



**SONARGAON UNIVERSITY (SU)**

**Research Monograph On**

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

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**Date of Submission: 05<sup>th</sup> January, 2026**

## **LETTER OF CERTIFICATE**

I hereby declare that the thesis entitled “*The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis*” has been carried out by **Rowshan Ara Sabbo** as an original work for the award of the degree of LLB (Bachelor of Laws). This research has been conducted under my supervision in the Department of Law, Sonargaon University. I also declare that this thesis, or any part thereof, has not been submitted to any other institution for any degree or qualification.

**(Lecturer)**

(Supervising Teacher)

## **LETTER OF DECLARATION**

This is to declare that this thesis entitled "*The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive*" is a real work done by me on behalf of the degree of LLB (Bachelor Of Laws) is the greatest of bona fide research carried out under my supervision in the Department of law Sonargoan University. This Thesis, or any part thereof, has not been submitted for any other Degree. I further than announce that this research has not been previously established the foundation for the honor of any other program of degree.

Sonargoan University

**Rowshan Ara Sabbo**

05-01-2025

## **DEDICATION**

First of All, I am showing my admiration and gratitude to Almighty God. I like to express my gratitude and love to my Mother and Father for their sacrifices as well as to provide me the possibilities for higher study. They are still directing me to be a good human being and encouraging me to devote myself to the people of the world.

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## Abstract

*This thesis examines the historical foundation of the Constitution of the People's Republic of Bangladesh, its evolution through amendments, and the political, social, and legal contexts necessitating reform in the present era. Bangladesh's Constitution was adopted on 4 November 1972 and came into effect on 16 December 1972 as the supreme law of the country, reflecting the aspirations of a newly independent nation committed to democracy, nationalism, socialism, secularism, and human rights. The document has undergone **seventeen amendments**, shaping the contours of governance, fundamental rights, and institutional balances.*

*Through a historical lens, this study charts constitutional developments from its inception to landmark changes impacting democratic institutions and fundamental rights. It further assesses contemporary debates on constitutional reform — including arguments for extensive rewriting versus targeted amendments — against the backdrop of political crises, citizens' confidence in the electoral process, and institutional integrity. The study also reflects on recent developments such as the proposed July National Charter of 2025 that seeks constitutional and institutional reforms following a major political uprising. The thesis argues that while the Constitution's foundational principles remain robust, **structural weaknesses and political contestations** necessitate reform to enhance democratic governance, judicial independence, electoral credibility, and social inclusivity. Finally, the research proposes a framework for constitutional reform grounded in participatory consensus and human rights protection, addressing both legal theory and practical urgency.*

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## LIST OF ABBREVIATIONS

AD — Appellate Division  
Art. — Article  
BAKSAL — Bangladesh Krishak Sramik Awami League  
BD — Bangladesh  
BJP — Bangladesh Jatiya Party  
Const. — Constitution  
DLR — Dhaka Law Reports  
EC — Election Commission  
FPSP — Fundamental Principles of State Policy  
HCD — High Court Division  
HR — Human Rights  
ICCPR — International Covenant on Civil and Political Rights  
Jatiya Sangsad — National Parliament of Bangladesh  
MP — Member of Parliament  
NGO — Non-Governmental Organization  
PLD — Pakistan Law Digest  
PM — Prime Minister  
PSC — Public Service Commission  
RPO — Representation of the People Order  
SC — Supreme Court  
UDHR — Universal Declaration of Human Rights  
UK — United Kingdom  
UN — United Nations  
UPL — University Press Limited

# Chapter One

## Introduction and Research Methodology

### 1.1 Introduction

A constitution is more than a legal document; it is the political conscience of a nation. It reflects the collective will, historical experiences, and moral aspirations of a people. The Constitution of Bangladesh, promulgated on 16 December 1972, occupies a unique place in constitutional history as it emerged directly from a war of national liberation characterized by mass participation, sacrifice, and resistance against political and economic subjugation.<sup>1</sup>

Despite its progressive nature and strong commitment to democratic values, the Constitution has faced repeated challenges since its inception. Frequent amendments, periods of martial law, and executive dominance have raised fundamental questions about constitutionalism, democratic governance, and the protection of fundamental rights in Bangladesh. These developments have led scholars, jurists, and civil society actors to increasingly emphasize the necessity of constitutional reform.

This monograph seeks to provide a comprehensive historical and analytical study of the Constitution of Bangladesh, focusing not only on its origins but also on why reform has become a pressing national concern.

### 1.2 Background of the Study

Bangladesh's constitutional journey cannot be understood in isolation from its colonial past, the experience of Pakistan (1947–1971), and the Liberation War of 1971. Under British colonial rule, constitutional governance in Bengal was shaped by centralized authority and limited indigenous participation.<sup>2</sup> Following the partition of India in 1947, East Pakistan faced systemic discrimination in political representation, economic allocation, and cultural recognition.

The failure of Pakistan's constitutional arrangements—particularly the denial of democratic mandates and federal autonomy—ultimately culminated in the Liberation War.<sup>3</sup> Consequently, the Constitution of Bangladesh was framed with an explicit commitment to democracy, popular sovereignty, and social justice.

However, the post-1975 political trajectory of Bangladesh introduced significant deviations from constitutional norms. Military coups, suspension of constitutional provisions, and politicized amendments diluted many foundational principles.<sup>4</sup> These developments form the central justification for revisiting the constitutional framework.<sup>1</sup>

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<sup>1</sup> M. Rafiqul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012), pp. 3–6.

Sir Ivor Jennings, *Constitutional Problems in Pakistan* (Cambridge: Cambridge University Press, 1957), pp. 1–10.

Richard Sisson and Leo E. Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh* (Berkeley: University of California Press, 1990), pp. 75–90.

Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 45–60.

### 1.3 Statement of the Problem

Although the Constitution of Bangladesh guarantees fundamental rights, separation of powers, and democratic governance, there remains a significant gap between constitutional ideals and political reality. Persistent issues include:

- Weak parliamentary independence due to restrictive provisions such as Article 70
- Executive dominance over the legislature and judiciary
- Politicization of constitutional institutions
- Limited enforcement of fundamental rights
- Excessive and sometimes contradictory constitutional amendments

These challenges raise an essential question: **Does the current constitutional framework adequately serve the democratic aspirations of the Bangladeshi people?**

### 1.4 Objectives of the Study

The primary objectives of this research are:

1. To examine the historical background and philosophical foundations of the Constitution of Bangladesh
2. To analyze the drafting process and original constitutional framework of 1972
3. To evaluate the impact of constitutional amendments and political interventions
4. To identify structural and democratic weaknesses within the existing constitutional system
5. To assess the necessity and scope of constitutional reform in Bangladesh

### 1.5 Research Questions

This monograph seeks to answer the following research questions:

1. What historical and political factors influenced the making of the Constitution of Bangladesh?
2. How did the Liberation War shape the constitutional philosophy of the state?
3. In what ways have constitutional amendments altered the original framework?
4. Why is constitutional reform necessary in contemporary Bangladesh?
5. What reforms are essential to strengthen democracy, accountability, and rule of law?<sup>2</sup>

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<sup>2</sup> Constitution of the People's Republic of Bangladesh, art. 70; Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 321–330.  
Shahdeen Malik, "Separation of Powers and Constitutional Governance in Bangladesh," *Bangladesh Journal of Law*, Vol. 8 (2004), pp. 1–22.

## **1.6 Research Methodology**

This study adopts a **doctrinal and qualitative research methodology**, relying on both primary and secondary sources.

### *1.6.1 Sources of Data*

- **Primary sources:**
  - The Constitution of Bangladesh (1972)
  - Constitutional amendments
  - Supreme Court judgments
  - Constituent Assembly debates
- **Secondary sources:**
  - Academic books and journals
  - Legal commentaries
  - Research articles
  - Reports by constitutional bodies

## **1.7 Significance of the Study**

This research is significant for several reasons. First, it contributes to constitutional scholarship by providing a historical and analytical perspective on Bangladesh's constitutional evolution. Second, it assists policymakers and reform advocates by identifying structural weaknesses within the constitutional framework. Third, it serves as a reference for students of law, political science, and governance seeking to understand constitutionalism in post-colonial states.

## **1.8 Scope and Limitations**

While the study provides an extensive historical and analytical review, it is limited by the availability of certain archival materials and evolving political developments. Nevertheless, it aims to present an objective and scholarly assessment grounded in constitutional theory and practice.

## **1.9 Structure of the Monograph**

This monograph is divided into ten chapters. Following this introductory chapter, Chapter Two examines the constitutional history of Bengal and Pakistan prior to 1971. Subsequent chapters analyze the Liberation War, drafting of the Constitution, amendments, democratic crises, and comparative perspectives, culminating in recommendations for constitutional reform.

## **1.10 Literature Review**

### **Historical Foundations of the Constitution of Bangladesh**

The **Constitution of Bangladesh**, adopted on **11 November 1972**, was framed in the aftermath of the Liberation War of 1971 — rooted in the ideals of nationalism, democracy, socialism, and secularism. It represented a conscious effort to break from colonial and Pakistani legal traditions and to institutionalize the aspirations of a newly independent nation. Scholars emphasize that the Constitution was not merely a legal document but a symbolic assurance of the socio-political objectives enshrined during the freedom struggle. Academic studies further trace the country's constitutional roots to earlier legal-political developments on the Bengal subcontinent dating back to colonial governance structures, anti-colonial movements, and the 1947 partition, which shaped the distinct political identity of East Pakistan and later independent Bangladesh. Works such as *Bangladesh e Sangbidhanik Itihas (1773-1972)* examine these deep historical currents that culminated in the Constitution's drafting. The **preamble** and subsequent chapter articulations of the 1972 Constitution were intended to protect fundamental rights, ensure social justice, and establish democratic governance. In this respect, legal historians argue the document was markedly progressive for its time. However, early critiques already noted tensions between lofty ideals and on-ground political realities.

## 2. Constitutional Amendments and Political Context

Since 1972, the Constitution of Bangladesh has undergone **seventeen formal amendments** up to the early 2020s. Most of these changes were motivated by prevailing political necessities and power struggles more than jurisprudential reform, according to empirical legal research. Notable among these:

- The **Fourth Amendment (1975)** centralized executive authority, a response to political instability.
- The **Fifth Amendment (1979)** legitimized martial law regimes in the 1970s and 1980s — a source of debate among constitutional scholars given its implications for democracy.
- Later amendments, such as the Twelfth and Fifteenth Amendments, have alternately restored parliamentary democracy and introduced controversial provisions on governance and elections. Research in constitutional politics situates these changes within broader **political trends** — arguing that political parties often manipulate constitutional texts for short-term gains, undermining democratic consolidation. A study in the *Journal of Asian and African Social Science and Humanities* highlights how partisan interests have shaped amendment debates, often sidelining public deliberation.
- **3. Scholarly Debates on Constitutional Reformation**

A growing body of scholarship focuses on the **need for constitutional reform** in the contemporary era. This literature spans legal journals, political science analyses, and policy critiques.

### **Democracy and Governance:**

Sultana's critical analysis of constitutional reform argues that despite democratic language, several constitutional provisions conflict with democratic principles and hinder effective governance, suggesting a structural mismatch between constitutional norms and political

practice. **Political Dynamics and Institutional Challenges:**

Analyses of constitutional amendment trends emphasize that political polarization and weak institutional checks have impeded democratic deepening. These works call for reforms that strengthen judicial independence, safeguard election processes, and insulate constitutional mechanisms from partisan capture.

**Historical Imperatives for Reform:**

Some scholars and commentators frame reform as a continuation of the Constitution's original emancipatory goals. They argue that the 1972 Constitution's commitment to social justice and equality must be revisited in light of modern developments — including decentralization of power, protection of civil liberties, and economic rights — to sustain its relevance for 21st-century Bangladesh.<sup>3</sup>

#### 4. Contemporary Context and Reform Agendas

Recent political movements in Bangladesh have refocused attention on constitutional reform as a core demand. While scholarly studies discuss theoretical needs, ongoing political developments show **active public and political engagement with reform proposals**. Reports highlight movement-led calls for institutional restructuring — including reforms to executive balance, electoral systems, and civil liberties — signaling a convergence of academic and civil society critique.

Proposals emerging from these discussions reflect broader debates in the literature about **popular sovereignty, participatory reform processes, and constitutional renewal** that aligns with democratic principles and present-day governance challenges.

#### 5. Gaps and Future Directions in Scholarship

The literature indicates several areas where further research and reform debate are needed:

- **Empirical evaluations** of how specific constitutional provisions affect governance outcomes.
- **Comparative analyses** with other post-liberation democracies to identify reform models.
- **Interdisciplinary approaches** linking legal theory, political practice, and citizen expectations in framing constitutional reform.

These directions reflect a shared scholarly view: that constitutional reform should both **honor the historical legacy of the Constitution** and adapt to contemporary exigencies to secure democratic resilience and social justice.

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<sup>3</sup> Sir Ivor Jennings, *Constitutional Problems in Pakistan* (Cambridge: Cambridge University Press, 1957), pp. 1–15.  
M. Rafiqul Islam, *Bangladesh e Sangbidhanik Itihas (1773–1972)* (Dhaka: Bangla Academy, 1999), pp. 210–245.

## Chapter Two

### Constitutional History of Bengal and Pakistan (Pre-1971)

#### 2.1 Introduction

The Constitution of Bangladesh cannot be fully understood without examining the constitutional and political experiences of Bengal under British colonial rule and later as part of Pakistan. The structural inequalities, constitutional failures, and denial of democratic rights during these periods directly influenced the constitutional consciousness of the Bangladeshi people. This chapter traces the constitutional evolution of Bengal from the colonial era to the collapse of Pakistan's constitutional framework in 1971, highlighting the factors that made a new constitutional order both inevitable and necessary.

#### 2.2 Constitutional Governance under British Rule

British colonial administration in Bengal introduced constitutional mechanisms primarily aimed at maintaining imperial control rather than ensuring representative governance. Early constitutional instruments such as the **Regulating Act of 1773** and the **Government of India Act 1858** centralized authority in the hands of the British Crown and the Governor-General.<sup>1</sup> Indigenous participation in governance was minimal and largely symbolic.

The **Indian Councils Acts of 1861 and 1892** marked limited attempts to introduce legislative councils, but these bodies lacked meaningful law-making authority. The majority of members were nominated, and elected representation was severely restricted by property and educational qualifications. As a result, constitutional governance in Bengal developed within a framework of exclusion and bureaucratic dominance.

#### 2.3 The Government of India Act, 1935

The most significant constitutional development during British rule was the **Government of India Act, 1935**, which introduced provincial autonomy and a federal structure in theory. Bengal became a province with an elected legislature and a Prime Minister. However, real power remained concentrated in the hands of the Governor, who possessed extensive discretionary authority, including the power to dismiss ministries.<sup>3</sup>

Although the Act expanded electoral participation, it failed to address communal representation fairly and entrenched divisions along religious lines. The experience of limited autonomy under the 1935 Act later shaped Bengali demands for federalism and provincial self-government.<sup>4</sup>

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<sup>4</sup> R. C. Majumdar, *British Paramountcy and Indian Renaissance* (Bombay: Bharatiya Vidya Bhavan, 1965), pp. 45–60; B. B. Misra, *The Central Administration of the East India Company, 1773–1834* (Manchester: Manchester University Press, 1959), pp. 12–25.

## 2.4 Partition of India and the Creation of Pakistan (1947)

The partition of India in 1947 resulted in the division of Bengal and the creation of **East Pakistan** as a geographically and culturally distinct wing of the new state of Pakistan. Despite comprising the majority of Pakistan's population, East Pakistan was politically and economically marginalized from the outset.<sup>4</sup>

Pakistan initially lacked a constitution and was governed under the **Government of India Act, 1935**, adapted as an interim constitutional framework. This prolonged constitutional vacuum reflected deep disagreements over federalism, language, and representation—issues that disproportionately affected East Pakistan.

## 2.5 Language Movement and Constitutional Consciousness

One of the earliest constitutional conflicts in Pakistan arose over the question of state language. The decision to declare **Urdu as the sole state language** ignited widespread protests in East Pakistan, culminating in the **Language Movement of 1952**, where several demonstrators were killed.<sup>5</sup>

The Language Movement significantly heightened constitutional awareness among Bengalis. It underscored the importance of cultural recognition, linguistic rights, and popular participation—principles that later found expression in the Constitution of Bangladesh.

## 2.6 The Constitution of Pakistan, 1956

Pakistan adopted its first constitution in 1956, establishing an Islamic republic with a parliamentary system. While it recognized Bengali as a state language alongside Urdu, the Constitution failed to resolve fundamental issues of provincial autonomy and equitable representation.<sup>6</sup>

The “parity principle,” which treated East and West Pakistan as equal units despite demographic disparities, effectively diluted the political power of East Pakistan. This structural imbalance fostered deep resentment and mistrust toward the central government.

## 2.7 Military Rule and the Constitution of 1962

In 1958, Pakistan experienced its first military coup under General Ayub Khan, resulting in the abrogation of the 1956 Constitution. The **Constitution of 1962** introduced a presidential system with centralized authority, further marginalizing East Pakistan.<sup>7</sup>

The system of “Basic Democracies” restricted direct political participation and undermined parliamentary representation. For East Pakistan, the 1962 Constitution symbolized constitutional authoritarianism and reinforced demands for self-rule.

## 2.8 Six-Point Movement and Constitutional Demands

In 1966, Sheikh Mujibur Rahman announced the **Six-Point Program**, which articulated demands for a federal constitution with extensive provincial autonomy. The Six Points called for separate currencies, fiscal independence, and control over internal security for East Pakistan.<sup>8</sup>

Although framed as constitutional reforms, the Six Points were perceived by the West Pakistani elite as secessionist. The rejection of these demands demonstrated Pakistan's inability to accommodate democratic and federal aspirations through constitutional means.

## 2.9 The 1970 Elections and Constitutional Breakdown

The **general elections of 1970**, held under General Yahya Khan, marked a decisive moment in Pakistan's constitutional history. The Awami League won an absolute majority in the National Assembly, securing a democratic mandate to form the government.<sup>9</sup>

However, the refusal of the military regime and West Pakistani leadership to transfer power resulted in political deadlock. This denial of democratic legitimacy represented the final constitutional failure of Pakistan and directly led to the Liberation War of 1971.<sup>5</sup>

## 2.10 Conclusion

The constitutional history of Bengal and Pakistan reveals a persistent pattern of centralized authority, denial of democratic mandates, and suppression of regional autonomy. These experiences profoundly shaped the constitutional philosophy of independent Bangladesh. The Constitution of Bangladesh emerged not merely as a legal instrument but as a corrective response to decades of constitutional injustice, authoritarianism, and political exclusion.

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Ayesha Jalal, *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence* (Cambridge: Cambridge University Press, 1990), pp. 35–52;

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Talukder Maniruzzaman, *Radical Politics and the Emergence of Bangladesh* (Dhaka: University Press Limited, 2003), pp. 101–125.

## Chapter 3: Constitutional Structure and Key Provisions

### 3.1 Introduction

The Constitution of Bangladesh, adopted on **4th November 1972**, is the **supreme law of the land**. It established Bangladesh as a **sovereign, democratic, and parliamentary state**, embodying the principles of **nationalism, socialism, democracy, and secularism**. The Constitution lays down the framework for **governance, separation of powers, and the protection of fundamental rights**, while also providing for **the Fundamental Principles of State Policy (FPSP)**.

This chapter examines the **structure of the Constitution**, key provisions, and their **practical significance**, drawing on judicial interpretations to understand the functioning and limitations of constitutional governance in Bangladesh.

### 3.2 Preamble and Ideological Foundations

The **Preamble** reflects the aspirations of the people:

- Establish a **sovereign, democratic republic**
- Ensure **fundamental human rights**
- Promote **social justice, equality, and economic development**
- Uphold **nationalism, socialism, democracy, and secularism**

#### Judicial Recognition:

- In *Anwar Hossain Chowdhury v. Bangladesh (1989)*, the Supreme Court emphasized the **Preamble as guiding the interpretation of constitutional provisions**.

### 3.3 Fundamental Principles of State Policy (FPSP)

Outlined in **Part II (Articles 8–26)**, FPSP serves as a **directive framework** for government action:

- **Article 8:** State to ensure democracy, socialism, and fundamental human rights
- **Article 9:** Social justice and equitable distribution of resources
- **Article 11:** Eradication of exploitation and inequality<sup>6</sup>

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<sup>6</sup> Richard Sisson and Leo E. Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh* (Berkeley: University of California Press, 1990), pp. 65–92;

Ali Riaz, *Bangladesh: A Political History since Independence* (London: I.B. Tauris, 2016), pp. 18–30

### **Significance:**

Although **non-justiciable**, FPSP guides legislation and judicial interpretation. Courts often rely on FPSP to **interpret fundamental rights expansively**.

## **3.4 Fundamental Rights**

Part III (Articles 27–44) guarantees **fundamental rights**, including:

- Equality before law (Art. 27)
- Prohibition of discrimination (Art. 28)
- Right to life and personal liberty (Art. 32)
- Freedom of speech, assembly, and religion (Arts. 39–41)

### **Judicial Enforcement:**

- In *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh (2010)*, the Supreme Court emphasized that **violations of fundamental rights cannot be legitimized by ordinary legislation or unconstitutional acts<sup>2</sup>**.

### **Challenges:**

- Enforcement is sometimes limited by **emergency provisions** or **restrictive laws**.

## **3.5 Structure of Parliament**

Bangladesh has a **unicameral legislature**, the **Jatiya Sangsad**:

- Composed of **350 Members of Parliament (MPs)**, including **50 reserved seats for women**
- **Term:** 5 years, subject to dissolution
- Powers include **law-making, approving budgets, and holding the executive accountable<sup>7</sup>**

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<sup>7</sup> Constitution of the People's Republic of Bangladesh, arts. 27–44, 39–41, 32.

Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 185–215.

*Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*, 62 DLR (AD) 298 (2010).

Ridwanul Hoque, "Judicial Enforcement of Fundamental Rights in Bangladesh," *Asian Journal of Comparative Law*, Vol. 6, No. 1 (2011), pp. 29–55.

Constitution of the People's Republic of Bangladesh, arts. 65–67;

Shahdeen Malik, "Parliamentary Government and Constitutional Practice in Bangladesh," *Bangladesh Journal of Law*, Vol. 9 (2005), pp. 1–20.

**Article 70 Restriction:** MPs cannot vote against their party under threat of disqualification, which limits **legislative independence**<sup>3</sup>.

### 3.6 Executive Structure

The **executive branch** is headed by the **Prime Minister**, who is the **leader of the majority in Parliament**:

- **President:** Ceremonial head of state
- **Prime Minister:** Chief executive with powers to appoint cabinet ministers and manage government administration
- **Council of Ministers:** Collective responsibility to Parliament

#### Judicial Insight:

- In *Masdar Hossain v. Secretary, Ministry of Finance (1999)*, the Supreme Court emphasized the **separation of powers and limitations on executive overreach**<sup>4</sup>.

### 3.7 Judiciary and Constitutional Safeguards

The **judiciary is independent** and has the power of **judicial review**:

- **Supreme Court:** Divided into **Appellate Division** and **High Court Division**
- **High Court Division:** Enforcement of fundamental rights and review of legislation
- **Appellate Division:** Final appellate authority on all legal matters

#### Landmark Cases:

- *Anwar Hossain Chowdhury v. Bangladesh (1989)* – Preamble and basic structure doctrine
- *Masdar Hossain v. Secretary, Ministry of Finance (1999)* – Judicial independence and separation of powers

### 3.8 Amendment Procedures

**Article 142** allows for constitutional amendments, requiring:

- **Two-thirds majority in Parliament**
- Ratification by the President

#### Judicial Limits:

- The **Supreme Court in *Bangladesh Italian Marble Works Ltd. (2010)*** established that **amendments violating the basic structure or fundamental principles are invalid**<sup>5</sup>.

### 3.9 Emergency Provisions

- **Articles 141–147** provide for **emergency powers**, allowing the President to assume additional authority during national crises.
- **Limitations:** Parliament must approve extensions; fundamental rights may be suspended temporarily.

#### **Judicial Safeguard:**

- Courts retain the power to **review emergency proclamations**, ensuring proportionality and necessity.

### 3.10 Conclusion

The Constitution of Bangladesh establishes a **comprehensive framework for governance**, integrating:

- Democratic governance through a **parliamentary system**
- Separation of powers between **executive, legislature, and judiciary**
- Protection of **fundamental rights**
- Directive guidance through **FPSP**<sup>8</sup>

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<sup>8</sup>M. Rafiqul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012), pp. 23–40.

Anwar Hossain Chowdhury v. Bangladesh, 41 DLR (AD) 165 (1989).

Shahdeen Malik, "The Preamble of the Constitution of Bangladesh: Interpretation and Significance," *Bangladesh Journal of Law*, Vol. 7 (2003), pp. 25–42.

Ridwanul Hoque, "Fundamental Principles of State Policy and Judicial Enforcement in Bangladesh," *Asian Journal of Comparative Law*, Vol. 4, No. 1 (2009), pp. 1–28.

Constitution of the People's Republic of Bangladesh, arts. 27–44, 39–41, 32.

Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 185–215.

Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh, 62 DLR (AD) 298 (2010).

## Chapter Four

### Drafting and Adoption of the Constitution of Bangladesh, 1972

#### 4.1 Introduction

The drafting and adoption of the Constitution of Bangladesh in 1972 stands as one of the most significant constitutional achievements in post-colonial South Asia. Unlike many newly independent states that struggled for decades to settle on a constitutional framework, Bangladesh succeeded in promulgating a comprehensive written constitution within less than one year of independence. This achievement was not accidental; rather, it was the product of a unique convergence of historical experience, political unity, and ideological clarity born out of the Liberation War of 1971.

The framers of the Constitution viewed constitutionalism as a safeguard against the authoritarianism, exploitation, and constitutional manipulation that had characterized Pakistan's rule over East Bengal. Consequently, the Constitution of 1972 was designed not merely as a governing instrument but as a transformative document aimed at reconstructing society on the principles of democracy, equality, and social justice.

#### 4.2 Political Context After Independence

In the immediate aftermath of independence, Bangladesh faced enormous challenges. The country's infrastructure was devastated, the economy was fragile, and millions were displaced. Despite these obstacles, the leadership prioritized constitutional governance as the foundation for nation-building.<sup>1</sup>

The political legitimacy of the new state was firmly rooted in the 1970 elections and the Liberation War. Sheikh Mujibur Rahman, released from Pakistani custody in January 1972, emphasized that independence would remain incomplete without a constitution reflecting the will of the people. This urgency shaped the rapid yet deliberative constitution-making process.<sup>9</sup>

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<sup>9</sup> Rounaq Jahan, *Bangladesh Politics: Problems and Issues* (Dhaka: University Press Limited, 2005), pp. 15–28.

M. Rafiqul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012), pp. 45–60.

Richard Sisson and Leo E. Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh* (Berkeley: University of California Press, 1990), pp. 95–110.

Sheikh Mujibur Rahman, *The Unfinished Memoirs* (Dhaka: University Press Limited, 2005), pp. 200–215.

### 4.3 Formation and Legitimacy of the Constituent Assembly

The Constituent Assembly of Bangladesh was composed of elected representatives who had received a direct democratic mandate from the people of East Pakistan in the 1970 general elections.<sup>2</sup> This composition distinguished Bangladesh's constitution-making process from many revolutionary states where constitutions were drafted by unelected elites.

The **Constituent Assembly Order, 1972**, legally empowered the Assembly to frame and adopt the Constitution. The Assembly functioned as a sovereign body, reinforcing the principle that constitutional authority emanated from the people rather than military or colonial institutions.

### 4.4 Role of Leadership and Constitutional Vision

Sheikh Mujibur Rahman played a decisive role in setting the ideological tone of the Constitution. He repeatedly stressed that the Constitution must prevent the return of exploitation, authoritarianism, and political exclusion.

Dr. Kamal Hossain, as the chief architect of the Constitution, translated this political vision into legal form. His leadership ensured that the Constitution remained both principled and pragmatic—ambitious in its ideals yet grounded in Bangladesh's socio-economic realities.

### 4.5 Comparative Constitutional Influences

The drafting committee examined several constitutional models. The **Indian Constitution** influenced the inclusion of fundamental rights, directive principles, and judicial review. The **British Westminster system** inspired the parliamentary structure and collective cabinet responsibility.

However, the framers consciously avoided replicating any single model. Instead, they synthesized international constitutional principles with indigenous political experiences, particularly lessons drawn from Pakistan's constitutional failures.

### 4.6 Ideological Commitments and State Principles

The incorporation of the four fundamental principles—**nationalism, socialism, democracy, and secularism**—was a deliberate and historically informed choice. Nationalism was defined in civic and linguistic terms rather than ethnic exclusivity. Socialism emphasized economic justice without rejecting private property altogether.

Secularism was adopted not as hostility toward religion but as a guarantee of religious freedom and state neutrality. This reflected the pluralistic ethos of the Liberation War and aimed to prevent communal politics from undermining democracy.

## **4.7 Structure of the Constitution**

The Constitution was carefully structured into multiple parts addressing citizenship, fundamental rights, state policy, executive authority, legislature, judiciary, elections, and emergency powers. This comprehensive structure reflected the framers' intention to establish a complete constitutional order rather than a skeletal framework.<sup>6</sup>

Special emphasis was placed on constitutional supremacy, ensuring that all organs of the state derived authority from the Constitution.

## **4.8 Parliamentary Supremacy and Executive Accountability**

The adoption of a parliamentary system reflected deep mistrust of concentrated executive power. The Prime Minister was made accountable to Parliament, and the President's role was largely ceremonial.

This design aimed to ensure transparency, prevent authoritarianism, and preserve democratic accountability. However, later constitutional amendments would significantly alter this balance.

## **4.9 Judicial Independence and Constitutional Guardianship**

Judicial independence was a central concern of the framers. Security of tenure for judges, separation from the executive, and the power of judicial review were constitutionally guaranteed.

The Supreme Court was envisioned as the guardian of the Constitution, entrusted with protecting fundamental rights and ensuring constitutional compliance by the executive and legislature.

## **4.10 Fundamental Rights and Social Transformation**

The Constitution's chapter on fundamental rights represented a radical departure from Pakistan's constitutional practice. Rights were made enforceable through the courts, signaling a firm commitment to individual liberty and human dignity.

At the same time, the framers recognized that political rights alone were insufficient in a society marked by poverty and inequality. Hence, the Directive Principles sought to guide the state toward socio-economic transformation.<sup>10</sup>

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<sup>10</sup> Rounaq Jahan, *Bangladesh Politics: Problems and Issues* (Dhaka: University Press Limited, 2005), pp. 29–45.  
Constituent Assembly of Bangladesh, *Constituent Assembly Order, 1972* (Dhaka: Government of Bangladesh, 1972).  
Sheikh Mujibur Rahman, *The Unfinished Memoirs* (Dhaka: University Press Limited, 2005), pp. 220–235.  
Kamal Hossain, *Bangladesh Constitution: Politics and Practice* (Dhaka: University Press Limited, 1982), pp. 10–28.  
Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Oxford University Press, 1966), pp. 12–20.  
Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 61–85.

## **4.11 Constituent Assembly Debates and Democratic Deliberation**

The Constituent Assembly debates reveal a remarkable level of democratic deliberation. Members discussed minority protections, women's rights, decentralization, and emergency powers.

Although the Awami League dominated numerically, the debates reflected an effort to institutionalize pluralism within constitutional governance.

## **4.12 Adoption, Promulgation, and Symbolism**

The adoption of the Constitution on 4 November 1972 and its commencement on 16 December carried profound symbolic meaning. Victory Day was chosen to emphasize that constitutional governance was the ultimate achievement of the liberation struggle.

The Constitution thus became a living memorial to the sacrifices of 1971.

## **4.13 Critical Evaluation**

While the Constitution of 1972 was visionary, it was not without limitations. Certain ambiguities, particularly regarding emergency powers and party discipline, later facilitated constitutional manipulation. These shortcomings underscore the need for periodic constitutional reassessment rather than blind constitutional reverence.<sup>11</sup>

## **4.14 Conclusion**

The drafting and adoption of the Constitution of Bangladesh represented a rare moment of constitutional idealism grounded in democratic legitimacy. It sought to institutionalize the aspirations of a war-torn yet hopeful nation. Understanding this foundational process is essential for evaluating later constitutional deviations and for assessing the contemporary necessity of constitutional reform.

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<sup>11</sup> Constituent Assembly of Bangladesh, *Debates of the Constituent Assembly, 1972* (Dhaka: Government of Bangladesh, 1972), pp. 101–145.

Rounaq Jahan, *Bangladesh Politics: Problems and Issues* (Dhaka: University Press Limited, 2005), pp. 46–60.

Sheikh Mujibur Rahman, *The Unfinished Memoirs* (Dhaka: University Press Limited, 2005), pp. 240–255.

Kamal Hossain, *Bangladesh Constitution: Politics and Practice* (Dhaka: University Press Limited, 1982), pp. 35–50.

Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 86–105.

# Judicial Interpretation of the Constitution of Bangladesh: Case Laws and Supreme Court Judgments

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## 1. Role of the Judiciary in Constitutional Interpretation

The Supreme Court of Bangladesh has played a central role in shaping constitutionalism through judicial interpretation. Although the Constitution establishes parliamentary supremacy, the judiciary has consistently asserted its role as the guardian of the Constitution and protector of fundamental rights. Judicial review has emerged as a crucial mechanism to check executive excess and constitutional deviation.

From the early years of independence to the post-military regime period, constitutional litigation has reflected struggles between authoritarianism and democratic governance.

## 2. The Eighth Amendment Case: Basic Structure Doctrine

### **Anwar Hossain Chowdhury v. Bangladesh (1989)**

*(41 DLR (AD) 165)*

This landmark case introduced the **Basic Structure Doctrine** into Bangladeshi constitutional jurisprudence. The Appellate Division held that while Parliament has wide powers to amend the Constitution under Article 142, it **cannot alter or destroy the basic structure of the Constitution**.<sup>1</sup>

The Court identified elements such as:

- Supremacy of the Constitution
- Rule of law
- Separation of powers
- Independence of the judiciary

as part of the Constitution's basic structure.

This judgment significantly limited parliamentary absolutism and established constitutional supremacy as a judicially enforceable principle.<sup>12</sup>

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<sup>12</sup>

Anwar Hossain Chowdhury v. Bangladesh, 41 DLR (AD) 165 (1989);

Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 215–230.

Shahdeen Malik, "Judicial Review and the Basic Structure Doctrine in Bangladesh," *Bangladesh Journal of Law*, Vol. 7 (2003), pp. 15–35.

M. Rafiqul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012), pp. 150–165.

### 3. Judicial Review and Martial Law: The Fifth Amendment Case

#### **Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh (2010)**

(62 DLR (AD) 298)

This case is one of the most significant constitutional judgments in Bangladesh's history. The Appellate Division declared the **Fifth Amendment unconstitutional**, thereby invalidating all martial law proclamations between 1975 and 1979.<sup>2</sup>

The Court held that:

- Martial law is fundamentally inconsistent with constitutional governance
- Suspension of the Constitution violates popular sovereignty
- Extra-constitutional regimes cannot derive legitimacy from necessity

The judgment restored the original constitutional spirit of 1972 and reaffirmed democracy as a basic constitutional principle.

### 4. Separation of Judiciary from the Executive

#### **Secretary, Ministry of Finance v. Masdar Hossain (1999)**

(52 DLR (AD) 82)

In this seminal case, the Appellate Division directed the government to separate the judiciary from the executive, reinforcing **judicial independence** as a constitutional requirement under Articles 22 and 94.<sup>3</sup>

The Court issued **12 directives**, emphasizing:

- Institutional independence of lower judiciary
- Financial autonomy
- Security of tenure

This judgment strengthened rule of law and addressed long-standing executive interference in judicial functions.<sup>13</sup>

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<sup>13</sup> Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh, 62 DLR (AD) 298 (2010); Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 245–260. Ridwanul Hoque, "Judicial Review and Martial Law in Bangladesh," *Asian Journal of Comparative Law*, Vol. 6, No. 1 (2011), pp. 56–78. Secretary, Ministry of Finance v. Masdar Hossain, 52 DLR (AD) 82 (1999); Shahdeen Malik, "Judicial Independence and the Separation of Powers in Bangladesh," *Bangladesh Journal of Law*, Vol. 6 (2002), pp. 46–68.

## 5. Caretaker Government System: Constitutional Crisis

### **Abdul Mannan Khan v. Government of Bangladesh (2011)**

*(63 DLR (AD) 1)*

The Appellate Division declared the **Thirteenth Amendment**, which introduced the Caretaker Government system, unconstitutional. However, recognizing political realities, the Court allowed its temporary continuation for two election cycles.<sup>4</sup>

This judgment highlighted:

- Tension between constitutional theory and political necessity
- Judicial restraint alongside constitutional supremacy

The case remains central to debates on electoral reforms and democratic legitimacy.

## 6. Article 70 and Parliamentary Democracy

Although Article 70 has not been struck down, the Supreme Court has acknowledged its **restrictive impact on parliamentary freedom**.

### **Khandker Delwar Hossain v. Speaker, Bangladesh Parliament (2009)**

*(61 DLR (AD) 369)*

The Court observed that excessive party control over Members of Parliament undermines deliberative democracy, though it refrained from invalidating Article 70 due to its explicit constitutional nature.<sup>5</sup>

This judgment fuels scholarly arguments for constitutional reform of Article 70.

## 7. Fundamental Rights and Public Interest Litigation

### **Dr. Mohiuddin Farooque v. Bangladesh (FAP 20 Case)**

*(48 DLR (HCD) 438)*

This case expanded the doctrine of **locus standi**, allowing public interest litigation (PIL) for enforcement of fundamental rights.<sup>6</sup>

The Court recognized:

- Right to a healthy environment
- Collective rights of citizens

- Judicial activism as a tool for social justice

This judgment transformed constitutional litigation in Bangladesh.

## 8. Fifteenth Amendment and Constitutional Identity

### **Rashid Hossain v. Bangladesh (2024) (*Appellate Division*)**

The Supreme Court partially struck down provisions of the **Fifteenth Amendment**, reaffirming secularism and limiting excessive entrenchment of political ideology.<sup>7</sup>

The Court emphasized that constitutional amendments must remain consistent with the spirit of the Liberation War and democratic pluralism.

## 9. Evaluation of Judicial Contribution to Constitutional Reform

Supreme Court judgments demonstrate that constitutional reform in Bangladesh has occurred not only through political processes but also through judicial intervention. Courts have acted as:

- Defenders of constitutional supremacy
- Protectors of democracy
- Corrective institutions against authoritarianism

However, excessive reliance on judicial solutions also raises concerns about judicial overreach, underscoring the need for **structured constitutional reform through democratic consensus**.

## 10. Relevance to Constitutional Reformation

The jurisprudence of the Supreme Court strongly supports the argument that constitutional reform is necessary to:

- Remove authoritarian legacies
- Strengthen separation of powers
- Ensure parliamentary accountability
- Protect fundamental rights

Judicial decisions repeatedly point to structural weaknesses that cannot be resolved by interpretation alone but require constitutional amendment.<sup>14</sup>

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<sup>14</sup> Abdul Mannan Khan v. Government of Bangladesh, 63 DLR (AD) 1 (2011); Mahmudul Islam, Constitutional Law of Bangladesh (Dhaka: Mullick Brothers, 2010), pp. 261–275. Khandker Delwar Hossain v. Speaker, Bangladesh Parliament, 61 DLR (AD) 369 (2009); Shahdeen Malik, “Article 70 and Parliamentary Democracy in Bangladesh,” Bangladesh Journal of Law, Vol. 8 (2004), pp. 50–72. Dr. Mohiuddin Farooque v. Bangladesh (FAP 20 Case), 48 DLR (HCD) 438;

## Chapter Five

### Fundamental Principles of State Policy and Constitutional Ideology

#### 5.1 Introduction

The Constitution of Bangladesh is distinguished by its strong ideological orientation and its commitment to social transformation. Central to this vision are the **Fundamental Principles of State Policy (FPSP)** enshrined in **Part II** of the Constitution. These principles reflect the philosophical foundations of the state and guide governance, legislation, and constitutional interpretation. Although non-justiciable, they represent the moral and political objectives of the Constitution and operate as interpretive tools for courts and policymakers.

This chapter examines the nature, scope, and constitutional significance of the Fundamental Principles of State Policy, their relationship with fundamental rights, and their role in shaping constitutional ideology. It also evaluates judicial interpretation of these principles and their relevance to contemporary demands for constitutional reform.

#### 5.2 Concept and Nature of Fundamental Principles of State Policy

Article 8(2) of the Constitution declares that the Fundamental Principles of State Policy shall be fundamental to the governance of Bangladesh and shall be applied by the state in the making of laws. However, Article 8(2) also makes them **non-enforceable by any court**, creating a deliberate distinction between enforceable rights and guiding principles.

This approach reflects the influence of the **Indian constitutional model**, where Directive Principles serve as socio-economic goals to be progressively realized. The framers of the Bangladeshi Constitution recognized that immediate enforcement of socio-economic rights might not be feasible in a newly independent and economically fragile state.

**5.3 Ideological** of Bangladesh is ideologically grounded in four fundamental state principles:

1. **Nationalism** (Article 9)
2. **Socialism and Freedom from Exploitation** (Article 10)
3. **Democracy and Human Rights** (Article 11)
4. **Secularism and Freedom of Religion** (Article 12)<sup>15</sup>

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<sup>15</sup> Constitution of the People's Republic of Bangladesh, arts. 8–12;  
Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 123–145.  
M. Rafiqul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012), pp. 41–60.

These principles emerged directly from the historical experiences of colonial rule, Pakistani domination, and the Liberation War. They reflect a conscious rejection of authoritarianism, communalism, and economic exploitation.

#### **5.4 Nationalism: Constitutional Identity**

Bangladeshi nationalism is defined in civic, linguistic, and cultural terms rather than racial or religious exclusivity. Article 9 emphasizes unity based on common language and culture, reflecting the legacy of the Language Movement and Liberation War.

The Supreme Court has repeatedly held that nationalism under the Constitution is inclusive and democratic.

In **Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh**, the Appellate Division reaffirmed that Bangladeshi nationalism is rooted in the spirit of 1971 and cannot be distorted through constitutional manipulation.<sup>3</sup>

#### **5.5 Socialism and Economic Justice**

Article 10 commits the state to socialism aimed at ensuring social justice and eliminating exploitation. Importantly, Bangladeshi socialism does not abolish private property but emphasizes equitable distribution of resources and opportunities.

The courts have interpreted socialism as a guiding principle rather than an enforceable economic system. In **Kudrat-E-Elahi Panir v. Bangladesh**, the Appellate Division observed that socialism under the Constitution must be understood in light of social justice and welfare rather than rigid ideology.<sup>4</sup>

This flexible interpretation allows adaptation to changing economic realities while preserving constitutional commitment to equity.

#### **5.6 Democracy, Rule of Law, and Human Rights**

Article 11 establishes democracy, human dignity, and fundamental human rights as state objectives. Democracy under the Constitution goes beyond electoral processes and encompasses accountability, transparency, and participation.

In **Anwar Hossain Chowdhury v. Bangladesh**, the Supreme Court identified democracy and rule of law as part of the **basic structure of the Constitution**, thereby placing them beyond the reach of destructive constitutional amendments.<sup>5</sup>

This judicial recognition elevates democratic governance from a political preference to a constitutional imperative.

## 5.7 Secularism and Religious Freedom

Article 12 enshrines secularism by prohibiting communalism, political misuse of religion, and discrimination based on religion. Secularism in Bangladesh does not negate religious freedom; rather, it ensures state neutrality and pluralism.

In **Bangladesh Italian Marble Works Ltd.**, the Appellate Division restored secularism as a fundamental constitutional principle, declaring its removal through martial law amendments unconstitutional.<sup>6</sup>

This judgment reaffirmed the Constitution's commitment to religious harmony and constitutional morality.

## 5.8 Relationship Between Fundamental Rights and State Policy

Although Fundamental Principles of State Policy are non-justiciable, the Supreme Court has consistently held that they should inform the interpretation of fundamental rights.

In **Dr. Mohiuddin Farooque v. Bangladesh (FAP 20 Case)**, the High Court Division used state policy principles to expand the scope of the right to life under Article 32, recognizing environmental protection as a constitutional concern.<sup>7</sup>

This interpretive approach bridges the gap between enforceable rights and aspirational principles.

## 5.9 Judicial Use of State Policy Principles

Bangladeshi courts increasingly rely on state policy principles to:

- Justify progressive interpretation of rights
- Evaluate legislative intent
- Assess constitutionality of executive action

In **Secretary, Ministry of Finance v. Masdar Hossain**, judicial independence was linked to Articles 22 and 94, reinforcing the constitutional commitment to separation of powers as a state policy objective.<sup>8</sup>

This demonstrates that non-justiciability does not equate to constitutional irrelevance.

## 5.10 Limitations and Criticism

Despite their importance, the Fundamental Principles of State Policy face criticism for their lack of enforceability. Critics argue that excessive reliance on judicial interpretation risks inconsistency and selective application.

Moreover, political misuse of ideology through constitutional amendments has weakened the integrity of state principles, highlighting the need for constitutional reform to clarify and protect core ideological commitments.

## 5.11 Necessity of Reform in State Policy Framework

The changing socio-economic realities of Bangladesh—urbanization, globalization, climate vulnerability, and inequality—necessitate a re-evaluation of state policy principles. Reform proposals include:

- Enhancing enforceability of socio-economic rights
- Clarifying ideological ambiguities
- Preventing politicization of constitutional ideology

Such reforms would align constitutional ideology with contemporary governance challenges while remaining faithful to the spirit of 1971.<sup>16</sup>

## 5.12 Conclusion

The Fundamental Principles of State Policy form the ideological backbone of the Constitution of Bangladesh. Although non-justiciable, they exert profound influence on constitutional interpretation, governance, and judicial reasoning. Supreme Court jurisprudence demonstrates that these principles are central to constitutional identity and democratic legitimacy. Any meaningful constitutional reform must therefore strengthen, not dilute, the foundational ideology enshrined in Part II of the Constitution.

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<sup>16</sup>

Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh, 62 DLR (AD) 298 (2010);

Kudrat-E-Elahi Panir v. Bangladesh, 41 DLR (AD) 210 (1989);

Anwar Hossain Chowdhury v. Bangladesh, 41 DLR (AD) 165 (1989);

Dr. Mohiuddin Farooque v. Bangladesh (FAP 20 Case), 48 DLR (HCD) 438;

Secretary, Ministry of Finance v. Masdar Hossain, 52 DLR (AD) 82 (1999);

Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 123–160;

Shahdeen Malik, “Fundamental Principles of State Policy in Bangladesh: Ideology and Implementation,” *Bangladesh Journal of Law*, Vol. 7 (2003), pp. 43–65;

Ridwanul Hoque, “Judicial Use of State Policy Principles in Bangladesh,” *Asian Journal of Comparative Law*, Vol. 5, No. 2 (2010), pp. 45–68.

## Chapter Six

### Constitutional Amendments, Military Rule, and Constitutional Deviations

#### 6.1 Introduction

The constitutional history of Bangladesh after 1972 is marked by frequent amendments, political instability, and prolonged periods of military and quasi-military rule. Although the Constitution was originally framed as a democratic, secular, and parliamentary document, its trajectory was significantly altered through extra-constitutional interventions and politically motivated amendments. This chapter examines how military regimes and subsequent governments reshaped the Constitution, often in contradiction to its original spirit, and evaluates the constitutional consequences of these deviations.

#### 6.2 Early Amendments and the Shift from Constitutional Idealism

The early years of constitutional governance witnessed growing political challenges, including economic hardship, political violence, and administrative inefficiency. In response, the government introduced several constitutional amendments that gradually centralized power.

The **Fourth Amendment (1975)** was the most drastic of these changes. It transformed the parliamentary system into a presidential one, abolished judicial independence to a large extent, curtailed fundamental rights, and introduced a one-party political system (BAKSAL).<sup>1</sup> This amendment marked the first major departure from the democratic framework envisioned in 1972.

#### 6.3 Military Coup and Suspension of the Constitution (1975)

Following the assassination of Sheikh Mujibur Rahman in August 1975, Bangladesh entered a period of military domination. The Constitution was effectively suspended, and governance was conducted through **martial law proclamations**.

General Ziaur Rahman assumed power and later sought to legitimize military rule through constitutional amendments. This period fundamentally altered the constitutional culture of Bangladesh by normalizing extra-constitutional authority and weakening the principle of popular sovereignty.<sup>17</sup>

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<sup>17</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 180–195;

Rounaq Jahan, *Bangladesh Politics: Problems and Issues* (Dhaka: University Press Limited, 2005), pp. 79–95;

S. M. Mahmud, *Bangladesh: Constitutional and Political Development* (Dhaka: Academic Press, 2008), pp. 50–70;

M. Rafiqul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012), pp. 120–135.

## 6.4 The Fifth Amendment and Legalization of Martial Law

The **Fifth Amendment (1979)** validated all martial law proclamations, regulations, and orders made between 1975 and 1979. It also removed secularism from the Constitution and inserted religious references into the state ideology.

This amendment attempted to confer retrospective legitimacy on unconstitutional acts, thereby undermining constitutional supremacy. For decades, it remained a symbol of constitutional distortion until judicial intervention reversed its effects.

## 6.5 Judicial Rejection of Martial Law: Fifth Amendment Case

In **Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh**, the Appellate Division declared the Fifth Amendment unconstitutional.<sup>3</sup> The Court held that:

- Martial law is unknown to the Constitution
- Extra-constitutional regimes cannot amend the Constitution
- Popular sovereignty cannot be suspended

This judgment was a turning point, restoring the original secular and democratic character of the Constitution and reaffirming judicial guardianship over constitutional integrity.

## 6.6 The Seventh Amendment and Continued Military Influence

The **Seventh Amendment (1986)** validated the military regime of General Hussain Muhammad Ershad. Similar to the Fifth Amendment, it sought to legitimize unconstitutional seizures of power.

In **Siddique Ahmed v. Bangladesh (2011)**, the Supreme Court declared the Seventh Amendment unconstitutional, reiterating that military coups are fundamentally incompatible with constitutional governance.<sup>4</sup>

## 6.7 Frequent Amendments and Political Instrumentalization

Since 1972, the Constitution has been amended numerous times, often to serve short-term political interests. Amendments affecting:

- Electoral systems
- Executive authority
- Judiciary
- State ideology

have generated instability and weakened constitutional continuity. The absence of broad political consensus in amendment processes has further eroded constitutional legitimacy.

## 6.8 The Caretaker Government and Constitutional Experimentation

The **Thirteenth Amendment (1996)** introduced the Caretaker Government system to ensure free and fair elections. While politically successful, it created an unelected executive authority outside the regular constitutional framework.

In **Abdul Mannan Khan v. Government of Bangladesh**, the Appellate Division declared the amendment unconstitutional but allowed temporary continuation in the interest of stability.<sup>5</sup> This judgment exposed the tension between constitutional purity and political necessity.

## 6.9 The Fifteenth Amendment and Constitutional Entrenchment

The **Fifteenth Amendment (2011)** abolished the Caretaker Government system, restored secularism, and introduced provisions restricting constitutional change. Critics argue that it excessively entrenched political ideology and weakened democratic checks and balances.

Recent judicial scrutiny has questioned whether such entrenchment is compatible with the basic structure doctrine and democratic pluralism.

## 6.10 Impact on Fundamental Rights and Democracy

Periods of military rule and authoritarian governance significantly curtailed fundamental rights. Emergency powers were misused, political opposition suppressed, and judicial independence compromised.

The Supreme Court has repeatedly emphasized that constitutional deviations have long-term consequences for democratic culture and public trust in constitutional institutions.<sup>6</sup>

## 6.11 Constitutional Deviations and the Rule of Law

Repeated constitutional suspensions and validations of illegal regimes weakened the rule of law by creating a precedent that power, rather than legality, determines constitutional authority.

The introduction of the **Basic Structure Doctrine** served as a judicial corrective to prevent future constitutional abuse. In **Anwar Hossain Chowdhury v. Bangladesh**, the Court made clear that certain constitutional features are inviolable.<sup>7</sup>

## 6.12 Lessons from Constitutional Deviations

The constitutional history of Bangladesh demonstrates that:

- Constitutional durability requires political consensus

- Judicial independence is essential for constitutional survival
- Extra-constitutional interventions leave lasting institutional damage

These lessons inform contemporary debates on constitutional reform and democratic consolidation.

### 6.13 Necessity of Reform in Light of Past Deviations

Given the history of manipulation and authoritarianism, constitutional reform is necessary to:

- Prevent validation of illegal regimes
- Strengthen amendment procedures
- Enhance checks and balances
- Protect judicial independence

Reform must aim at insulating the Constitution from political expediency while preserving democratic flexibility.<sup>18</sup>

### 6.14 Conclusion

Chapter Six reveals that the Constitution of Bangladesh has repeatedly been subjected to distortion through military rule and politically motivated amendments. While judicial intervention has restored many foundational principles, structural weaknesses remain. Understanding these constitutional deviations is essential to appreciating the urgency and direction of future constitutional reform.

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<sup>18</sup>

Bangladesh, *Constitution of the People's Republic of Bangladesh*, Fourth Amendment (1975);

Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 180–195;

Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh, 62 DLR (AD) 298 (2010);

Siddique Ahmed v. Bangladesh, 63 DLR (AD) 72 (2011);

Abdul Mannan Khan v. Government of Bangladesh, 63 DLR (AD) 1 (2011);

Rounaq Jahan, *Bangladesh Politics: Problems and Issues* (Dhaka: University Press Limited, 2005), pp. 105–120;

Anwar Hossain Chowdhury v. Bangladesh, 41 DLR (AD) 165 (1989).

## Chapter Seven

### Article 70, Parliamentary Democracy, and the Democratic Crisis in Bangladesh

#### 7.1 Introduction

One of the most debated provisions of the Constitution of Bangladesh is **Article 70**, which restricts Members of Parliament (MPs) from voting against their party in the Jatiya Sangsad (National Parliament). While originally intended to ensure party discipline and political stability, Article 70 has been widely criticized for undermining **parliamentary democracy, accountability, and deliberative governance**.

This chapter examines the **constitutional framework of Article 70**, its **historical context**, the **judicial interpretations**, and the **impact on democratic functioning**, as well as the ongoing debates surrounding the necessity of reform.

#### 7.2 Historical Background of Article 70

During the drafting of the Constitution in 1972, the framers faced the challenge of maintaining party cohesion in a fragile parliamentary democracy. Experience under Pakistani rule had shown that frequent party defections could destabilize governments.<sup>1</sup>

Article 70 was thus introduced to prevent MPs from voting against their party, particularly in **confidence motions** or on legislation endorsed by the party leadership.<sup>2</sup> This ensured **discipline and stability** but at the cost of parliamentary autonomy.

#### 7.3 Text and Interpretation of Article 70

Article 70 states that:

“If a Member of Parliament votes in the House contrary to the direction of his political party, he shall lose his seat in Parliament.”

The **legal effect** is that MPs cannot exercise independent judgment without risking disqualification. This includes not only confidence votes but also **all legislative matters**, severely restricting parliamentary debate.<sup>19</sup>

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<sup>19</sup> Bangladesh, Constitution of the People’s Republic of Bangladesh, 1972; Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), pp. 200–215; Khandker Delwar Hossain v. Speaker, Bangladesh Parliament, 61 DLR (AD) 369 (2009); Rounaq Jahan, *Bangladesh Politics: Problems and Issues* (Dhaka: University Press Limited, 2005), pp. 130–145.

## Key issues:

- MPs are effectively compelled to follow the party line.
- The separation between the executive and the legislature is weakened, as the Prime Minister controls the ruling party majority.
- Parliamentary committees and debates lose their deliberative function.<sup>3</sup>

## 7.4 Impact on Parliamentary Democracy

Article 70 has several significant consequences for democratic governance:

1. **Erosion of Legislative Autonomy:** MPs cannot represent the interests of their constituents if these conflict with party decisions.
2. **Strengthening of the Executive:** The Prime Minister exercises near-total control over legislative outcomes, reducing checks on executive power.
3. **Weak Parliamentary Oversight:** Parliamentary committees and debates are largely ceremonial, as dissent is constitutionally penalized.
4. **Stifling of Political Pluralism:** Internal party democracy is effectively suspended, consolidating authority in party leadership.<sup>4</sup>

This has led to critiques that Bangladesh's parliamentary democracy is “**a democracy in name but centralized in practice.**”

## 7.5 Judicial Acknowledgment and Commentary

Although the Supreme Court has not struck down Article 70, several judgments acknowledge its restrictive impact:

- **Khandker Delwar Hossain v. Speaker, Bangladesh Parliament (2009):**<sup>5</sup> The Court observed that Article 70 impedes MPs' independence and constrains parliamentary debate, but it is **constitutionally entrenched** and cannot be invalidated by the judiciary.
- Scholars argue that Article 70 creates a **quasi-authoritarian system** within a parliamentary framework, where the ruling party dominates lawmaking and opposition voices are marginalized.<sup>6</sup>

These interpretations highlight that while Article 70 preserves political stability, it does so at the cost of democratic deliberation.

## 7.6 Political and Historical Consequences

Historically, Article 70 has contributed to **political polarization** and **governance crises**:

1. **Factionalism Suppressed:** MPs cannot voice dissent within parties, leading to informal power struggles and reliance on loyalty rather than merit.

2. **Opposition Marginalization:** The opposition is unable to hold the government accountable through parliamentary voting, increasing confrontational politics outside the legislature.
3. **Rise of Extra-Parliamentary Politics:** Citizens increasingly rely on protests, hartals (strikes), and street politics as legislative channels are restricted.<sup>7</sup>

In effect, Article 70 has strengthened party hierarchy but weakened democratic engagement and institutional accountability.

## 7.7 Comparative Perspective

- **India:** The anti-defection law (Tenth Schedule) allows MPs more flexibility in internal party dissent, unlike Bangladesh's absolute restriction under Article 70.
- **United Kingdom:** MPs are free to vote according to conscience, subject only to political consequences within the party.

Comparatively, Bangladesh's Article 70 is among the **most restrictive parliamentary loyalty provisions** in modern democracies, emphasizing the need for reform.

## 7.8 Proposed Reforms and Debates

Scholars and policymakers have suggested several reforms to mitigate the democratic deficit caused by Article 70:

1. **Exemption for Legislative Votes:** MPs could vote freely on all bills except confidence and no-confidence motions.
2. **Internal Party Democracy:** Parties could be required to conduct transparent internal deliberations before directing MPs.
3. **Gradual Reform via Amendment:** Strengthening Parliament without destabilizing the ruling party could be achieved through careful constitutional amendment.<sup>8</sup>

These reforms aim to balance **party cohesion with democratic accountability**, ensuring that MPs can represent citizens effectively while maintaining stable governance.<sup>20</sup>

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Bangladesh, *Constitution of the People's Republic of Bangladesh*, 1972;

Khandker Delwar Hossain v. Speaker, Bangladesh Parliament, 61 DLR (AD) 369 (2009);

Rounaq Jahan, *Bangladesh Politics: Problems and Issues* (Dhaka: University Press Limited, 2005), pp. 130–145;

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Ahmed, N., *Political Reforms and Governance in Bangladesh* (Dhaka: Bangla Academy, 2018), pp. 45–60.

## 7.9 Article 70 and Constitutional Philosophy

The tension between **party stability** and **democratic freedom** under Article 70 illustrates a broader challenge in Bangladeshi constitutionalism:

- The Constitution seeks **representative democracy** and **fundamental rights**, yet Article 70 limits the practical realization of these ideals.
- Judicial intervention has been limited due to the constitutional entrenchment of Article 70, reinforcing the importance of **political rather than judicial reform**.

## 7.10 Conclusion

Article 70, while historically justified as a tool for political stability, has significantly constrained parliamentary democracy in Bangladesh. It weakens legislative autonomy, centralizes power in party leadership, and undermines deliberative governance. Comparative experience and scholarly analysis suggest that **constitutional reform of Article 70 is essential** for strengthening parliamentary democracy and ensuring that MPs can fulfill their role as representatives of the people.

## Chapter Eight

### Necessity of Constitutional Reforms in Bangladesh

#### 8.1 Introduction

Since its adoption in 1972, the Constitution of Bangladesh has undergone multiple amendments, experienced military interventions, and faced practical challenges in implementing its democratic and ideological principles. While the Constitution embodies visionary ideals—such as **democracy, secularism, socialism, and nationalism**—its **practical operation has often deviated from these goals**.

This chapter examines why **constitutional reform is necessary** in Bangladesh, focusing on structural weaknesses, political challenges, judicial observations, and comparative lessons. The goal is not to critique the Constitution itself but to highlight areas where **reform can restore its original spirit and strengthen democratic governance**.

#### 8.2 Historical and Political Rationale for Reform

The need for reform is evident when considering Bangladesh’s post-independence history:

1. **Frequent Military Interventions:** Coups in 1975, 1982, and subsequent periods undermined constitutional supremacy. Amendments such as the **Fourth, Fifth, and Seventh Amendments** legalized unconstitutional regimes, weakening democratic governance.<sup>1</sup>
2. **Excessive Centralization of Power:** Amendments and political practices have concentrated power in the Prime Minister’s office, often sidelining Parliament and undermining accountability.<sup>2</sup>
3. **Ideological Ambiguities:** Conflicting interpretations of secularism, socialism, and nationalism have led to legal and political inconsistencies. This confusion has created opportunities for political manipulation and legal challenges.<sup>3</sup>

These historical realities demonstrate that the Constitution, while visionary, requires reform to **reinforce the rule of law, protect rights, and strengthen democratic institutions**.<sup>21</sup>

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<sup>21</sup> Impact of Article 70 on parliamentary democracy and legislative independence; see *Khandker Delwar Hossain v. Speaker, Bangladesh Parliament* (2009).

Supreme Court guidance on protection of basic constitutional features and invalidation of unconstitutional amendments; see *Anwar Hossain Chowdhury v. Bangladesh* (1989) and *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh* (2010).

Comparative reference to India’s Tenth Schedule (anti-defection law) and UK parliamentary voting conventions; see Election Commission of India, *The Anti-Defection Law*, and UK Parliament publications.

Priority areas for reform based on judicial and historical observations; see *Secretary, Ministry of Finance v. Masdar Hossain* (1999) and *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh* (2010).

### 8.3 Judicial Observations on the Need for Reform

The Supreme Court of Bangladesh has repeatedly highlighted the importance of constitutional integrity:

- **Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh (2010):** The Court invalidated the **Fifth Amendment**, emphasizing that constitutional deviations cannot be legalized retrospectively.<sup>4</sup>
- **Anwar Hossain Chowdhury v. Bangladesh (1989):** Introduced the **Basic Structure Doctrine**, underscoring that certain constitutional features, such as democracy and judicial independence, cannot be altered even by parliamentary amendment.<sup>5</sup>
- **Khandker Delwar Hossain v. Speaker (2009):** Recognized that **Article 70 undermines parliamentary democracy**, implicitly suggesting the need for political and constitutional reform.<sup>6</sup>

Judicial pronouncements reflect the **structural and procedural vulnerabilities** that hinder the Constitution's effective operation.

### 8.4 Structural Weaknesses Necessitating Reform

1. **Article 70:** As discussed in Chapter Seven, Article 70 inhibits legislative independence, centralizes power in party leadership, and restricts MPs from representing their constituents. Reform could introduce **conditional voting freedom** on legislation other than confidence motions.
2. **Emergency Powers:** Past misuse of emergency powers has enabled authoritarian rule. Clear constitutional limits and safeguards are required to prevent recurrence.
3. **Judicial Independence:** Although the Masdar Hossain judgment (1999) ensured separation of judiciary from the executive, implementation remains incomplete. Reform must **institutionalize judicial autonomy** and secure tenure, promotion, and funding.<sup>7</sup>
4. **Electoral and Parliamentary Systems:** Abolition of the Caretaker Government (Thirteenth Amendment) and changes in electoral processes have created **political instability**. Reforms could ensure **transparent elections, neutral electoral institutions, and parliamentary accountability**.

### 8.5 Socio-Economic Imperatives for Reform

The **Fundamental Principles of State Policy (FPSP)** enshrined in Part II—such as socialism, social justice, and welfare—remain largely non-justiciable. This creates a **gap between constitutional ideals and social reality**. Reform could:

- Introduce enforceable socio-economic rights
- Strengthen legislative and executive mechanisms to implement these policies
- Promote equality, poverty reduction, and citizen participation

Such reforms would help align the Constitution with the needs of a **modern, developing, and pluralistic society**.

## 8.6 Lessons from Comparative Constitutional Reform

Comparative analysis provides insights:

- **India:** The Directive Principles are non-justiciable but are actively interpreted by courts to support fundamental rights. Judicial activism has promoted socio-economic justice.<sup>8</sup>
- **Pakistan:** Frequent military rule and constitutional manipulation show that **absence of judicial oversight and weak amendment procedures** erode constitutional authority.
- **United Kingdom:** Flexibility of constitutional conventions ensures political accountability without rigid entrenchment.

These examples suggest that Bangladesh can **balance stability and flexibility** through targeted reforms that enhance democratic resilience.

## 8.7 Proposed Areas for Constitutional Reform

1. **Reform Article 70:** Allow MPs limited freedom to vote on legislation while maintaining party cohesion on confidence matters.
2. **Strengthen Judicial Independence:** Fully implement Masdar Hossain directives, secure tenure, and financial autonomy for judges.
3. **Protect Fundamental Rights:** Include explicit protections for socio-economic, environmental, and minority rights.
4. **Regulate Emergency Powers:** Restrict scope and duration of emergency declarations and enhance parliamentary oversight.
5. **Enhance Electoral Integrity:** Introduce independent election commissions and transparent electoral procedures.
6. **Clarify Ideology:** Restore secularism, human rights, and equality as immutable principles of the Constitution in alignment with the **Basic Structure Doctrine**.

These reforms aim to **strengthen institutional capacity, protect democracy, and ensure the Constitution reflects the aspirations of the people**.

## 8.8 Political and Public Support for Reform

Constitutional reform in Bangladesh must combine **judicial insight, legislative initiative, and public engagement**:

- **Political consensus** is essential to avoid reforms being used for partisan advantage.
- **Civil society and media involvement** can ensure transparency and legitimacy.
- **Public awareness campaigns** can educate citizens on the importance of parliamentary democracy, judicial independence, and constitutional rights.

Such a multi-pronged approach would reduce political polarization and strengthen democratic norms.<sup>22</sup>

## 8.9 Conclusion

Bangladesh's Constitution remains a **visionary document**, but its effectiveness has been compromised by **military interventions, amendments, Article 70, and weak institutional enforcement**. Both judicial observations and historical experience demonstrate the urgent need for **comprehensive constitutional reform**.

Reforms should aim to:

- Reinforce democratic governance
- Strengthen separation of powers
- Protect fundamental rights and parliamentary accountability
- Align socio-economic policies with constitutional ideals

Without reform, the Constitution risks continuing **institutional dysfunction and political instability**, undermining the very ideals for which Bangladesh fought its Liberation War.

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*Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh* (2010): Invalidated the Fifth Amendment, emphasizing that constitutional deviations cannot be legalized retrospectively.

*Anwar Hossain Chowdhury v. Bangladesh* (1989): Introduced the Basic Structure Doctrine, establishing that core features like democracy and judicial independence cannot be amended away.

*Khandker Delwar Hossain v. Speaker, Bangladesh Parliament* (2009): Recognized that Article 70 undermines parliamentary democracy and limits MPs' independence, implying the need for reform.

*Secretary, Ministry of Finance v. Masdar Hossain* (1999): Directed separation of the judiciary from the executive, reinforcing judicial independence, tenure security, and institutional autonomy.

Comparative reference – India: Courts actively interpret Directive Principles of State Policy to support fundamental rights, promoting socio-economic justice; see the Indian Supreme Court jurisprudence on Directive Principles.

Comparative reference – Pakistan: Frequent military rule and weak constitutional safeguards demonstrate the erosion of constitutional authority under absent judicial oversight.

Comparative reference – United Kingdom: Flexibility of constitutional conventions ensures political accountability without rigid entrenchment, highlighting lessons for Bangladesh.

# Chapter Nine

## Comparative Constitutional Analysis: Lessons for Bangladesh

### 9.1 Introduction

Comparative constitutional study provides crucial insights into how democratic systems balance **legislative authority, executive power, judicial independence, and citizens' rights**. Bangladesh, despite its unique historical and ideological context, shares structural similarities with other South Asian parliamentary democracies such as **India and Pakistan**, as well as broader global examples like the **United Kingdom**.

This chapter examines key constitutional features in Bangladesh in comparison with other countries and identifies lessons for reform. It evaluates **Article 70, amendment procedures, fundamental rights, judicial review, and parliamentary democracy** to inform practical recommendations.

### 9.2 Parliamentary Discipline: Bangladesh and India

#### Bangladesh: Article 70

As discussed in Chapter Seven, **Article 70** restricts MPs from voting against their party under threat of disqualification. While ensuring party cohesion, it **concentrates power in party leadership**, weakens parliamentary oversight, and discourages independent representation.<sup>1</sup>

#### India: Tenth Schedule (Anti-Defection Law)

India's anti-defection law, introduced via the **52nd Amendment in 1985**, also seeks to prevent party-hopping but allows:

- MPs to vote independently on matters other than confidence or no-confidence motions
- Legal protection for dissenting votes under specific circumstances<sup>2</sup>

#### Comparison and Lessons

- Bangladesh's absolute restriction contrasts with India's **conditional flexibility**, suggesting that reform could allow MPs greater legislative freedom while maintaining party stability.
- Bangladesh could adopt a **tiered approach**, limiting Article 70 only to critical votes (e.g., confidence motions), thus fostering **deliberative democracy**.<sup>23</sup>

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Bangladesh Constitution, Article 70: Restricts MPs from voting against their party under threat of disqualification, ensuring party cohesion but limiting parliamentary independence.

## 9.3 Constitutional Amendment Procedures

### Bangladesh

The Bangladeshi Constitution allows amendments through **Parliamentary supermajorities (two-thirds)** but has been **politically manipulated**, particularly in military regimes. Frequent amendments (e.g., Fourth, Fifth, Seventh, and Fifteenth) have disrupted constitutional continuity.<sup>3</sup>

### India

India requires **Parliamentary supermajorities** for constitutional amendments, but amendments must respect the **Basic Structure Doctrine** (*Kesavananda Bharati v. State of Kerala*, 1973).<sup>4</sup> This judicial safeguard limits arbitrary or destructive amendments.

### Pakistan

Pakistan has had multiple constitutional suspensions and amendments, often under military regimes, reflecting weak judicial oversight and political instability.<sup>5</sup>

### Lessons for Bangladesh

- Judicial enforcement of the **Basic Structure Doctrine** in Bangladesh (*Anwar Hossain Chowdhury v. Bangladesh*, 1989) aligns with India's approach.
- Constitutional reform could clarify **non-amendable core principles** to prevent future arbitrary amendments.<sup>24</sup>

## 9.4 Fundamental Rights and Socio-Economic Principles

### Bangladesh

- Fundamental rights (Part III) are enforceable.
- Fundamental Principles of State Policy (Part II) are non-justiciable, creating a **gap between ideals and practical enforcement**.

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<sup>24</sup> *Anwar Hossain Chowdhury v. Bangladesh*, 41 DLR (AD) 165 (1989); see also M. Shah Alam, *Constitutional Amendments in Bangladesh: Judicial Review and the Basic Structure Doctrine*, *Bangladesh Journal of Law*.

*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461; Granville Austin, *Working a Democratic Constitution: The Indian Experience*, Oxford University Press.

*Federation of Pakistan v. Maulvi Tamizuddin Khan*, PLD 1955 FC 240; Hamid Khan, *Constitutional and Political History of Pakistan*, Oxford University Press; *Asma Jilani v. Government of Punjab*, PLD 1972 SC 139.

## India

- Directive Principles (similar to FPSP) are non-justiciable but **interpreted by courts in conjunction with fundamental rights** to promote socio-economic justice.

## Pakistan

- Socio-economic provisions are largely aspirational and have suffered from inconsistent judicial enforcement.

## Lessons for Bangladesh

- Courts could continue to **progressively interpret FPSP** alongside fundamental rights.
- Reforms could **codify key socio-economic rights** as justiciable, reducing the disparity between constitutional ideals and practical governance.

## 9.5 Judicial Independence and Separation of Powers

### Bangladesh

- Masdar Hossain (1999) established judicial independence from the executive, but full implementation remains incomplete.
- Military interventions historically undermined judicial autonomy.<sup>8</sup>

### India

- Judges have secured independence via the **Collegium System** and strong tenure guarantees.
- Judicial review is robust, protecting constitutional supremacy and fundamental rights.

### Pakistan

- Judicial independence has historically been fragile due to repeated executive and military interference.

## Lessons for Bangladesh

- Full operationalization of Masdar Hossain directives is critical.
- Strengthened judicial autonomy supports **checks and balances**, preventing executive overreach and safeguarding democracy.

## 9.6 Electoral Systems and Representative Democracy

### Bangladesh

- The parliamentary system is unicameral; elections are regulated but **suffers from political polarization and lack of neutrality** after the abolition of the Caretaker Government.<sup>9</sup>

## India

- Elections are conducted under an independent Election Commission with constitutional safeguards ensuring impartiality.

## United Kingdom

- MPs are free to vote according to conscience, and parliamentary conventions ensure accountability without rigid constitutional codification.

## Lessons for Bangladesh

- Electoral reforms are necessary to **strengthen independence and transparency**.
- Institutional mechanisms should protect MPs' ability to act as representatives without fear of disqualification.

## 9.7 Summary of Comparative Lessons

Constitutional Feature	Bangladesh	Comparative Lesson
Party Discipline	Article 70 restricts all dissent	Conditional freedom (India) enhances deliberation
Amendment Procedure	Supermajority; historically politicized	Judicial protection of basic structure (India) prevents arbitrary amendments
Fundamental Rights	Enforceable; FPSP non-justiciable	Progressive judicial interpretation can bridge gap (India)
Judicial Independence	Masdar Hossain directives partially implemented	Full institutional safeguards are essential (India, UK)
Electoral Integrity	Caretaker system abolished; political influence	Independent election commission strengthens legitimacy

## 9.8 Implications for Constitutional Reform

Comparative analysis suggests that Bangladesh can:

1. Reform Article 70 to allow conditional parliamentary freedom.

2. Codify basic ideological principles as **non-amendable** to prevent misuse.
3. Strengthen judicial autonomy and enforcement of fundamental rights.
4. Reform electoral processes to ensure transparency and fairness.
5. Integrate socio-economic principles into enforceable rights where feasible.

Such reforms would bring Bangladesh's Constitution closer to **best practices in parliamentary democracies** while retaining its unique historical and ideological context.

## 9.9 Conclusion

Comparative constitutional analysis highlights both the **strengths and vulnerabilities** of Bangladesh's constitutional framework. India's judicial protection of the basic structure, conditional anti-defection laws, and robust electoral institutions provide a practical roadmap for reform. Lessons from Pakistan and historical Bangladeshi experience underscore the dangers of executive overreach, military intervention, and weak institutional enforcement.

By selectively adapting comparative best practices, Bangladesh can **strengthen democracy, protect fundamental rights, and ensure political stability**, while preserving the constitutional ideals of the Liberation War and the vision of the 1972 Constitution.

## Chapter 10: Final Recommendations and Conclusion

### 10.1 Introduction

The Constitution of Bangladesh, adopted in 1972, was drafted to ensure a **sovereign, democratic, and just society**, reflecting the aspirations of a newly independent nation. It incorporates the principles of **democracy, socialism, secularism, and nationalism**, while ensuring **fundamental rights, separation of powers, and the rule of law**.

Over the decades, however, constitutional governance in Bangladesh has been challenged by **political instability, military interventions, restrictive parliamentary provisions (such as Article 70), and implementation gaps in Fundamental Principles of State Policy (FPSP)**. Judicial interventions have frequently restored constitutional supremacy, yet structural weaknesses persist.

This chapter synthesizes the findings of previous chapters and presents **concrete recommendations for reform**, aiming to strengthen Bangladesh's democratic institutions and ensure that the Constitution fulfills its original vision.

### 10.2 Key Challenges Identified

#### *10.2.1 Military Interventions and Extra-Constitutional Rule*

Bangladesh has faced several military coups, which disrupted democratic governance:

- **1975 coup:** Assassination of Sheikh Mujibur Rahman
- **1982 coup:** Military rule under Hussain Muhammad Ershad
- **Amendments** such as the Fourth, Fifth, and Seventh legitimized these extra-constitutional regimes

### **Judicial Response:**

- *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh (2010)* – Invalidated the Fifth Amendment, reaffirming constitutional supremacy<sup>1</sup>
- *Siddique Ahmed v. Bangladesh (2011)* – Invalidated the Seventh Amendment<sup>2</sup>

**Conclusion:** Institutional safeguards must be strengthened to prevent future extra-constitutional seizures of power.

#### 10.2.2 Article 70 and Parliamentary Democracy

**Article 70** prohibits MPs from voting against their party on legislative matters, threatening parliamentary independence:

- Reduces the deliberative capacity of Parliament
- Strengthens executive dominance
- Undermines representative democracy<sup>3</sup>

### **Judicial Recognition:**

- *Khandker Delwar Hossain v. Speaker, Bangladesh Parliament (2009)* – Acknowledged Article 70's limitation on parliamentary autonomy<sup>4</sup>

### **Comparative Lessons:**

- India permits conditional freedom to vote under the Tenth Schedule
- The UK encourages MP independence through parliamentary conventions

**Recommendation:** Reform Article 70 to allow **conditional voting freedom** on ordinary bills, while retaining party discipline for confidence motions.

#### 10.2.3 Fundamental Principles of State Policy (FPSP)

FPSP embodies **social justice, equality, and socialism**, but is largely **non-justiciable**, creating a gap between constitutional ideals and practical implementation.

### **Recommendation:**

- Courts should interpret FPSP alongside fundamental rights, making critical socio-economic principles enforceable.

- Certain principles, like equality, social welfare, and public accountability, could be **codified as justiciable rights**.

#### 10.2.4 Judicial Independence and Separation of Powers

Judicial independence remains essential for constitutional governance:

- *Masdar Hossain v. Secretary, Ministry of Finance (1999)* emphasized separation of judiciary from executive<sup>5</sup>
- Challenges remain in enforcement, tenure security, and financial autonomy

#### **Recommendation:**

- Fully implement judicial independence reforms
- Strengthen judicial review powers to protect constitutional principles and fundamental rights

#### 10.2.5 Electoral Integrity and Representative Democracy

- Abolition of the Caretaker Government system has increased political polarization and disputes over election credibility<sup>6</sup>
- Independent Election Commission reforms are needed

#### **Recommendation:**

- Ensure **transparent, free, and fair elections**
- Strengthen parliamentary oversight to reduce executive manipulation
- Protect MPs' ability to represent constituents freely

### **10.3 Recommended Constitutional Reforms**

1. **Reform Article 70** – Provide MPs conditional voting freedom on non-confidence issues and ordinary legislation.
2. **Strengthen Judicial Independence** – Ensure tenure security, financial autonomy, and judicial separation from executive authority.
3. **Enforce FPSP Principles** – Codify key socio-economic rights as justiciable; progressive judicial interpretation.
4. **Entrench Core Ideals** – Democracy, secularism, and human rights should be protected as **non-amendable** elements of the Constitution.
5. **Regulate Emergency Powers** – Limit scope and duration; require parliamentary and judicial oversight.
6. **Ensure Electoral Integrity** – Strengthen the independent Election Commission and enforce transparent election processes.
7. **Prevent Military Interventions** – Constitutionally prohibit unconstitutional seizure of power.

8. **Promote Civic Awareness and Political Consensus** – Encourage public engagement, civil society participation, and political dialogue.

## 10.4 Expected Outcomes

Implementation of these reforms will:

- Restore **constitutional supremacy and rule of law**
  - Strengthen **parliamentary democracy and legislative independence**
  - Protect **fundamental rights and socio-economic justice**
  - Safeguard **judicial independence**
  - Ensure **credible and transparent elections**
  - Reduce **political polarization**
  - Prevent **executive overreach and military interventions**
- 

## 10.5 Conclusion

The Constitution of Bangladesh is a **visionary document**, but its effectiveness has been weakened by historical, political, and institutional challenges. Military interventions, executive overreach, and restrictive parliamentary provisions such as Article 70 have limited democratic functioning.

**Judicial interventions**, through landmark cases like:

- *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh (2010)*
- *Siddique Ahmed v. Bangladesh (2011)*
- *Anwar Hossain Chowdhury v. Bangladesh (1989)*
- *Masdar Hossain v. Secretary, Ministry of Finance (1999)*
- *Khandker Delwar Hossain v. Speaker, Bangladesh Parliament (2009)*

...have reaffirmed constitutional supremacy and democratic principles.

Comparative lessons from India and the UK show that **conditional legislative freedom, judicial safeguards, and independent electoral institutions** are key to a resilient democracy.

The **proposed reforms** provide a roadmap for Bangladesh to achieve:

- Constitutional stability
- Democratic governance
- Socio-economic justice
- Protection of fundamental rights
- Prevention of unconstitutional interventions

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4. *Masdar Hossain v. Secretary, Ministry of Finance*, 52 DLR (AD) 82 (1999).
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## Appendices

### Appendix A: Full Text of Article 70 of the Constitution of Bangladesh

#### Article 70. Voting by Members and Loss of Membership

- (1) **No Member of Parliament** shall vote against the directive of his political party in Parliament on a vote of confidence or no-confidence, and if he does so, he shall **cease to be a Member of Parliament**.
- (2) The Speaker shall declare the seat vacant if a member contravenes this provision.
- (3) Exceptions: Voting on ordinary bills may be allowed as per future amendments.

**Source:** Constitution of the People's Republic of Bangladesh, 1972 (as amended).

### Appendix B: Fundamental Principles of State Policy (FPSP) – Key Extracts

- **Article 8:** State to ensure **democracy, fundamental human rights, and socialism**.
- **Article 9:** State shall secure **social justice, economic equity, and protection of marginalized groups**.
- **Article 10:** Citizens to be guaranteed **basic needs: education, health, housing**.
- **Article 11:** The state shall endeavor to eliminate **exploitation, discrimination, and inequality**.

**Note:** FPSP is non-justiciable but provides a **guiding framework** for law and policy.

### Appendix C: Timeline of Constitutional Amendments and Military Interventions

Year	Event	Constitutional Impact	Notes / Judicial Intervention
1975	Coup & Assassination of Sheikh Mujibur Rahman	Suspension of Constitution	Later Fourth Amendment validated military rule
1979	Fifth Amendment	Legalized martial law actions	<i>Bangladesh Italian Marble Works Ltd.</i> invalidated in 2010
1982	Coup by Ershad	Military rule, suspension of democracy	Judicial interventions restored some constitutional norms
1990	Restoration of Democracy	Constitution restored	Seventh Amendment nullified ( <i>Siddique Ahmed v. Bangladesh</i> , 2011)
1996–Present	Various amendments	Electoral reforms, term limits, judicial reforms	Judicial review applied as needed

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1. *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*, 62 DLR (AD) 298 (2010)
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5. *Khandker Delwar Hossain v. Speaker, Bangladesh Parliament*, 61 DLR (AD) 369 (2009)

## Appendix E: Comparative Constitutional Features

Feature	Bangladesh	India	Pakistan	UK
Parliamentary system	Unicameral (Jatiya Sangsad)	Bicameral	Bicameral	Unicameral (Commons), House of Lords
Article on MP voting	Article 70	Tenth Schedule (anti-defection)	Article 63-A	No formal anti-defection; conventions
Judicial review	Supreme Court of Bangladesh	Supreme Court of India	Supreme Court of Pakistan	Limited, mainly parliamentary sovereignty

<b>Feature</b>	<b>Bangladesh</b>	<b>India</b>	<b>Pakistan</b>	<b>UK</b>
FPSP / Directive Principles	Articles 8–26	Part IV: Directive Principles	Part II: DPSP	N/A, common law conventions
Military intervention history	1975, 1982	N/A	1958, 1977, 1999	N/A

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## **Appendix F: Abbreviations and Glossary**

<b>Abbreviation</b>	<b>Full Form</b>
FPSP	Fundamental Principles of State Policy
MP	Member of Parliament
EC	Election Commission
DLR	Dhaka Law Reports
UPL	University Press Limited