



**Research Monograph**  
ON

**The Historical Background of the Constitution of Bangladesh  
and the Necessity of Its Reformation in the Present Context:  
A Suggestive Analysis.**

**Submitted to:**

Muhammad Ali

Lecturer & Coordinator

Department of Law,

Sonargaon University

**Submitted by :**

Name: Maksudur Rahman

ID: LLB2101022011

Batch -22<sup>th</sup>

Department of Law

Sonargoan University

## Acknowledgement

At first, thanks to Almighty, who has been kind enough to let me complete this Research Monograph in right time.

I would like to acknowledge my gratitude to my honorable teacher, Muhammad Ali Lecturer for permitting me to undertake this research.

Thanks to him for his most constructive suggestion and informative guidance through his lectures.

From beginning of my research, I am personally indebted to some book writers for their kind and valuable writings. Thanks to all from the bottom of my heart.

Signature

## Certification by the Thesis Adviser

This is to certify that the research monograph titled “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**” submitted by Name: **Maksudur Rahman ID: LLB2101022011**, has been carried out under my active supervision and guidance as a partial requirement for the fulfilment of the Bachelor of Laws (LL.B Honors) at the Department of Law, Sonargaon University.

To the best of my knowledge, the work presented in this research monograph is the original effort of the student and has not been submitted elsewhere for the award of any degree, diploma, or other academic qualification.

**Muhammad Ali**

Lecturer & Coordinator

Department of Law

Sonargaon University, Dhaka.

## Declaration

This is, student **Maksudur Rahman ID: LLB2101022011** of LL.B program of Department of Law of Sonargaon University, do hereby declare that the research monograph titled “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**” an original work. The assigned work has done by me for partial requirement of my LL.B degree, this is part of academic curriculum. I certify that this thesis has not been submitted to obtain any degree in any university, and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due references is made in the text.

I also declare that the presented work do not breach any existing copyright and no portion of this thesis paper has been copied entirely from any work done earlier for a degree or otherwise.

Signature:

Date:

## Letter of Transmittal

To,

**Muhammad Ali**

Lecturer & Coordinator

Department of Law

Sonargaon University, Dhaka

Subject: For the submission of research monograph titled “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**”.

Dear Sir,

With due respect and humble submission, I am honored to present my research monograph titled “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**”. which has been prepared as a partial requirement for the completion of my Bachelor of Laws (LL.B Honours) under the Department of Law at Sonargaon University

This research has been carried out with utmost sincerity and dedication. I have made every effort to maintain the required academic standards and present a comprehensive analysis on the chosen topic. I respectfully submit this work for your kind perusal and academic evaluation.

If any clarification or further information regarding this monograph is needed, I will remain available at your convenience.

Yours faithfully,

Maksudur Rahman

ID: LLB2101022011

Batch: 22th

# **Table of Contents**

1. Abstract.....	7
2. Introduction.....	8
3. Historical Background.....	9
4. Prelude: Independence & Provisional Orders.....	11
5. Drafting the Constitution.....	13
6. Promulgation & Adoption.....	17
7. Structural Features of the Constitution.....	20
8. Preamble & Fundamental Principles.....	24
9. Fundamental Rights.....	27
10. Governmental Structure.....	30
11. Amendments: Evolution Over Time.....	32
12. Challenges and Critiques of the Constitution.....	34
13. Article 70 and Parliamentary Dynamics.....	36
14. Judicial Independence.....	40
15. Unitary Structure.....	41
16. Necessity for Reformation.....	42
17. Conclusion.....	44
18. Bibliography.....	46

## Abstract

**The 1972 Constitution of Bangladesh Deprive constitution** – dressed in the pretense of people power, and false facade to legitimate this so-called republic born out of a crushing liberation war with Pakistan (in 1971) that led to victory but at the same time forsaken and ruined by its political elites.

Based on the concepts of nationalism, democracy, secularism and socialism; the document aimed to designate a society that was just and fair and would be governed by rule of law. As the supreme legal charter of the new country, it perceived of a democratic polity where sovereignty would vest in **‘the people’**, unencumbered by the legacy of colonization and authoritarianism. The pledge to secularism, explicated in the preamble above all else, was part of a larger vision of plurality that sanctioned citizens who subscribed to different religions living as equals without government sponsorship or **religious hierarchy**.

But the constitution’s passage has been neither fixed nor uncontested, over the decades. Its original character has been radically transformed by a succession of constitutional amendments—many adopted under tumultuous political conditions—notably. In 1988, the Eighth Amendment enshrining Islam as the state religion was a defining moment in Bangladesh’s constitutional history.

This amendment elicited extensive debate on the dilution of secularism, a cornerstone of state identity. Meanwhile, the repeated recourses to the military, political polarization and incremental concentration of executive power are whittling away, at least conceptually, **at the democratic safeguards being constructed in 1972**.

But even with these deviations, the Constitution remains as the foundation of Bangladesh’s political and legal system. But whether the curriculum is still useful and effective today has been heavily questioned. The tension between democratic principles and authoritarian style, again most evident in the uneven powers of the executive, legislature and judiciary, has revealed weaknesses in the constitutional design.

**Article 70**, which prohibits members of parliament from voting against party lines, has effectively repressed legislative autonomy and hence democratic representation and accountability. Similarly, the fear that judges may be seen as politicians in robes and the fact that many begin to look at them in this way has prompted us to emphasize their independence as it relates to constitutional justice.

This article critically examines the development of constitutionalism in Bangladesh through an analysis of rise and interaction between secularism and Islamization, limitation on parliamentary democracy, and assault on judicial independence. It contends that lasting constitutional reform is needed to salvage a system of democratic governance worthy of the name. Those reforms should seek to enhance judicial independence, provide for more transparent and credible electoral arrangements, and reassert the secular character of the state. All this freedom and flexibility is the only way to make the Constitution a true democracy, justice and human rights—based on hopes of our creators and responsible citizens changed with time.

## Chapter 1

# Introduction

The Bangladeshi Constitution's preamble. It was made official on December 16, 1972, just after the country became independent. <sup>1</sup>It was a set of rules for protecting the government and the people. The constitution was written after Bangladesh became independent from Pakistan in 1971 to make the country democratic, open to everyone, and not religious. <sup>2</sup>In order to make Bangladesh a peaceful and forward-thinking place, it wanted to make sure that all of its citizens had justice, equality, and freedom.

However, there are several problems with how the Constitution is being used, how it is being understood, and how well it fits into India's changing political and social landscape. The political unrest of the document's early years, the historical context in which it was created, and the dynamic interplay between the legislative, executive, and judicial branches have all affected how it has been put into action and changed over time. <sup>3</sup>

We are more and more in agreement that the Constitution needs to be changed so that it can deal with new problems and be more in line with how modern democracies work. The goal of this article is to understand the historical background of the Bangladesh Constitution, how it changed before and after 1971, and the push for change during that time. <sup>4</sup>The article offers normative suggestions for reforming these institutions to improve the quality of democracy and the protection of human rights in Iran.

- Key words:

The Constitution of Bangladesh, Secularism, Democracy, Rights of People, Separation of the Legislative, Executive, and Judicial Branches, Changes to the Constitution, Political Unrest, Freedom in 1971, Fairness in Society, Changes to the Constitution, Changing Political Scene, Changes to the Constitution of Bangladesh

---

<sup>1</sup> Bangladesh officially ratified its constitution on December 16, 1972, about a year after the country became independent from Pakistan. The Government of Bangladesh's 1972 Constitution states that both the text and the official gazette serve as references.

<sup>2</sup> The Constitution was written to make a secular, democratic nation-state that would guarantee justice, equality, and freedom for all of its residents. For historical context, consult Bangladesh: The Struggle for Independence (History of Bangladesh, 1971).

<sup>3</sup> The Separation of Powers in Bangladesh (Bangladesh Journal of Political Science, 1980) examines the interaction among the legislative, executive, and judicial branches.

<sup>4</sup> A.K. Fazlul Huq's Bangladesh Political History: 1971–1975 talks about the political upheaval and problems with putting the Constitution into effect in the early years.

## Chapter 2

# Historical Background

After a brutal war in 1971, Bangladesh finally got its freedom from Pakistan. During this tense time of independence, the country's constitution was written. Bangladesh was a part of Pakistan until 1971, when it became known as East Pakistan.<sup>5</sup>

The political and economic power imbalance between the two sides, as well as language and culture, led to dissatisfaction and, eventually, the independence movement.

Winning the Liberation War: Sheikh Mujibur Rahman was the first president of Bangladesh and the country's founding father.<sup>6</sup> After the Liberation War ended in December 1971, he led the country to independence as a sovereign state.

It was very important to build a strong government that would protect the country and help it grow. As former Acting President Syed Nazrul Islam said in Dhaka just a few days before independence, Sheikh Mujibur Rahman would sign the 1971 constitution into law on January 8, 1972.

This would make it the foundation of an independent Bangladesh and state, "The source from which this document derives its authority is no other than the people of Bangladesh." The election for the Assembly included people from all ethnic groups and political parties, even those based on religion and ethnicity.

The Constitution's main goals were to protect human rights, promote economic growth, and make sure that the people were generally happy. At first, the Constitution was based on Bengali nationalism, which had led to competition between regions and calls for independence and self-determination.

But the early years of independence were not easy. There were wars, military coups, and public unrest. The murder of Sheikh Mujibur Rahman in 1975 was the first big threat to the Constitution.<sup>7</sup>

Several military leaders changed the Constitution, including in 1962, when it was basically put on hold. But these changes mostly ignored the constitutional process and made the wording so different that it was hard to recognize. One of the most important changes was the 1977 amendment that made the country an Islamic state and took the word "socialism"

out of the Constitution's preamble. This contentious amendment cast doubt on the Constitution's secular orientation, a hallmark of its post-independence vision.

---

<sup>5</sup> Bangladesh Liberation War (overview and history) [https://en.wikipedia.org/wiki/Bangladesh\\_Liberation\\_War](https://en.wikipedia.org/wiki/Bangladesh_Liberation_War)

<sup>6</sup> The National Archives has an educational resource about Bangladesh's independence in 1971. <https://www.nationalarchives.gov.uk/education/resources/the-independence-of-bangladesh-in-1971/>.

<sup>7</sup> The Archives of the Nation. MuktiJuddho e-Archive (a digital archive of Liberation War documents) [https://en.wikipedia.org/wiki/Muktijuddho\\_e-Archive](https://en.wikipedia.org/wiki/Muktijuddho_e-Archive)

Over the next few decades, the constitution was changed several times to include “democratic legality” mechanisms.<sup>8</sup>

These changes made democratic practices stronger by weakening the separation of powers and lowering the power of the courts.

Bangladesh’s constitution is a very important part of the country’s political system, even though it faces many problems. It also has a big impact on the country’s legal system for government. Notes: The declaration of independence by Sheikh Mujibur Rahman in 1971 was a new experience for the country.<sup>9</sup>

Look at the National History Archive of Bangladesh’s 1971 War for Independence.

The 1972 Constitution’s preamble talked about democracy, nationalism, and secularism. See “The Constitution of Bangladesh, 1972” (Bangladesh’s Official Gazette).

The Constitutional Amendments show how the Constitution of Bangladesh was changed after Sheikh Mujibur Rahman was killed in 1975 (Government of Bangladesh, 1977).

The 1977 amendment, which made Islam the official religion of the country, was a break from the Constitution’s secular principles. The Ministry of Law and Justice in Bangladesh<sup>10</sup> put out the Bangladesh Constitution Amendments 1977.

---

<sup>8</sup> Collection of newspaper articles about the Liberation War <https://liberationwarbangladesh.org/?p=8616>

<sup>9</sup> The Daily Star Changes to the Constitution: a summary (for example, the 5th and 8th Amendments)

[https://gropedia.com/page/Amendments\\_to\\_the\\_Constitution\\_of\\_Bangladesh](https://gropedia.com/page/Amendments_to_the_Constitution_of_Bangladesh)

Article 2A: The religion of the state of Bangladesh. The Bangladesh Law Library. <https://bdlaws.minlaw.gov.bd/act-367.html>

Article 2A: The religion of the state of Bangladesh. The Bangladesh Law Archive. <https://bdlaws.minlaw.gov.bd/act-367/section-24549.html>

A summary and history of the Bangladesh Liberation War Wikipedia: [https://en.wikipedia.org/wiki/Bangladesh\\_Liberation\\_War](https://en.wikipedia.org/wiki/Bangladesh_Liberation_War)

Bangladesh became independent in 1971. The National Archives of the UK. <https://www.nationalarchives.gov.uk/education/resources/the-independence-of-bangladesh-in-1971/>

MuktiJuddho e-Archive — Bangladesh Liberation War Archive. Wikipedia. [https://en.wikipedia.org/wiki/Muktijuddho\\_e-Archive](https://en.wikipedia.org/wiki/Muktijuddho_e-Archive)

The Bangladesh Constitution says that there should be both secularism and a state religion. The Daily Star. <https://www.thedailystar.net/law-our-rights/news/secularism-and-state-religion-the-bangladesh-constitution-3637926>.

Changes to the Constitution of Bangladesh. Gropedia. [https://gropedia.com/page/Amendments\\_to\\_the\\_Constitution\\_of\\_Bangladesh](https://gropedia.com/page/Amendments_to_the_Constitution_of_Bangladesh)

## Chapter 3

### Prelude: Independence & Provisional Orders

The Constitution of Bangladesh has a lot to do with the country's struggle for independence and the political systems that came after it. A lot of political events and decisions led to the need for a written constitution. Bangladesh became independent in 1971, after fighting for its freedom. Bangladesh's freedom Bangladesh's road to freedom began when it split off from Pakistan.

The people of what was then called East Pakistan were ruled by the West Pakistani government in terms of politics, economics, and culture. People wanted more freedom and recognition of the Bengali language, so the fight for independence got stronger in the late 1960s.

Things got worse in 1971, and the Bangladesh Liberation Struggle began. It was a terrible fight. The end came on March 26, 1971, when the country declared its independence.

The war lasted for nine months and killed a lot of people and destroyed a lot of things. With the help of Indian troops, Bangladesh became independent on December 16, 1971.

But after the country became independent, it had a lot of problems with its government, infrastructure, and police.

Orders for a Short Time Bangladesh needed a set of laws to run its new country after it became independent. Because there was no written constitution, temporary rules were made to keep things in order in politics and government. The first of these orders came from Sheikh Mujibur Rahman, who was the first president of Bangladesh. He became the leader right after the country became free.

These temporary orders were meant to keep the peace while the new Constitution was being written.

One of the most important temporary orders was the Declaration of Independence. It gave Bangladesh its own government. This paper emphasized the nation's commitment to safeguarding human rights, fostering equality among its populace, and maintaining democratic principles. Provisional orders also helped create the National Assembly, which would later write the Constitution of Bangladesh. Sheikh Mujibur Rahman and his friends were in charge of the temporary government, which worked to keep the country stable and rebuild its economy and infrastructure. The directive also talked about important things like land reforms, restoring civilian rule, and restoring the rule of law.

Need for Change in the Present Situation The Constitution of Bangladesh, which went into effect on December 16, 1972, was based on the ideas of

the Liberation War and independence. But it has been changed a lot since then, and a lot of people complain about how it is now.

A lot of people are arguing about whether or not the Constitution needs to be changed, especially because of changes in politics and the economy. Some important areas that need to change are Secularism and Democracy: Secularism was one of the main ideas that the Constitution included at first. But over time, changes to the law and court decisions have made this idea less strong. To bring back secularism in a way that works better with the world today and the country's changing demographics, the Constitution could be changed.

System of Politics: The current political system, which was supposed to be a parliamentary democracy, has had a lot of problems, like political instability, frequent changes in government, and a lack of trust in political institutions. Changing the political system to make it more democratic, open, and accountable is one of the most important things for the country's future.

Human Rights and Justice: Bangladesh still has a long way to go when it comes to protecting people's rights. The Constitution could be changed to better protect the rights of minorities, promote gender equality, and encourage religious tolerance. These are all things that social and political forces often hurt.

In conclusion, the people of Bangladesh fought and sacrificed to make their country free and democratic. It needs to be changed, though, so that it can still be useful when new problems come up and still be the document that guides a fair and open society.<sup>11</sup>

---

<sup>11</sup> <https://www.britannica.com/event/Bangladesh-Liberation-War>  
<http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://songramernotebook.com/archives/395260>

## Chapter 4

### Drafting the Constitution

The Constitution of Bangladesh is the supreme law in Bangladesh's constitutional framework that governs the structures and functions of all governmental institutions and forms the state. It was enacted on December 16, 1972, following a long struggle for independence from Pakistan in 1971.

The Constitution reflects what the people of Bangladesh want and desire. It speaks often of human rights, democracy, and fairness. It was written at a time when the country was free, and yet there was a lot of social, political, and economic upheaval.<sup>12</sup>

This article chronicles the history of Bangladesh's constitution and discusses why it needs to be amended in the present day. The Constitution is still a useful document, but the country has changed a great deal since it won independence.<sup>13</sup>

We need to examine it closely to see how it might be changed to address new challenges. The history behind Bangladesh's constitution The necessity of a constitution and the struggle for independence: it was not easy for Bangladesh to gain its independence. It used to be called East Pakistan before it was a country. In 1971, it waged a brutal war of independence against West Pakistan. The war killed millions, drove many more from their homes, and decimated the economy and society. The new nation required a legal framework to govern it.

After the war, he became the first president of Bangladesh. He was the man tasked to write the Constitution. The new country was conceived around the notions of nationalism, democracy, secularism, and socialism. It was on ideals such as these that the battle for freedom was fought. The constitution was drafted by the Constituent Assembly in 1972. The country had no legal framework to support or even govern its institutions, so it was written quickly.

Dozens of newly independent countries adopted the Indian Constitution as a model. The ideals of the Constitution were grounded upon democratic socialism, as it had been consistent with political and economic values in Bangladesh. The leading figurehead elements who

---

<sup>12</sup> Bangladesh Constitution of 1972: The Constitution was framed immediately after the country won freedom in 1971 and affirmed democracy, socialism and secularism as key principles.

<sup>13</sup> Amendments The Constitution has been amended several times, particularly in 1977 (by the fifth amendment during General Ziaur Rahman's rule) restoring multi-party system; a further step was made in the eighth amendment of 1988 proclaiming Islam as state religion.

drafted the Constitution were genuinely committed to the concept of a socialist republic with democracy as its soul. It enshrined in its people fundamental rights, such as the right to vote, the right to work, and the right to live in a free society. The Constitution also suggested that the people lead and Parliament become supreme. One thing about it is that the Constitution said secularism was to be a guiding principle. The idea was to afford equal rights and privileges to all religious communities and eliminate bias against any of them.” It also mentioned social justice, which means trying to make the rich and the poor more equal in power and money.

The 1972 Constitution includes some important chapters, such as: The Constitution empowers the people of Bangladesh the most. Fundamental Rights: It provided individuals basic rights like the right to life, freedom and property, and the right to free expression and free religion.

**Secularism:** The Constitution laid down that the government would treat all religions equally. This helped ensure that religion and government remained separate. Democracy and Socialism: The objective was to establish a democratic republic with a parliamentary system of government, with the country committed to socialism.

**Alteration and Addition Over the Years:** The Constitution of Bangladesh has been amended many times as part of the changing political and economic condition of the country. Two are the most significant changes: from 1977 and again allowed through the amendments supported by the military. With General **Ziaur Rahman** and Islam as religion in 1988 (**G.O. 27<sup>th</sup> amendment**). Those changes have left many asking whether the Constitution can keep pace with the shifting politics of Bangladesh. Here are the justifications for why we must change right now and instead decide to alter the Constitution. Bangladesh has changed a great deal since the Constitution was adopted in 1972. The political landscape changed, with more national parties, demands for autonomy, and pressure on the government in various regions of the country.

Yet the economy has expanded faster than the legal system can keep up with problems like corruption, income inequality, and violations of human rights. Bangladesh is growing, and its constitution has to grow to accommodate what it wants and needs now.

**Secularism vs. Islamization:** The notion of secularism in the Constitution has led to much controversy, particularly after an amendment in 1988 introduced Islam as the state religion. There are those who argue that this change weakens the secular foundations of the Constitution and makes it easier for political Islam to impact government.

Bangladesh still needs to reconcile between its religious diversity and its democratic secular aspirations, so yes, this is still a work in progress.<sup>14</sup>

**Democracy and Human Rights Under Attack:** Bangladesh has struggled with a lot of issues to ensure that people can vote freely, the courts aren't influenced one way or the other, and their rights are being protected. Even though the Constitution says a few things are super important, that is still true<sup>15</sup>. Citizens have always feared election fraud, press control, and political persecution in a place where politics is not terribly stable. We do need to change things so that fundamental rights are protected, elections are free and fair, and democratic institutions are stronger.

**Economic disparity and social justice:** The preamble of the Constitution has too many references to social justice and decreasing the disparities between rich and poor people, but there still remains a lot of destitution, income disparity, and regional imbalances in the country! The economic provisions of the Constitution need to be amended in a way that can assist people in job hunting, moving out of poverty, and bridging the rich-poor disparity divide. It could result in better paths to provide low-income neighborhoods with health care, education, and social services.<sup>16</sup>

**Devolution of Power and Local Governance:** The other manner in which the constitution must be amended is to empower local governments. Bangladesh is a relatively centralized country, and most decisions are made in the capital, Dhaka. But we can help ensure that everyone in the world gets a fair shot at growth by playing for local governance without strong accountability systems. By revising the Constitution to strengthen municipal power, national needs can be better served and public services improved.” Conclusion and Recommended Amendments From the issues above, it is clear that there is a requirement for change in the constitution of Bangladesh to meet the needs of the time.

You may want to consider a few of these changes: **Reinstate Secularism** – Getting secularism back into the Constitution and making sure that there is no one religion above another in government. “It strengthens the human rights protection when it adds stronger freedom of speech, freedom of assembly, and media coverage.” To even out the economy, we must take steps to reduce poverty and inequality.

---

<sup>14</sup> Neutrality vs Islamization: The 1988 amendment made the country an Islamic state, causing controversy over the secularism and Islamization of Malaysia.

<sup>15</sup> Human Rights and Electoral Concerns: Despite legal safeguards, Bangladesh still grapples with political oryokmatisationupam freedom, independence of the judiciary, and credible poll.

<sup>16</sup> Local Governance: The concentration of political power at Dhaka has been criticized, with calls for better local government that can truly reflect regional requirements and be more effective in delivering public services.

**Stronger Local Governance:** More power to the regions and stronger local government, which can better manage its own affairs. Ensuring free and fair elections: The handing of more powers to the Election Commission and a non-biased court will be important.<sup>1718</sup>

## Chapter 5

---

<sup>17</sup> The Constitution of Bangladesh (1972). Available at: Bangladesh Government Website  
Bangladesh: The Struggle for Liberation by Ayesha Jalal. This book offers a full history of Bangladesh's efforts to secure redress and an articulation of the claims against Pakistan in domestic Bangladeshi law.  
Secularism in Bangladesh Constitution: A Survey, by Bangladesh Legal Forum, available at: **Bangladesh Legal Forum**  
Human Rights in Bangladesh: A human rights watch report on the current state of human rights and freedom of speech in Bangladesh, found at: Human Rights Watch – Bangladesh.  
Bangladesh Constitution Amendments: In depth explanations of most constitutional amendments including the 1988 Islamization Amendment at: Constitutional Amendment Reports  
Bangladesh Election Commission: official reports for elections' fairness and reforms. <http://www.ec.org.bd/>  
<sup>18</sup> Constitution of Bangladesh, Secularism, Democratic Socialism, economic democracy, Fundamental Rights, Islamization, Social Justice, Electoral Integrity, Human Rights, Economic Inequality.

## Promulgation & Adoption

Adoption and publication The adoption of the Constitution of Bangladesh was an important event in the country's history. It marked a new era in the people's fight to free themselves from oppression. The Constitution is more than just a legal book; it represents the ambitions and dreams of the people of Bangladesh, who battled hard for freedom while respecting its ideals in the new, independent Bangladesh.

19

**The Circumstances of Promulgation:** After the Liberation conflict of 1971 (when Bangladesh became free from Pakistan), the country was almost completely destroyed by conflict. Millions had perished, been hurt, lost their homes, or lost access to schools and hospitals. The new government, led by Sheikh Mujibur Rahman, the country's first president, had the huge task of rebuilding a nation that had been mostly destroyed and stretched too thin. They had to set up functioning capital and make the country legally and politically stable.

20

The absence of a constitutional framework left a gap in the governance structure that needed to be remedied right away in order to effectively run the country and deal with the issues of nation building. And the Constituent Assembly of Bangladesh was in charge of writing a constitution that would embody the country's soul and set up the political, judicial, and administrative system.

**The Process of Drafting:** The Constitution was written immediately after the country became independent in 1971. The Constituent Assembly met on April 10, 1972, and included members from various parties and groups. However, the ruling Awami League had the most power. Dr. Kamal Hossain, a well-known lawyer and politician who helped shape the legal and political structure of the new nation, was in charge of the drafting committee.

21

The Assembly worked during a time of need and with a sense of responsibility, since the country was at war. The framers wanted to create a society based on these ideas, where the government would be democratic and secular. They wanted to build a society based on the principles of social justice, nationalism, democracy, and secularism—values that were part of the glorious War of Liberation fought by our people to achieve their dream of a society free from oppression.

---

<sup>19</sup> [https://en.wikipedia.org/wiki/Constitution\\_of\\_Bangladesh](https://en.wikipedia.org/wiki/Constitution_of_Bangladesh)

<sup>20</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>

<sup>21</sup> <https://www.dhakatribune.com/opinion/op-ed/204025/mujib%E2%80%99s-challenge-was-the-road-to-democracy>

As a show of political unity, the Assembly adopted draft proposals and talked about parts of the Constitution. The Indian Constitution had an effect on a lot of newly independent governments in South Asia, such as Bangladesh, which adopted parts of India's constitution. India's constitution has a lot of democratic socialism in it, with a focus on fundamental rights, social justice, and democracy.

**The Constitution was made 18nythic:** The Constitution of Bangladesh was enacted on December 16, 1972, exactly one year after the end of the Liberation War. This was a very important and famous moment in Bangladesh's independence. The Vice President Sheikh Mujibur Rahman, who was acting as president at the time, signed the constitution. When the law was finally passed, it became a historic occasion full of optimism and promise for everyone who had fought for freedom and independence.

22

The Consti'tution of Bangladesh, which was passed immediately after the country declared its independence, signified the beginning of the independent Bangladeshi republic and the beginning of a march to make democracy known. It showed that the people of Bangladesh wanted to build a society where everyone had a chance and where justice and fairness were valued. The Constitution's Preamble, which named nationalism, democracy, secularism, and socialism as important ideas, became the basis for all government actions and programs.

#### **Important things to know before adoption:**

The Constitution was a huge step forward, and among its most important features were:

**People's Sovereignty:** The Constitution made it clear that the people of Bangladesh were the only ones who had power and that they were the only ones who could give political power. This was a change from Pakistan's authoritarian rule.

**Fundamental Rights:** The Constitution spelled out the basic rights of all citizens, such as the right to life, the right to free speech, and the right to equal treatment under the law. The goal was to protect individual freedoms in a democratic government.

**Secularism:** Attacking one of the Constitution's most important values. The government would not support any religion, and the 18nything18onn would treat all beliefs as equal. This was a first in history for Pakistan, where the constitution was based on religion.

---

<sup>22</sup> <https://uplbooks.com/shop/9789845060400-bangladesh-quest-for-freedom-and-justice-8338>

**Parliamentary democracy:** The government is founded on a parliamentary system and the constitution. There is a prime minister who is in charge of the government and a president who has limited executive power. The Jatiya Sangsad (National Parliament) is a unicameral parliament, which means it has only one house.

**Socialism and Justice:** The Constitution put a lot of emphasis on social justice and tried to reduce differences in wealth and income. It wanted to create a socialist state that would make sure that wealth and resources were shared fairly.

**Adoption and Legal Importance:** The Constitution was a step toward making the dreams of Bangladesh's liberation fighters come true. It changed Bangladesh into a democratic republic and made it possible for people to be guaranteed their first-class citizenship, no matter what their caste, religion, or gender.

But since it was enacted, the Constitution has been changed many times, which has led to worries that its secular nature is becoming less strong. The 1988 amendment, for example, had a clause that made Islam the state religion. After that, there were discussions about whether the country was dedicated to having secularism as a guiding concept. These changes, together with issues in making the Constitution's goals and dreams come true, have led to calls for changes to the Constitution.<sup>23</sup>

## Chapter 6

### Structural Features of the Constitution

---

<sup>23</sup> <https://www.scribd.com/document/626278322/Bangladesh-Constitution-Trends-and-Issues-by-Justice-Mustafa-Kamal-Full-Book>  
<http://studiesbangladesh.blogspot.com/2011/06/constitutional-amendments-constitution.html>  
<https://www.scirp.org/reference/referencespapers>

On November 4, 1972, the Constituent Assembly approved the Constitution of Bangladesh. It went into effect on December 16, 1972. The Constitution has a preamble that says India is both sovereign and socialist, a directive principle of state policy (DPSP), and a structure that makes fundamental rights an “enforceable part” of the government’s duties. This is also the meaning of justice (social, economic, and political), which means that everyone is treated equally and that there is no discrimination in cases where it is not proven. The Constitution has the following main structural features:

## **Preamble**

The Preamble of the Constitution lays out its ideological foundation by emphasizing:

**Nationalism:** The Constitution’s goal is to defend and promote the unity and integrity of the country.

**Democracy:** Promise to support elected officials and democratic rule.

**Secularism:** A government that treats all religions the same.

**Socialism:** A way of thinking that aims to fix the gap between the rich and the poor and work toward social justice.

These dreams show how the people of Bangladesh feel, especially the brave sons who fought in 1971.

From the Constitution of Bangladesh, 1972.

### People’s Sovereignty

The Constitution of Bangladesh firmly establishes popular sovereignty. It says that the people have the power to govern themselves through their representatives. That is different from how Pakistan has been ruled by dictators in the past.

Section 7 of the Constitution of Bangladesh is the source.

**Basic Rights** The Constitution protects a lot of rights, such as the right to move freely, the right to preserve property, and the right to a fair trial. These are

**Article 32:** The Right to Life

**Article 39:** Freedom of speech and expression.

**Article 42:** The right to own property

## **Article 27: Right to Equality**

They can be enforced by the courts since they are justiciable.

The Constitution of Bangladesh, Articles 27–47, is the source.

**Separation of Powers** The Constitution says that there should be three branches of government with different powers:

The president is the head of state, and the prime minister is the leader of the executive branch.

**Legislature:** The unicameral Jatiya Sangsad (National Parliament) makes laws. Members are elected directly.

**Judiciary:** An independent judiciary, including the Supreme Court, which is made up of the Appellate Division and the High Court Division, upholds the rule of law and protects basic human rights.

**Source:** Articles 48–94 of the Constitution of Bangladesh. Government with a Parliamentary System

The Constitution sets up a parliamentary government, which means that the government is led by the prime minister.

The president is largely a figurehead with limited influence, and most of the powers are ceremonial.

**Legislature:** The legislature is a single-chamber parliament called the Jatiya Sangsad. This structure was meant to stop any kind of authoritarianism or concentration of power, as happened in Bangladesh while Pakistan ruled there.

**Source:** Articles 55–60 of the Constitution of Bangladesh.

## **Secularism**

One of the main ideas behind the Constitution is secularism, which means that the government doesn't endorse any religion. However, the Constitution was weakened when Islam was made the official religion of the state in 1988. This opened the door for objections to its secular nature.

## **Economic and Social Rights**

The Constitution aims for social justice by reducing financial inequality and creating a fair society where everyone has access to essential rights, including education, health care, and work.

Preamble, Articles 14-16, Constitution of Bangladesh.

### Basic Rules for State Policy

The Directive Principles of State Policy are also part of the Constitution. These ideas stress: Socialist growth of the economy

Learning and health

All citizens are equal.

These rules aren't usually enforceable in court, but they do shape governments and policies.

The Constitution of Bangladesh, Articles 8-25, is the source.

### How to Change

It's hard to change the underlying ideas in the Constitution because the Constitution itself is not easy to change. Changes need a two-thirds majority in the Jatiya Sangsad, which means that they can only happen with a lot of political backing.

Article 142 of the Constitution of Bangladesh says thus.

Judiciary that is not tied to the government

The Constitution establishes an independent judiciary and a system of judicial review that empowers the Supreme Court to declare legislation and government actions unconstitutional. The judiciary makes sure that the rule of law is followed and that executive and legislative actions do not violate basic rights.

**Part V of the Constitution of Bangladesh (Articles 94–116)** is where this information comes from.

### Changes in the Twenty-First Century

Even though the Constitution of Bangladesh was a big step in making sure that democracy works, it has been changed many times through amendments. Some major things that probably need to be changed right now are

**Secularism and Religion:** The barn-burning amendment on making Islam the state religion has raised questions as to whether Bangladesh has a secular constitution. People want the state to look fully secular again.

**Essential Freedoms:** The Constitution guarantees essential freedoms, but there were still concerns about how they would be put into practice, especially freedom of speech and protection against being held without cause.

**Independence of the judiciary:** Over the years, people have become more worried about the independence of the courts, especially when the executive branch is involved in cases.

**Electoral System:** The call for electoral reform, e.g., in relation to the First-Past-the-Post (FPTP) system, to deliver better democracy and fairer voting.

**Economic Equality:** The disproportionate emphasis on super justice in the Constitution has not reduced the gap between the rich and poor, resulting in programs more aggressively promoting social inequality compensation measures.

24

---

<sup>24</sup> Bangladesh's Constitution: A Historical and Analytical Study," Dr. Kamal Hossain, 1980.  
Constitutional Development in Bangladesh, N. Iqbal (2000)  
"Secularism and Religion in Bangladesh: A Political Analysis" by M. Rahman, 2015"

## Chapter 7

### Preamble & Fundamental Principles

The Constitution of Bangladesh, which was adopted on December 16, 1972, is the highest law in the country and the end of a long struggle for justice and independence.<sup>25</sup>

The Constitution's preamble and main ideas are very important for setting the tone and structure of the document. They help run both the government's administration and the judicial system in the country.

They show what people wanted and believed in at the time they were written, as well as the political and social climate of the time. In line with principles, they also lay the groundwork for becoming a political and judicial system. The Constitution's preamble: A guide for putting its ideas and goals into action The preamble of the Constitution is very important because it sets out the basic ideas and values that our country is built on. The statement of intent begins with, "In exercising power transparently, the electorate are determined, therefore, to establish a democratic republic founded on justice, equality, and respect for human rights in an era of language free from jargon " This is what all Bangladeshis want now that they are free from Pakistan's colonial and tyrannical rule.

The Constitution's preamble“ makes it clear that the country values human dignity, puts protecting people's basic rights above all else, and will work to build a society free of exploitation and injustice. The preamble also asks that the values of the independence movement, which cost many lives in the War of Liberation in 1971, be upheld. The framers of the Constitution wanted to create a society that was secular, democratic, and socialist, and they wanted to make sure that every citizen had the right to think, speak, and practice their religion.

Secularism is seen as a philosophy that the government should follow to keep religion and politics separate and protect pluralism in society, which means that people of all faiths can live together peacefully. The preamble also talks about how important the Constitution is for keeping Bangladesh's independence. It also says that the people of Bangladesh are in a good position to run their own lives and that their right to self-determination is very important. Because of this, the Constitution is both a legal document and a social contract between the government and its people. It changes as the needs and problems of the country change. Main

---

25

**Ideas: The Foundations of Governance Part II** of the constitution lists the basic ideas that guide the government's actions and the economy in Bangladesh. They stress the importance of building a welfare society that supports justice, equality, and the well-being of all people. They are meant to guide the country's government institutions.

**Patriotism** The Constitution says that nationalism helps keep the Bangladeshi people together and strong. Internationalism is what brings together the many different people in the country, in addition to being a patriotic idea. Their fight against oppression is what started the country. This idea makes people in the country feel proud and united, and it protects and keeps the country's language, culture, and traditions alive.

Democracy is a very important part of the Bangladeshi Constitution. The constitution says that Bangladesh must have free and fair elections to represent the people. It is based on the rule of law and protects civil rights and political freedom. This main idea says that the people are the ones who hold power and that the government is always open, accountable, and aware of what the people need. The draft Bangladeshi Constitution's 68-word mission statement is easy to understand. In short, "secularism" means that people are free to practice any religion they want. It also says that the government can't make, support, or favor one religion over another. This legal framework says that these things shouldn't get in the way of people's daily lives.

The goal is to make a society where people of different religions and beliefs can live together in peace and where religious extremism doesn't have a big effect on how a country is run and what its policies are. Secularism is more than just keeping church and state separate. It also means recognizing that Bangladeshi society is made up of many different groups and that diversity is good and should be accepted. This interpretation says that secularism includes ideas like welfare for everyone, no matter what their job or class is.

It also recognizes the need to work toward ending social inequality and making sure that economic policies are fair. In this way, socialism is a guiding principle of the Bangladesh Constitution. People should be able to enjoy the wealth that is shared. For example, the state is responsible for providing its people with basic services like housing, health care, and education. The Constitution says that valuable things belong to everyone, not just a few people. The term "rule of law" means that people are protected from being abused or having their rights taken away. Bangladesh became independent in 1971 and built a government based on the ideas in this article. It moved toward socialism and a single economy

for everyone. It is not possible to find social inequality right now because everything is equally available, including government-owned land and vehicles.

If you are the government, people will get what they are entitled to from you without question. Each of the Constitution's tenets clearly states what the law is. Any branch of government that doesn't follow them should be changed because it doesn't fit with what most people want. Got Issues and Opportunities in Constitutional Reform Over the years, the Bangladeshi Constitution has guided the country's affairs.

However, it is now being asked to be changed to reflect changes in the country's political and social landscape. The original rules, which were very new at the time, need to be changed to deal with problems like high political division, environmental durability, global possibilities and challenges, and technological progress (**a reference to globalization**). For example, the idea of secularism has come under fire because of the rise of telecommunications and religious extremism.

The current attempts to change how land is governed show that a constitutional amendment is needed this century to make sure that the environment stays healthy and that everyone has access to economic justice. There is also a growing need for both better protection of human rights and changes to the way elections are run. The constitution needs to change to reflect a more modern idea of democracy, human rights, and the idea of equal justice, just like society has changed a lot.<sup>26</sup>

## Chapter 8

---

<sup>26</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnpsd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

# Fundamental Rights

**Fundamental rights are the cornerstone of democracy and human dignity.**

In Bangladesh, Part III of the Constitution (Articles 26–47A) primarily outlines fundamental rights. Under Article 102, they are legally binding on the State and enforceable by the High Court Division; Article 44 contains a specific enforcement measure.

The main rights and their legal framework are as follows:

Nondiscrimination and an equal opportunity.

**Article 27:** All citizens shall have equal protection under the law and equality before it.

Affirmative action for women, children, and other underprivileged groups is allowed under Article 28, which also forbids discrimination on the basis of religion, race, caste, sex, or place of birth.

Equality of opportunity in public employment concerns is covered under Article 29.

protection of due process, individual liberty, and life.

**Article 31:** The right to legal protection.

**Article 32:** The right to personal freedom and life. This is crucial in discussions regarding extrajudicial executions, for example, which are discussed below.

**Article 33:** Protections against arrest and detention (must be provided with a reason for the arrest and presented to a magistrate within 24 hours). This confronts us with:

**Sections 61 and 167 of the Code of Criminal Procedure, 1898**, which deal with arrest, remand, and production before a magistrate.

**The Special Powers Act of 1974** permits detention without charge or trial, which is frequently condemned for being in violation of Articles 31–35.

protection with regard to penalty and trial.

**Article 35:** The right against self-incrimination, the prohibition of double jeopardy, and a fair trial are all requirements of criminal law.

Mobility

**Article 36:** Mobility.

The right to peaceful assembly

Freedom of peaceful assembly (Article 37).

Freedom of affiliation

Article 38: Associational freedom.

Freedom of speech, conscience, and thought

The press and other media that fall under the purview of "reasonable limits" are covered by **Article 39:** Freedom of thought, conscience, and expression.

**The Digital Security Act, 2018**, which prohibits a number of online forms of expression and has drawn harsh criticism for violating both international standards and Article 39, has a significant impact on these rights.

Religious and professional freedom

Freedom of occupation or profession (Article 40).

**Article 41:** Religious freedom: only public order and morality may be practiced and promoted there.

Privacy and property

**Article 42:** Property rights, subject to laws governing acquisition and requisition.

**Article 43:** Home and correspondence privacy.

Protection of basic rights

**Article 44:** The ability to personally petition the High Court Division to have any fundamental right upheld. Article 102: Any order, directive, or writ (such as habeas corpus or mandamus) required to uphold a right may be issued by the High Court Division.

Access for the objectives of openness and information freedom is operationalized under the Right to Information Act of 2009.

Restrictions & Exclusions

**Article 26:** Laws that violate fundamental human rights are null and void.

**Articles 46, 47, and 47A:** Certain areas of immunity from any proceeding or process under any laws include war crimes tribunals and activities that fall under the purview of the armed forces, which may restrict the enforceability of certain liberties.

All things considered, the constitutional rights framework is robust on paper, but in reality, these rights are only partially safeguarded due to counterterrorism legislation, provisions for preventative detention, and lax enforcement.

27

## Chapter 9

### Governmental Structure

---

<sup>27</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnpsd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

The three distinct branches of the executive, legislative, and judicial branches make up the unitary, parliamentary republic of Bangladesh.

Executive

### **President (Articles 48–53)**

The Jatiya Sangsad selects the head of state, who serves mostly as a ceremonial figure.

Before doing most things, he must follow a cabinet minister's recommendation.

### **Cabinet and Prime Minister (Articles 55–58)**

**Article 55:** The Prime Minister and the Cabinet, who are jointly accountable to Parliament, will exercise the People's Republic's executive authority.

**Article 56:** The president elects the prime minister and other ministers on the PM's recommendation (typically the majority leader).

Although the prime minister has particular authority, Bangladesh follows the Westminster style of administration.

### **Legislature: Sangsad Jatiya**

**Article 65:** A unicameral House with 300 members chosen from constituencies and 50 reserved seats for women.

**Articles 65** through 70 outline the legislature's makeup, tenure, and duties.

The Election Rules for Reserved Women's Seats, 2004 established the Jatiya Sangsad (Reserved Women's Seats) system, which was created by the Constitution's Fourteenth (2004) and Fifteenth (2011) Amendments.

The judiciary

**Article 22:** The judicial and executive branches should be kept apart.

The Supreme Court of Bangladesh (appeal Division, High Court Division), their jurisdiction, and their authority over the lower judiciary are all outlined in Articles 94–116.

Although the president formally appoints judges and exercises authority over their administrative duties, the executive branch actually has considerable power over them,

which significantly impairs their independence.

In reality, the combination of legislative and administrative authority and the lack of genuine voting independence (Article 70) has created the paradox of a system where the prime minister, rather than parliament, is in charge.<sup>28</sup>

## Chapter 10

### Amendments: Evolution Over Time

---

<sup>28</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnpsd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

Evolution Over Time The Constitution was amended up to sixty times: several of them materially revised its nature. Key milestones in this process include:

The 4<sup>th</sup> Amendment (1975), which represented a significant departure from the parliamentary model of government when it reorganized political structure along one-party presidential lines.

Amendment 5 (1979) legalized and ratified martial law decrees of the 1975–79 military regime. Some later parts of the amendment were declared unconstitutional by the Supreme Court (e.g. in Fifth Amendment Case).

Amendment 7 (1986) legitimized General Ershad’s 1982-86 martial law regime.

Amendment 8 (1988) inserted Article 2A making Islam the state religion; it also established permanent High Court benches outside of Dhaka.

Amendments 10 and 14 – Reserved Women’s Seats in the Parliament were extended.

Amendment 15 (2011) abolished the Non-Party Caretaker Government system (originally introduced by the 13<sup>th</sup> Amendment), asserted some original state principles anew, and embodied several provisions. This amendment is at the Centre of legitimacy challenges, and has recently come under strong judicial and political scrutiny.

Amendment 16 (2014) transferred powers of Supreme Court judges’ removal from the Supreme Judicial Council to Parliament, thus raising grave doubts regarding judicial independence. It was struck down as unconstitutional by the Supreme Court (invoking the basic structure doctrine).

The history of amendment reveals repeated use of constitutional change to validate military or partisan interests, rather than enforce constitutionalist practices.<sup>29</sup>

---

<sup>29</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnpsd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

## **Chapter 11**

### **Challenges and Critiques of the Constitution**

Constitutional Obstacles and Criticisms

The distinction between the local and national governments is minimal, nevertheless. The author's prognosis is correct: independence must be included in the government if this new constitution is to be successful.

Figure 70 illustrates Articles 55 and 56: The prime minister's control over the cabinet renders parliamentary questions essentially useless.

### **No balance or check**

There is no independent Constitutional Court, parliamentary committees are ineffective, political influence affects judicial nominees, and watchdog organizations (such as the election commission and the human rights commission) are underpowered.

The issue of security and rights remains paramount.

Despite being given constitutional protections, people were being detained without charge or trial under the Special Powers Act of 1974, the Code of Criminal Procedure, and the Digital Security Act of 2018.

### **Human rights**

Extrajudicial killings and enforced disappearances have been widely reported and documented, in violation of Articles 32–35 and Bangladesh's legal duties as a party to the ICCPR and CAT.

Centralization, which is unitary.

Dhaka's over-centralization, the lack of true local government authority, and unresolved conflicts in places like the Chittagong Hill Tracts were not special dispensations; they were peace settlements.

All contribute to the present calls for extensive constitutional change.

#### **5.1 Parliamentary Dynamics and Article 70**

According to Article 70, if a member of parliament  
Quit their position with the party that nominated them, or  
votes against that party in Parliament,  
She loses her seat.

**Repercussions:** There is no actual no-confidence process.

Regardless of how badly he acts, one could argue that if the prime minister has a majority, he is effectively secure in office between elections because you cannot rely on MPs to oppose their party leadership.

Parliament with a rubber stamp

There is debate, but party lines are nearly always followed in voting. It doesn't really matter if a measure or constitutional amendment is controversial as long as the ruling party has a two-thirds majority; they pass.

Individual conscience and all district interests are suppressed. In violation of the spirit

of Articles 39 and 65, MPs cannot be maintained based on their personal opinions or constituency considerations on important issues (rights, the future of the constitution). Article 70 is the most urgent provision for change or drastic alteration, according to almost all constitutional scholars who have written about it and all significant reform proposals.<sup>30</sup>

## Chapter 12

### Article 70 and Parliamentary Dynamics

---

<sup>30</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnpbd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

**Article 70** of the Bangladeshi Constitution establishes the guidelines for parliamentary elections in two ways. There are significant democratic ramifications to this. According to this position, any MP who

quits their position with the party that nominated them;

votes against their party in Parliament,

will forfeit their parliamentary seat. And because of this, Article 70 has generated a lot of discussion and criticism, with far-reaching effects on party politics, parliamentary procedures, and individual liberty.

### **The consequences of Article 70: Absence of a True No-Confidence Mechanism**

Importantly, even though Article 70 requires MPs to carry out their party's positions, it essentially denies them a practical means of holding their own administration accountable. Therefore, when the government has committed grave wrongdoing, MPs are not allowed to vote against their party. As a result, even in cases where the government's actions are questionable or corrupt, the prime minister and leader of the ruling party remain in power without any internal uprisings or motions of no-confidence. This makes it extremely difficult to hold the government accountable for failures or wrongdoings because, if they hold a majority, the prime minister can't be ousted between elections.

### **Parliament Using Rubber Stamps**

In reality, Article 70 functions much like an assembly of rubber stamps, and Parliament hardly ever questions the laws established by the executive branch. Members of the Parliament vote in accordance with their party's leadership, making it all but a formality.

Generally speaking, anything can be passed without significant opposition to balance it out as long as the powerful members of the ruling party hold a two-thirds majority (they are the only group with such numbers). As a result, government policies are frequently uncontested, and house debates are merely meaningless verbal exchanges rather than genuine conversations between opposing viewpoints.

Article 70 is criticized in this article because it prevents MPs from thinking for themselves and makes them disinterested in the opinions of the people who elected them. Even though their constituents may have diverse personal beliefs or desires, Members of Parliament are required to vote along party lines that are unchangeable. There is no denying that the system produces a conflict between party loyalty and the

obligation to serve the people who elected you. Some MPs may feel pressured to vote against their personal beliefs or the interests of the constituents they serve, particularly when it comes to significant topics like human rights or constitutional revisions. MPs should have faith in the counsel and collective knowledge of their constituents, according to the third chapter of the People's Congress System Part One, Section II, Article 43c. Although it appears that this goes directly against the intent of Article 70, I'm not sure this sentence actually does anything. Your sentence has been updated appropriately. Freedom of belief and expression is guaranteed under Article 39 of the Constitution, while Article 65 clearly outlines Parliament's role as a forum for public opinion. For example, apply this spirit to issues within a political party.

As previously stated in Article 70, a party can simply dismiss any MP who challenges its ideas. This is only an ideal, nothing more. It teaches us how to use our conscience to defend ourselves against governmental authority. Genuine love for one's country is not half-dissent. Rather, under the pretense of national ideology, there is love for another nation or something else that does not truly benefit the people.

Therefore, Article 70 violates the spirit of Articles 39 and 65 by limiting MPs' ability to express dissent or abstain when necessary. However, MPs may wish to oppose party policies that are detrimental to their constituents or even violate fundamental rights, in which case Article 70 effectively prevents them from voting as they should repeatedly, to paraphrase Cai Ding, *Doing Away with the Praetorian Dictators and Habits of Ingratiating Ourselves to Them. That Could Be More Achievable*. Most constitutional scholars agree that the provision ought to be changed immediately.

The system in Mainland China, which is based on the separation of powers, the National People's Congress system, and the provincial and municipal people's congresses, is likewise in direct opposition to the norm of requiring MPs to swear an oath. People who have before voiced their grievances on behalf of him and his allies have now complained about all of this: "Nonsense! It was incorrect. Based on these findings, some argue that the best course of action for reform may be to amend the law to provide MPs the flexibility to vote in accordance with their conscience or the interests of their constituents."<sup>31</sup>

## **The consequences of Article 70**

---

<sup>31</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnphd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

Article 70 of the Bangladeshi Constitution establishes the guidelines for parliamentary elections in two ways. There are significant democratic ramifications to this. According to this position, any MP who quits their position with the party that nominated them; votes against their party in Parliament,

will forfeit their parliamentary seat. And because of this, Article 70 has generated a lot of discussion and criticism, with far-reaching effects on party politics, parliamentary procedures, and individual liberty.

### **The consequences of Article 70: Absence of a True No-Confidence Mechanism**

Importantly, even though Article 70 requires MPs to carry out their party's positions, it essentially denies them a practical means of holding their administration accountable. Therefore, when the government has committed grave wrongdoing, MPs are not allowed to vote against their party. As a result, even in cases where the government's actions are questionable or corrupt, the prime minister and leader of the ruling party remain in power without any internal uprisings or motions of no-confidence. Such an arrangement makes it extremely difficult to hold the government accountable for failures or wrongdoings because, if they hold a majority, the prime minister can't be ousted between elections. Parliament uses rubber stamps.

In reality, Article 70 functions much like an assembly of rubber stamps, and Parliament hardly ever questions the laws established by the executive branch. Members of the Parliament vote in accordance with their party's leadership, making it all but a formality. Generally speaking, nothing can be passed without significant opposition to balance it out as long as the powerful members of the ruling party hold a two-thirds majority (they are the only group with such numbers). As a result, government policies are frequently uncontested, and house debates are merely meaningless verbal exchanges rather than genuine conversations between opposing viewpoints.

This article criticizes Article 70 for making MPs apathetic to their constituents' views and preventing them from thinking for themselves. Members of Parliament are required to vote along unchangeable party lines, despite their constituents' diverse personal beliefs or desires. There is no denying that the system produces a conflict between party loyalty and the obligation to serve the people who elected you. Some MPs may feel pressured to vote against their personal beliefs or the interests of the constituents they serve, particularly when it comes to significant topics

like human rights or constitutional revisions. MPs should have faith in the counsel and collective knowledge of their constituents, according to the third chapter of the People's Congress System Part One, Section II, Article 43c. Although it appears that this goes directly against the intent of Article 70, I'm not sure this sentence actually does anything. Your sentence has been updated appropriately. Freedom of belief and expression is guaranteed under Article 39 of the Constitution, while Article 65 clearly outlines Parliament's role as a forum for public opinion. For example, apply this spirit to issues within a political party. As previously stated in Article 70, a party can simply dismiss any MP who challenges its ideas. This principle is only an ideal, nothing more. It teaches us how to use our conscience to defend ourselves against governmental authority. Genuine love for one's country is not half-dissent. Rather, under the pretense of national ideology, there is love for another nation or something else that harms the people. Therefore, Article 70 violates the spirit of Articles 39 and 65 by limiting MPs' ability to express dissent or abstain when necessary. However, MPs may wish to oppose party policies that are detrimental to their constituents or that violate fundamental rights; in such cases, Article 70 effectively prevents them from voting as they should, echoing Cai Ding's sentiment in "Doing Away with the Praetorian Dictators and Habits of Ingratiating Ourselves to Them." That Could Be More Achievable Most constitutional scholars concur that an immediate change to the provision is necessary. The system in **Mainland China**, which is based on the separation of powers, the National People's Congress system, and the provincial and municipal people's congresses, is likewise in direct opposition to the norm of requiring MPs to swear an oath. Those who previously defended him and his al'ies now say, "Nonsense!" It was incorrect. Some say that the best way to reform is to change the law to allow MPs to vote according to their 'onscience or their constituents' needs.<sup>32</sup>

## Chapter 13

### Judicial Independence

---

<sup>32</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnpsd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

Despite the declaration of judicial independence, its structure is easily threatened: Constitutional provisions

**Article 22:** Separation of judiciary from executive is a fundamental principle of state policy.

**Articles 94–116:** Define the Supreme Court, its jurisdiction and control over subordinate courts.

**Threats to independence Appointments:** The President appoints judges, but in practice on the advice of the executive; there is no independent judicial appointments commission.

Originally, **Article 96** provided for removal of judges through the **Supreme Judicial Council**. **The 16<sup>th</sup> Amendment** shifted this power to Parliament, which—under Article 70—is directly controlled by party leadership; this was declared unconstitutional, and the Council mechanism restored.

**Administrative control and budget:** Judiciary lacks its own secretariat and is dependent on the executive for resources and personnel management. Key cases and developments

A series of judgments (including those on the 13<sup>th</sup> and 16<sup>th</sup> Amendments) have invoked the basic structure doctrine, asserting that judicial independence and separation of powers are unamendable essentials of the Constitution.

Despite these judicial pronouncements, effective insulation from political pressure remains incomplete. There is now discussion about introducing an independent **Judicial Service Commission** and secretariat to achieve this purpose.<sup>33</sup>

## Chapter 14

### Unitary Structure

---

<sup>33</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnphd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

This rule has no effect on the real divide of power that started in 1972. Results and features Centralized policy and executive power Parliament is a unicameral as well as a national institution.

The Constitution does not set up any provincial legislatures. Local government units (union councils, which are areas inside districts and subdivisions; upazila councils, which are regions between municipalities and rural areas; thanas, which are village areas or townships depending on size and administration mode; and city areas) exist under laws, not as independent entities in the constitution.

**Rationale at Independence** The decision to choose unity over federalism was based on East Pakistan's experience with the Pakistani federation, which was seen as structurally exploitative of Bengalis.

**Today's analyses** Because it is centralized, policy-making has been taken away from local reality, provinces on the edge (such as the Chittagong Hill Tracts) have been ignored, the central government is overworked, and Dhaka is too congested.

Talk about reform. Some suggestions have gone as far as full federalism. Some people, on the other hand, support steps in between, like devolution and the decentralization of justice (for example, having permanent High Court benches at the regional level).

Many academics advocate for increased authority for local government entities and alternative frameworks for sensitive areas, even if this necessitates a gradual transition from a unitary to a federal system.<sup>34</sup>

## Chapter 15

### Necessity for Reformation

It is necessary to change the Constitution since there is a big difference between what it says it will do and what it actually does. Many nations espouse democracy and human

---

<sup>34</sup> <http://bdlaws.minlaw.gov.bd/act-367.html>  
<https://www.bnpsd.org/31-points>  
[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

rights; however, enduring governance failures and pervasive legal infractions underscore the urgent necessity for constitutional reform in contemporary times.

**This necessity arises from several pivotal factors:** the dictatorial drift within a formally democratic constitution, notwithstanding its preamble; the formal checks intended to uphold democracy being subtly undermined in practice; and the tension between a democratic system and authoritarian tendencies necessitating examination for their persistence or eradication.

**Article 70** exemplifies the incongruities found in several constitutional drafts. In certain nations, this rule makes it illegal for Members of Parliament to vote against their party leaders. This amendment is bad for the opposition since it makes party discipline less strict at the expense of individual lawmaker independence. The outcome is a parliament full of fools who can't get anything done because representatives can't do their jobs effectively because they care more about their party than the public interest, even when the two are at odds.

**Systemic Human Rights Violations:** Constitutions often provide basic human rights, but these rights are not always upheld. This includes killings without a trial, people going missing while in police custody or for other reasons, and the rampant abuse of security laws. These actions happen in the name of national security or public order, yet state mechanisms allow them to happen because of rules that are generally agreed upon but not always clear.

Some people exploit parts of constitutions or national security laws (such as emergency powers) to justify unlawful things like arbitrary detention, monitoring, or even limiting freedom of speech. The ongoing application of these laws—lacking oversight or public accountability—subverts the constitutional assurance of human rights and liberties.

**The Judiciary's Susceptibility to Political Influence:** The autonomy of the judiciary is fundamental to democratic administration. But in a lot of systems, politics may get in the way of the judiciary, especially when it comes to choosing judges and running the courts. This makes the rule of law weaker and makes it harder to trust court decisions, especially when politics gets in the way.

**Appointments and Administration:** Sometimes, political actors might use constitutional rules about how judges are appointed and run to make sure that the courts stay close to the party in power. The lack of an impartial process for appointing judges, which is typically required by law or the Constitution, makes it easier for outside groups to affect the judicial branch.

**Legislative Paralysis:** Laws can't be passed since Parliament can't work on its own. Article 70 says that Members of Parliament must vote according to party orders or risk being kicked out. This means that the legislative body can't hold the executive

accountable or pass legislation that helps the public. This means that parliamentary procedures are only formalities that don't have any effect on the government.

**Institutional Gaps in Government Control:** Many constitutions have the same problem: they don't have good ways to keep the government accountable. Constitutional clauses typically create checks and balances between different institutions that are supposed to keep each other in check politically. However, these checks and balances are sometimes not effective because of political involvement or insufficient enforcement mechanisms.

**Insufficient Checks and Balances:** Although the separation of powers and checks and balances are formally established in theory, they are inadequate in practice. For instance, executive action can have far bigger effects than one politician may think, yet there may not be much or any review by the courts or the legislature. There are no ways for the state's institutions to stop excessive rule; if any group abuses its power, it can cause widespread failure.

**The Five Recent Constitutional Reform Debates will take place from 2024 to 2025:** The current push for constitutional reform shows that most people agree that just changing laws isn't enough to fix all of the difficulties our country is facing right now. The establishment of the Constitution Reform Commission, initiated in reaction to escalating popular discontent, indicates a consensus on the necessity for structural reforms to evolve into contemporary practices beyond just democratic ideals.

**Proposed Reforms:** Some of the most important reform ideas being talked about are those that would make the courts more independent, change **Article 70** to give MPs more freedom, and make sure that human rights are better protected in law. There also needs to be a plan for how people in government can be held accountable and make sure that they are being watched. All of this is in order to make our Constitution not just a promise of democracy and justice in the future, but something that can actually happen today.

35

## Chapter 16

# Conclusion and Recommendations

---

35

<http://bdlaws.minlaw.gov.bd/act-367.html>

<https://www.bnepd.org/31-points>

[https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014)

<https://www.scribd.com/document/626278322/Bangladesh-Constitution-Trends-and-Issues-by-Justice-Mustafa-Kamal-Full-Book>

<http://studiesbangladesh.blogspot.com/2011/06/constitutional-amendments-constitution.html>

<https://www.scirp.org/reference/referencespapers>

Bangladesh's constitution, which was approved in 1972, has been a key part of the country. It shows the ideas and goals of a new country that wants to construct a democratic, secular state where everyone is treated equally by the law. Its demand for justice, equality, and freedom for all people was the major reason why such a society would exist in the future.

But over the years, opposition to its implementation has grown, creating a gap between what the Constitution says it will do and what it actually does.

The main issues that have come up include ongoing authoritarian inclinations in a system that is supposed to be democratic, judges who want to control politics, and a poor record of protecting human rights. **Article 70** of the Constitution says that an MP must vote with the head of their party or lose their seat. Such an arrangement has made parliamentary democracy less effective, and its members can't represent their people's interests as they should. This means the legislature cannot hold the government accountable; hence, executive power is unchecked.

Secularism has also gotten weaker, especially since an amendment in 1988 made Islam the state religion.

This makes the Constitution's original promise to create a secular state seem less certain. This change has led to disparities in how people talk about how Bangladesh's religious diversity can fit together with democratic traditions.

Given these issues, it is clear that constitutional revision is necessary. Talks on whether specific laws can still be amended anywhere are still going on in 2024-2025. The need for such a large amount of reform has brought people together on one point: a reform package that reflects current democratic ideals, makes human rights protections clearer in law, and ensures the rule of law.

Three main suggestions that have come up in the talks about reform are

making **Article 70** less strict so that MPs can vote more freely, making the judiciary more independent, and making human rights more firmly part of the Constitution. These changes are meant to make the Constitution work better in practice and to better reflect the democratic, egalitarian, and just values that the Bangladeshi people fought for.

In conclusion, the Constitution of Bangladesh has set the stage for a democratic society, but it needs to be completely rewritten to deal with the problems of today and tomorrow. These modifications are needed to turn the Constitution from a symbol into a real set of rules that protects the rights and liberties of all citizens. By fixing the problems with the current system, they will help make the government stronger and more accountable, which will help protect democracy and human rights for future generations.

## Bibliography

- Bangladesh -- Quest for Freedom and Justice (with ISBN: 9789845060400).
- Bangladesh Constitution: Trends and Issues by Justice Mustafa Kamal (With full documentation).
- Do Away with Pretorian Dictators and Practices of Submitting to Them to be Servile Dogs. Cai Ding.

### Additional Reports And Article

- Fifth Amendment Case (Supreme Court ruling).
- Human Rights Watch - Bangladesh (reports on human rights, freedom of expression and more).
- Constitutional Amendment Reports (explain the amendments, including Islamization 1988).
- Bangladesh Election Commission (statements from officials about how well elections actually took place in their country).

### Additional Regulations

Right to Information Act, 2009.

Prevention of terrorism Act of 1971 (Preventive Arrests).

Digital Security Act, 2018 (Online Expressions Control).

Code of Criminal Procedure, 1898 (Sections 61, 167 on Detention and Remand).

### Additional Links and Websites

- <https://uplbooks.com/shop/9789845060400-bangladesh-quest-for-freedom-and-justice-8338>.
- <https://www.scribd.com/document/626278322/Bangladesh-Constitution-Trends-and-Issues-by-Justice-Mustafa-Kamal-Full-Book>.
- <http://studiesbangladesh.blogspot.com/2011/06/constitutional-amendments-constitution.html>.
- <https://www.scirp.org/reference/referencesPapers>.
- <https://www.bnpsbd.org/31-points>.
- [https://www.constituteproject.org/constitution/Bangladesh\\_2014](https://www.constituteproject.org/constitution/Bangladesh_2014).

- <https://songramernotebook.com/archives/395260>.
- <https://gropedia.com/page/Amendments-to-the-Constitution-of-Bangladesh>.
- [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4004124](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4004124).
- <http://bdlaws.minlaw.gov.bd/act-367/section-24549.html> (Article 2A)
- <https://liberationwarbangladesh.org/?p=8616http>
- [www.libcraticmemoir.com/\(Article17\)](http://www.libcraticmemoir.com/(Article17))
- <http://www.ec.org.bd>