar Hossain Chowdhury v Bangladesh* case (reported in BLD's special issue in 1989), his Lordship Badrul Haider Chowdhury's observation is reflective of the fact that in the Proclamation, the Constituent Assembly explicitly ensured for the people of Bangladesh, "equality, human dignity, and social justice." All of these three fundamental notions found their place in the Constitution, which guarantees enforcement of fundamental rights, and thereby "equality, human dignity, and social justice." The Fundamental Principles of State Policy are also founded

on these three themes. The Proclamation laid the foundation for the incorporation of the doctrine of separation of power, as envisaged by Baron Montesquieu, with the warning that concentration of all of the three kinds of powers in a single authority would entail tyranny. The embryo of the four basic principles namely, democracy, nationalism, socialism, and secularism were truly brought into animation by ensuring the three notions of equality, human dignity, and social justice. All these were possible due to the Proclamation of Independence and the formation of the government added Mr. Justice Chowdhury. He noted that Bangabandhu himself referred to and relied on the Proclamation of Independence dated 10th April 1971, when he promulgated the 'Provisional Constitution of Bangladesh, vide *Provisional Constitution of Bangladesh Order 1972*.

At the last phase of his lecture, Mr. Justice Chowdhury brings to attention an often raised question that whether 10th April should be declared as our Republic day. He opined that in India and Pakistan, Republic days are those days on which they assumed Republican status by coming out of the conceptual dominion of the British Crown. Since Bangladesh became a People's Republic following an Order promulgated on 10th April, this question deserves serious consideration, he added.

Mr. Justice Chowdhury, however, concluded his speech by recognizing the historic contribution that was made by Barrister M Amirul Islam, the Honourable Chairman of BILIA, by bringing into light the Proclamation of Independence—the Birth certificate of the People's Republic of Bangladesh.

Panel Discussion



Professor Dr. Fayek Uzzaman, the former Vice-Chancellor of Khulna University, expressed his views in line with the keynote speech mentioning that Bangladesh achieved three of four elements of a free and sovereign state on the 3rd March of 1971 under the leadership of Bangabandhu Sheikh Mujibur Rahman. The only remaining criterion—government—was achieved by the formation of the Mujibnagar Government on April 10, 1971. He added that the

Mujibnagar Government ensured all the features and elements of a legal government. Under this government, liberation forces, armed forces, *Shadhin Bangla Betar Kendro*, and worldwide diplomatic relations were successfully established. This government also succeeded in confronting refugee crises, founding secretariats, and freeing Bangabandhu Sheikh Mujibur Rahman, the father of our nation.

Open Discussion



Dr. Zia Rahman, Professor of Sociology, University of Dhaka, posits that the contribution of our national four leaders in the making of Bangladesh as a free and sovereign state should be duly recognized along with the leading role played by Bangabandhu Sheikh Mujibur Rahman.

Dr. Abdus Sattar Molla contended that the significance of the first Bangladesh Government will be properly emphasized and the four national leaders will be truly honored, only if we can declare this day (10th April) as the 'Republic Day. A national committee should immediately be formed to expedite the process.

Sharmin Ahmad, daughter of Tajuddin Ahmad, the first Prime Minister of Bangladesh, contends that we should pay more attention to the study of our glorious history and cultivate the historic roles played by our national leaders. The history of our first government should be explored and disseminated by national-level endeavors. Institutional initiatives at the national level should be taken to declare 10th April as the Republic Day of Bangladesh added Sharmin Ahmad.

Barrister Tania Amir, a member of BILIA EC, contended that the government formed on April 10, 1971, was the first government of independent Bangladesh and legally continued till March 1973. Therefore, when someone terms it as the `government in exile, or, `provisional government`, or, `Interim Government`, that is erroneous, legally and historically.

The event was graced by the presence of eminent lawyers, historians, sociologists and political scientists including Former Ambassador Mohammed Mohsin, Journalist Ajoy Dasgupta, Kazi Arifuzzaman, Joint Secretary at the Ministry of Law, among others.

The lecture was well-attended by students, academicians, diplomats, lawyers, jurists, ministry officials, and media persons. More than 120 persons attended the program.

Concluding Remarks



The session was chaired by Barrister M Amirul Islam. In his concluding speech, Mr. Islam said that equality, human dignity, and social justice were the main sprits of our liberation war. Unfortunately, the Proclamation of Independence and all other provisions of human rights enshrined in the constitution are merely confined within the courtrooms and legal community. It should be included in our national textbooks, researched in the universities, and practiced in our daily life.

The report is prepared by Kamrul Islam Aftab, Research Assistant (International Affairs), BILIA.