



Sonargaon University (SU)

Research Monograph

On

“Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh”

Research Monograph Submitted for the partial fulfillment of the award of the degree

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Department of Law

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Submitted To

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Letter of Transmittal

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Subject: Submission of Research Monograph on “**Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh**”

Dear Sir,

This is a great pleasure to submit the Research Monograph on “**Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh**” as a partial requirement for the fulfillment of my LL.B course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Yours sincerely

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Declaration

I do hereby declare that the Research Monograph Title “**Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh**” prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B (Hon’s) Degree. This is an original work of mine. No part of this research, in any way or in form, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

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Supervisor Certificate

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.B. program.

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Md. Sagor Hossain

Lecturer

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Thank you

Tasnia Tabassum Smriti

ABSTRACT

The study titled “**Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh**” explores the gap between constitutional provisions and their practical implementation. Although Bangladesh has a comprehensive written constitution that guarantees fundamental rights, separation of powers, judicial independence, and the rule of law, the effective realization of these principles remains limited in practice. This study argues that the main reason behind this gap is the absence of a strong constitutional culture rather than the lack of constitutional provisions.

Constitutional culture refers to the shared values, institutional practices, and civic awareness that ensure respect for constitutional norms in governance. In its absence, constitutionalism becomes largely formal and fails to influence political and administrative behavior effectively. The study identifies several key factors responsible for this situation, including political influence over state institutions, weak judicial independence, administrative inefficiency, corruption, delays in the justice system, and limited constitutional awareness among citizens.

Using a qualitative analytical approach based on secondary sources, the study examines how these factors weaken the rule of law and institutional accountability. The findings reveal that despite having a strong constitutional framework, Bangladesh faces serious challenges in implementing constitutional principles effectively. The study concludes that strengthening the rule of law requires not only legal reforms but also the development of a strong constitutional culture through institutional independence, civic education, and political commitment to constitutional norms.

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Chapter One

Introduction

1.1 Introduction

Constitutionalism is widely regarded as the cornerstone of modern democratic governance, where state power is limited and regulated by a supreme legal framework known as the constitution. It ensures that governmental authority is exercised within legally defined boundaries and is subject to accountability, transparency, and respect for fundamental rights. In its ideal form, constitutionalism prevents arbitrary governance and establishes the rule of law as the guiding principle of the state.¹

However, the effectiveness of constitutionalism depends not only on the existence of a written constitution but also on the presence of a strong constitutional culture. Constitutional culture refers to the shared political values, institutional practices, and civic attitudes that ensure respect for constitutional norms in everyday governance. Without such a culture, constitutional provisions may remain symbolic and fail to influence actual political and administrative behavior.²

In the context of Bangladesh, the Constitution of 1972 provides a comprehensive legal framework that includes guarantees of fundamental rights, separation of powers, judicial independence, and accountability of public institutions. Despite these constitutional provisions, the practical implementation of constitutional principles has often been inconsistent. Over the years, concerns have been raised regarding executive dominance, politicization of institutions, delays in the judicial process, and challenges in ensuring equal application of law. This gap between constitutional design and constitutional practice has led scholars to describe the situation as “constitutionalism without constitutional culture.” This concept highlights the contradiction between constitutional ideals and institutional realities, where legal frameworks exist but are not fully reflected in governance practices. As a result, the rule of law becomes fragile and uneven in its application.

¹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (1885), pp. 202–203

² András Sajó, “Constitutional Culture: A Contextual Analysis,” *International Journal of Constitutional Law*, Vol. 1, No. 1 (2003), pp. 1–25

One of the key challenges in Bangladesh is the limited independence of key institutions, particularly the judiciary and public administration. Institutional decision-making is often influenced by political considerations, which weakens neutrality and accountability. This affects the consistency of legal enforcement and undermines public confidence in the justice system. Another important factor is the lack of widespread constitutional awareness among citizens. A strong constitutional culture requires that people understand their rights and responsibilities under the constitution and actively demand accountability from state institutions. When such awareness is limited, institutional inefficiencies and governance weaknesses tend to persist without significant resistance.³ Additionally, structural problems such as case backlogs, procedural delays, and resource constraints within the justice system further weaken the effectiveness of the rule of law. When justice is delayed or appears inaccessible, public trust in constitutional institutions declines, even if legal safeguards formally exist. Against this background, the present study titled “Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh” aims to critically examine the gap between constitutional ideals and practical governance. It explores the political, legal, and social factors contributing to this gap and assesses how the absence of a strong constitutional culture affects the functioning of the rule of law. The study also seeks to provide recommendations for strengthening constitutional governance and institutional accountability.

In essence, constitutionalism can only be effective when it is supported by a strong constitutional culture that embeds democratic values into both institutions and society. Without this integration, constitutional provisions risk remaining theoretical rather than practical in nature.

1.2 Objectives of the Study

Board Objectives

The preface of the Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh.

Specific Objectives

1. To explain the theoretical concepts of constitutionalism, constitutional culture, and rule of law.

³ The Constitution of the People’s Republic of Bangladesh, Articles 26–44

2. To examine the constitutional framework of Bangladesh, particularly its provisions related to governance and fundamental rights.
3. To identify the gap between constitutional provisions and their practical implementation in state institutions.

1.3 Statement of the Problem

The concept of constitutionalism is founded on the principle that all state power must operate within the limits of a written constitution and in accordance with the rule of law. In theory, the Constitution of Bangladesh provides a strong legal framework for ensuring fundamental rights, separation of powers, judicial independence, and accountability of public institutions. However, despite the existence of these constitutional guarantees, there remains a significant gap between constitutional ideals and their practical implementation. In practice, the effectiveness of constitutional governance in Bangladesh is often questioned due to various institutional and structural challenges. Issues such as political influence over state institutions, delays in the judicial process, administrative inefficiency, and weak enforcement of legal provisions have contributed to the fragility of the rule of law. As a result, constitutional provisions that are intended to protect citizens' rights and ensure justice are not always effectively realized. A major concern is that the problem does not lie solely in the constitutional framework itself, but in the absence of a strong constitutional culture that supports and sustains constitutional norms in everyday governance. Constitutional culture requires respect for legal institutions, adherence to democratic values, and active civic engagement. However, in Bangladesh, such a culture remains underdeveloped, leading to inconsistency between constitutional provisions and their actual application. This gap between constitutionalism in theory and constitutionalism in practice has created a situation where the rule of law is often perceived as weak and unevenly applied. Consequently, public trust in legal and constitutional institutions is affected, and accountability mechanisms become less effective.

1.4 Significance of the Study

This study is significant as it critically examines the gap between constitutional principles and their practical implementation in Bangladesh, particularly in relation to the concept of constitutionalism without constitutional culture. Although Bangladesh

has a well-established constitutional framework, the effectiveness of governance often depends on how far constitutional norms are respected in practice. This research helps to understand why the rule of law remains fragile despite the existence of strong legal provisions.

Academically, the study contributes to constitutional and political scholarship by linking constitutional theory with real governance challenges. It also enriches the understanding of constitutional culture as a key factor in ensuring institutional accountability and democratic stability. For policymakers, the findings may provide useful insights into improving institutional performance, strengthening judicial independence, and reducing political interference in state institutions.

Furthermore, the study is relevant for legal practitioners, researchers, and civil society organizations working on governance and human rights issues. It highlights the importance of civic awareness and institutional reforms in strengthening the rule of law. Overall, the study emphasizes that constitutional development is not only a legal process but also a cultural and institutional one.

1.5 Scope and Limitations of the Study

Scope of the Study

This study focuses on analyzing the gap between constitutionalism and constitutional culture in Bangladesh. It examines the constitutional framework of Bangladesh, the functioning of key state institutions, and the challenges affecting the rule of law. The study primarily relies on qualitative analysis of secondary sources such as books, journal articles, legal documents, reports, and constitutional provisions.

The scope is limited to understanding how political, institutional, and social factors influence the implementation of constitutional principles. It does not involve field-based empirical surveys or quantitative data collection.

Limitations of the Study

The study is limited by its reliance on secondary data, which may not fully capture current real-time institutional practices. Time and resource constraints also limit the depth of field-level investigation.

Additionally, constitutional and political conditions are dynamic, and changes occurring after the collection of data may not be fully reflected in this study. Despite these limitations, the study provides a comprehensive analytical overview of the subject matter.

1.6 Methodology

This study adopts a qualitative research methodology based on doctrinal and analytical approaches. The research primarily relies on secondary sources of data, including constitutional texts, scholarly books, journal articles, research papers, government reports, and relevant legal documents.

The Constitution of Bangladesh (1972) serves as the primary legal source for analyzing constitutional provisions and institutional frameworks. Secondary literature is used to understand theoretical concepts such as constitutionalism, constitutional culture, and the rule of law.

The data collected is analyzed using a descriptive and analytical method. The study compares constitutional principles with practical governance realities to identify gaps between theory and practice. It also applies a critical approach to assess institutional weaknesses and the factors responsible for the fragility of the rule of law.

No primary survey or field interviews were conducted in this study. The methodology is therefore fully based on documentary and literature-based analysis.

Chapter Two

Conceptual Framework

2.1 Concept of Constitutionalism

Constitutionalism is a political and legal philosophy that emphasizes that government authority must be limited, regulated, and guided by a supreme legal document known as the constitution. It is based on the idea that state power is not absolute and must operate within defined legal boundaries to prevent arbitrary rule and protect individual rights. In a constitutional system, the constitution serves as the highest law of the land, and all organs of the state—executive, legislature, and judiciary—are bound by it. At its core, constitutionalism ensures the supremacy of law over the will of rulers. It promotes accountability, transparency, and the protection of fundamental rights through legally established mechanisms. A key feature of constitutionalism is the principle of the rule of law, which requires that all individuals and institutions, including government authorities, are equally subject to the law.⁴

In modern democratic theory, constitutionalism is not limited to the existence of a written constitution; rather, it includes the effective implementation of constitutional norms and values in practice. This includes separation of powers, judicial independence, checks and balances, and protection of human rights. Without these supporting mechanisms, a constitution may exist only in form but fail in substance.

In the context of Bangladesh, constitutionalism is formally established through the Constitution of 1972, which provides a detailed framework for governance, fundamental rights, and institutional structures. However, the practical realization of constitutionalism often depends on political culture, institutional integrity, and public awareness. Where these elements are weak, constitutionalism becomes fragile and may fail to effectively restrain the exercise of state power.

Thus, constitutionalism can be understood both as a legal framework and as a living political practice. Its success depends not only on written provisions but also on the willingness of institutions and citizens to uphold constitutional values in everyday governance.

⁴ Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (Boston: Ginn and Company, 1950), 25.

Constitutionalism is a political and legal philosophy that advocates the limitation of governmental power through a constitution and the rule of law. It is based on the principle that governmental authority should not be exercised arbitrarily but must operate within a framework of established legal norms and democratic values. Constitutionalism seeks to ensure accountability, separation of powers, protection of fundamental rights, and respect for democratic governance. A constitution under constitutionalism serves not merely as a legal document but as a mechanism for controlling state power and safeguarding citizens' liberties. In modern democratic states, constitutionalism requires that all public institutions, including the legislature, executive, and judiciary, function within constitutional boundaries and remain subject to legal scrutiny.

The essence of constitutionalism lies in the supremacy of the constitution over all governmental actions. It emphasizes limited government, checks and balances, judicial review, and the protection of individual freedoms. Constitutionalism also requires political actors to respect constitutional norms and values beyond the literal text of the constitution. Therefore, a constitution alone does not guarantee constitutionalism; rather, constitutionalism depends upon adherence to constitutional principles by both state institutions and citizens.⁵

2.2 Concept of Constitutional Culture

Constitutional culture refers to the set of shared values, attitudes, traditions, and institutional practices that ensure respect for constitutional norms in a political system. It goes beyond the written constitution and focuses on how constitutional principles are understood, accepted, and practiced by political actors, institutions, and citizens in everyday governance.⁶

A strong constitutional culture ensures that all branches of government—executive, legislature, and judiciary—operate within constitutional limits and respect the principle of accountability. It also requires citizens to be aware of their constitutional rights and responsibilities and to actively participate in protecting democratic values.

⁵ Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (2nd ed., New York: New York University Press, 1997), 309.

⁶ Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (1885).

In this sense, constitutional culture transforms constitutionalism from a legal document into a living practice.

In the absence of a strong constitutional culture, even a well-drafted constitution may fail to ensure good governance. Institutions may become vulnerable to political influence, and constitutional provisions may be applied selectively rather than uniformly. This leads to a gap between constitutional ideals and actual political behavior.

In the context of Bangladesh, constitutional culture remains a developing concept. Although the Constitution of 1972 establishes a strong legal framework for democracy, rule of law, and fundamental rights, the consistent application of these principles depends on institutional discipline and political commitment. Weak institutional accountability, limited civic awareness, and politicization of state structures often hinder the development of a strong constitutional culture.⁷

Therefore, constitutional culture can be understood as the practical embodiment of constitutionalism in society. It is not only about laws and institutions but also about values, norms, and behaviors that sustain constitutional governance in practice.

2.3 Rule of Law: Meaning and Principles

The rule of law is a foundational principle of constitutional governance that ensures that all individuals and institutions, including the state, are subject to and governed by law. It prevents arbitrary use of power and guarantees equality before the law. Under this principle, laws must be applied fairly, consistently, and transparently.

Key principles of the rule of law include:

- **Supremacy of law:** Law is the highest authority in the state.
- **Equality before law:** All individuals are treated equally under the legal system.
- **Accountability:** Government officials are accountable for their actions.
- **Fairness and justice:** Legal processes must be impartial and just.
- **Independent judiciary:** Courts must be free from external influence.
- **Legal certainty:** Laws should be clear, predictable, and stable.

⁷ Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (1989)

In practice, the rule of law is not only a legal doctrine but also an institutional and cultural reality. It depends on the strength of institutions, the independence of the judiciary, and the willingness of political actors to respect legal boundaries.

In many developing democracies, including Bangladesh, challenges such as delays in justice, political interference, and unequal enforcement of laws often weaken the effective implementation of the rule of law, even when constitutional guarantees exist.

2.4 Relationship between Constitutionalism and Constitutional Culture

Constitutionalism and constitutional culture are closely interconnected concepts. Constitutionalism provides the legal and institutional framework that limits state power and ensures governance according to constitutional principles. Constitutional culture, on the other hand, ensures that these principles are respected, internalized, and practiced in real life.

Without constitutional culture, constitutionalism remains formal and symbolic. A written constitution may exist, but its principles may not be effectively implemented due to lack of political commitment, institutional integrity, or civic awareness. Conversely, a strong constitutional culture strengthens constitutionalism by ensuring that institutions function within their constitutional limits.⁸

In this relationship, constitutionalism can be seen as the **structure**, while constitutional culture is the **spirit** that sustains it. Both are necessary for the effective functioning of the rule of law. When they operate together, they create a stable democratic system where power is regulated, rights are protected, and accountability is ensured.

In Bangladesh, the gap between constitutionalism and constitutional culture is often cited as a key reason for weak rule of law enforcement. While constitutional structures exist, the cultural and institutional commitment to uphold them remains uneven, leading to governance challenges.

⁸ András Sajó, “Constitutional Culture,” *International Journal of Constitutional Law* (2003)

2.5 Theoretical Perspectives on Constitutional Governance

Several theoretical perspectives explain constitutional governance and its challenges:

1. Legal Positivism

Legal positivism emphasizes that law is valid if it is properly enacted, regardless of moral considerations. However, it may overlook the importance of values and culture in ensuring effective governance.

2. Natural Law Theory

This theory argues that law should be based on moral principles such as justice and fairness. Constitutional governance, therefore, must reflect ethical values to be legitimate.

3. Constitutional Institutionalism

This perspective focuses on the role of institutions in shaping governance outcomes. Strong institutions ensure effective implementation of constitutional principles.

4. Political Culture Theory

This theory highlights the importance of shared political values and norms. A democratic constitutional system requires citizens and institutions that respect constitutional rules.

5. Rule of Law Theory

This approach emphasizes equality before law, judicial independence, and accountability as essential components of constitutional governance.

Together, these theories show that constitutional governance is not only a legal arrangement but also a political and cultural system.

2.6 Review of Relevant Literature

Existing literature on constitutionalism and rule of law highlights the importance of both legal frameworks and institutional practices. Scholars such as A.V. Dicey emphasized the supremacy of law and equality before law as central to constitutional governance. Modern scholars further argue that constitutional effectiveness depends on institutional integrity and political culture.⁹

Studies on developing democracies suggest that many countries face a gap between constitutional design and constitutional practice. In South Asian contexts, including Bangladesh, research indicates that while constitutional frameworks are often well-

⁹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution*

developed, implementation is weakened by political interference, weak institutions, and limited civic awareness.

Recent literature also highlights the concept of constitutional culture as a critical missing link. Without it, constitutionalism becomes formalistic, and rule of law remains fragile. Scholars argue that strengthening institutions alone is not sufficient unless supported by cultural and behavioral change within the political system and society.

2.7 Research Gap

Although significant research exists on constitutionalism, rule of law, and governance in Bangladesh, most studies focus primarily on institutional and legal dimensions. There is limited comprehensive analysis that integrates the concept of **constitutional culture** as a central explanatory factor for the fragility of the rule of law.

Furthermore, existing literature often treats constitutionalism and governance challenges separately, without adequately exploring their interdependence with political culture and civic awareness. This study addresses this gap by focusing on the concept of “**constitutionalism without constitutional culture**” and examining how its absence contributes to weak rule of law implementation in Bangladesh.

By combining legal, institutional, and cultural perspectives, this research provides a more holistic understanding of constitutional governance challenges and contributes to filling an important gap in existing academic discourse.¹⁰

¹⁰ Bruce Ackerman, *We the People* (1991)

Chapter Three

How Is Constitutionalism In Bangladesh Ensured In Bangladesh

The concept of Constitutionalism in Bangladesh though can be traced in the nature of its written characteristics, rules of construction, its rigidity and special procedure required for amendment, and by applying the doctrine of basic structure but in substance, Constitutionalism in Bangladesh would become meaningless unless people could be made active participants and beneficiary from the constitutional governance, i.e. the rule of law, enjoyment of rights and freedom with dignity and honour as an equal citizen enjoying protection of law and equal treatment and opportunity in accordance with law. They must also have the right to information, freedom of opinion and association with active participatory role in policymaking. People are not only to be perceived as source but also as owners of power, a power which can be exercised through effective mechanism of representation coupled with accountability at all levels. Such mechanism is necessary for ensuring the peoples participation into the entire process of governance. People therefore must be empowered not merely in theory as may now belong to them but such powers need to be exercised in actual practice, almost on daily basis and in all interaction as citizens.¹¹

3.1 Constitutionalism in Bangladesh Exists In Bangladesh Are Illustrates Below

The following points will help clarifying how the constitution supremacy is ensured in the constitution of Bangladesh.

Firstly, the constitution of Bangladesh is a written one. It specifies the organs of the government will be exercised. It is a rigid constitution. Because it can be amended only by two thirds majority (Art.142). Again, to amend some provisions like the preamble, the form of government (Article 48 & 56) and fundamental principles of state policy (Art.8) a more stringent method has been provided for. In these cases even after the bill has been passed by two-thirds majority, a referendum is essential. This rigidity, therefore, impose restriction on the power of the parliament on the one hand and ensures distinction between ordinary law and fundamental law on the other hand.

¹¹ Article 1 of the Bangladesh Constitution provides: 'Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh'.

Secondly, It is the constitution and not the parliament which is supreme under the constitution of Bangladesh. This is because, firstly, it is stated in the preamble that “it is our sacred duty to safeguard, protect and defend this constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh.”

Thirdly, ‘The Constitution declares that the sovereignty lies with the people and the Constitution is the embodiment and solemn expression of the will of the people.’ The topic statement is taken from the article 7 of Bangladesh constitution which is given as follows: “The Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void. “This article 7 is a declaration that Constitution is the supreme and fundamental law of the country and every other law should be consistent with it. The focus of the statement assumes that rather than parliamentary Supremacy which is in Britain, Bangladesh has Constitutionalism in Bangladesh. That means Constitution is supreme over the Parliament and the Parliament requires to work within the boundary set by the Constitution. The constitution supremacy is further characterized by its written form and rigidity.¹²

Fourthly, Article 26 states that “All existing laws inconsistent with the provisions of this part (i.e. fundamental rights) shall, to the extent of such inconsistency, become void on the commencement of this constitution. The state shall not make any law inconsistent with the provisions of this part, and any law so made shall to the extent of such inconsistency be void.

Fifthly, Article 65 states that the legislative powers of the republic shall, subject to the provision of this constitution, be vested to the parliament. The declaration of Constitutionalism in Bangladesh in the constitution implicitly presupposes the existence of an independent authority to examine the constitutionality of actions taken by the legislative and executive. To that end the constitution of Bangladesh has ensured in Articles 94 and 95 an independent organ- the Supreme Court. Under articles 102 the Supreme Court has been empowered to scrutinize the governmental actions done in violation of fundamental rights. Again, under Articles 7 and 26 the Supreme Court exercises the power of judicial review i.e to examine the constitutionality of any law passed by the parliament. And a glaring example to this is

¹² Ibid. p. 35

the historic Eight Amendment case. In that case the Supreme Court held the Eight Amendment to the constitution unconstitutional and invalid.

Furthermore, the Constitution created the Parliament where the latter works within the bindings set by the constitution itself. Judiciary Supremacy is the other name for the Constitutionalism in Bangladesh. The reason lies in the fact that highest court of the land is supreme over the legislature and look over the legislation made by the parliament in order to make sure that it fall within the limitations of the Constitution. Thus it is clear that the constitution declares itself to be supreme over the parliament.

3.2 Survival and supremacy of the constitution of Bangladesh

Constitution is framed for ages to come and is designed to approach immortality as near as human institutions can approach. In tracing the immortality of constitution, Chief Justice Marshall conceptualizes the basic structure of the constitution as he reminds that ‘The people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness. The exercise of this original right is a very great exertion: nor can it nor ought it to be frequently repeated. The principles therefore, so established, are deemed fundamental. And as the authority from which they proceed is Supreme, and can seldom act, they are designed to be permanent. ‘Constitution has close relationship, as already indicated, with culture and convention based on its history and past civilization. Working of it ultimately depends on the genius of the people who work the constitution.’¹³

3.3 Context in which the constitution should be read

In order to understand the true meaning and message of the constitution, it is most important to know the history and background in which the constitution was originally crafted by the framers. The proclamation of independence, the first constitutional document, asserted the sovereignty of ‘the people of Bangladesh whose will is supreme.’ We fought for our independence, for self-governance, equality, dignity and social justice and in order to achieve those goals we formed an orderly and just government to pursue the war of independence by way of reiterating and

¹³ Article 1 of the Bangladesh Constitution provides: ‘Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh’.

confirming the declaration of the independence made by the undisputed leader of the people, Bangabandhu Sheikh Mujibur Rahman, at the striking hour of the midnight of March 25, 1971 while Yahia's army was committing orgy of genocide in Dhaka killing students and teachers on the campus of Dhaka University, vendors and dwellers, burning newspaper offices, and employees of the media and the press club, street dwellers and those living in bastis. Our voice of independence rung with a clarion call for the people to rise in unity to repel the enemies with the strategy to act at the striking hour as indicated by the father of the nation in his historic speech on March 7, 1971.

The oath of allegiance as was taken in the name of our martyrs and freedom fighters as the first government took oath under the proclamation of independence (recognised as the genesis of the Bangladesh constitution by Justice Badrul Haider Chowdhury in his judgement in 8th amendment case.) This continues to create the bonding of our people as reflected in the preamble of the constitution by virtue of its eternal oath echoed in each generation passing like torch of freedom from one generation to another.¹⁴

3.4 Themes of Our Constitution

The main theme of the constitutional system from its genesis is the empowerment of our people to whom all the powers of the republic belong (Article 7). The vitality of our republic depends on the vitality of our people and those who are assigned—elected and otherwise—for managing the affairs of the republic. They must act not as masters but as trustees for, and on behalf of, the people. It is they who must be made accountable in every respect being actively conscious that any and all the powers that they exercise do not belong to them but those powers belong to none but the people. They are duty bound in ensuring each citizen the most important right 'to enjoy the protection of the law and to be treated in accordance with the law, and only in accordance with law is the inalienable right of every citizen wherever he may be and of every other person for the time being within Bangladesh and in particular no action

¹⁴ Article 152(1) of the Bangladesh Constitution defines the term, 'law' as any Act, ordinance, order, rule, regulation, by-law, notification, or other legal instruments, and any custom or usage, having the force of law in Bangladesh.

detrimental to the life, liberty, reputation or property of any person shall be taken except in accordance with law' (Article 31).

'Human dignity' as perceived in the proclamation of independence itself is further expounded in the whole chapter of fundamental Rights (Part II) in a composite form not only to be protected but sustained by blowing life into it by fulfilling the fundamental principles of state policy (Part III). Such basic features as the rule of law (Article 31), republican character, separation of power, independence of judiciary, representative government, secular and equal participation in the republic are integral and inalienable part of the concept that all powers of the republic belong to people. Republic is defined as a democracy working of which should ensure fundamental rights, human dignity as provided under Article 11 as follows: 'Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.'

3.5 Amendments of Constitution

As of until 2013 the Constitution of the People's Republic of Bangladesh has been amended 15 times.

Summary of 15 Amendments:

Amendments	Date	Summary of substance
1st Amendment	15th July 1973	To make way for prosecution of genetic crime against humanity and war crimes committed in the liberation war of 1971.
2nd Amendment	22nd September, 1973	Inclusion emergency provision suspension of fundamental rights and preventive detention.
3rd Amendment	28th November 1974	To give effect to the boundary line treaty between Bangladesh and India.
4th Amendment	25th January, 1975	One party dictatorial system was subsisted for a responsible parliamentary system.
5th Amendment	6th April, 1979	Legalising all acts done by the first Military Authority
6th Amendment	10th July, 1981	To make way for the Vice President to be a candidate in president election.

7th Amendment	10th November, 1986	Legalising all acts done by the 2nd Military Authority.
8th Amendment	9th June, 1988	Setting up six permanent Benches of the High Court Division and making 'Islam' the state religion.
9th Amendment	11th July, 1989	Direct election of the president and the Vice-President simultaneously.
10th Amendment	23rd June, 1990	Period for reservation of 30 women members seats in the parliament was extended for 10 years.
11th Amendment	10th August 1991	Legalising the appointment of Shahabuddin Ahmed, Chief Justice of Bangladesh as Vice President of Bangladesh and his all activities as the Acting President and then the return to his previous position of the Chief Justice of Bangladesh.
12th Amendment	18th September, 1991	Reintroducing the parliamentary system.
13th Amendment	28th March, 1996	Provision for Caretaker Government.
14th Amendment	16th May 2004	Provision regarding women in the parliament
15th Amendment	30th June 2011	Omitted of Non-party Care-Taker Government

3.6 Importance of Separation of Power

The constitution itself tries to give some design and the basic structure. The first step is to make sure that there is no absolute power. Human experience is that power corrupts and absolute power corrupts absolutely.

'Political liberty is to be found only when there is no abuse of power. But constant experience shows us that every man invested with power is liable to abuse it, and to carry his authority as far as it will go.... To prevent this abuse, it is necessary from the nature of things that one power should be a check on another... when the legislative and executive powers are united in the same person or body.... there can be no liberty.... Again there is no liberty if the judicial power is not separated from the legislative and the executive.... There would be an end of everything if the same person or body, whether of the nobles or of the people were to exercise all these powers. 'Although a complete separation of powers without some overlapping or coordination may not be possible, the prime caution as contained in this doctrine remains valid. There is the need for expert committees to sit and study the working of

judicial administration in other neighbouring countries including the one in Singapore so that a sinless administrative mechanism for judicial administration may play its rightful role relieving the judges the extra load they have to carry with poor administrative and support service.

Chapter Four

Case Report

4.1 Case Reports of Constitution Amendment Issues

Our constitution has been amended 15 times and some of the amendments like the 5th amendment purporting to legitimize the extra-constitutional taking over the power by martial law proclamation by Khondokar Mushtaq Ahmed, ultimately inherited by General Zia. Since having been declared as ultra vires to the constitution, there seems to be no scope for usurping the power under the constitution same fate was met by the 7th amendment.¹⁵

4.2 The Fifth Amendment and Seventh Amendment Case

The common aspects of the 5th and 7th amendments of the constitution of Bangladesh are that they both were promulgated by the military rulers. In both amendments it tried to legitimise the martial law executed during their dictatorial presidential period. *Khondker Delwar Hossain v Bangladesh Italian Marble Works Ltd*. Ultimately and at last both the High Court Division and the Appellate Division as finally gave judgement in *Delwar Hossain v Bangladesh Italian Marble Works Limited*. The Appellate Division reviewed in this case the judgement delivered in *Halima Khatun v Bangladesh* and that of *Ehteshamuddin v Bangladesh* and of *Haji Jainal Abedin* and of *Nasiruddin*. The Appellate Division gave its final judgement and the salient features of the judgement are: ‘This is no amendment of the Constitution even in the plain eyes, but destruction of the basic character of the Constitution by a Proclamation Order issued by the CMLA. But the Second Parliament ratified and validated the said Proclamation Order No. 1 of 1977 by the Fifth Amendment. Not only the Proclamations but also Martial Law Regulations and Martial Law Order made under the various Proclamations, were also ratified and validated. ‘Under the above noted Proclamations, a couple of hundred MLRs and MLOs were made from time to time to suit the needs of the usurper, since the promulgation of the Martial Law on August 20, 1975, till it was withdrawn on April 7, 1979. All those validated by the Fifth Amendment, passed on April 6, 1979. ‘We have already discussed as to how our Constitution is supreme and under the Constitution all the powers and functions of the

¹⁵ *Abdul Mannan Khan v Bangladesh* [2012] 64 DLR (AD) 169 (*Abdul Mannan case*).

Republic are vested in the three organs of the Government, namely, Legislature, Executive and Judiciary and since all these organs owe their existence to the Constitution, which is the embodiment of the will of the people as held by the superior Courts, the basic features of the Constitution cannot be changed by Proclamations, Martial Law Regulations or Orders.

‘From the analysis of Proclamations, MLRs, and MLOs and the findings of our Apex Court as stated above, it is crystal clear that the Constitution was made subordinate and subservient to the Proclamations dated August 20, 1975, November 8, 1975 and November 29, 1976 and the Martial Law Regulations and as such those are ultra vires the Constitution. There is no provision in the Constitution which is ‘Supra Constitutional’ or to put it mildly, ‘Extra Constitutional’. All laws or provisions and actions taken thereon must, without any exception, conform to the Constitution. Any law or provision, which is beyond the ambit of the Constitution, is ultra vires and void and as such non-set in the eye of law. The doubtless supremacy of the Constitution is far above all institutions, functionaries and services it created.’ The Appellate Division also held that: ‘We have held earlier in general that there was no legal existence of Martial Law and consequently of no Martial Law Authorities, as such, all Proclamations etc. were illegal, void ab initio and non est in the eye of law. This we have held strictly in accordance with the dictates of the Constitution, the supreme law to which all the Institutions including the Judiciary owe its existence. We are bound to declare what have to be declared, in vindication of our oath taken in accordance with the Constitution, otherwise, we ourselves would be violating the Constitution and the oath taken to protect the Constitution and thereby betraying the Nation. We had no other alternative; rather, we are obliged to act strictly in accordance with the provisions of the Constitution.’ The Appellate Division finally held dismissing the leave petition that: ‘While dismissing the leave petitions we are putting on record our total disapproval of Martial Law and suspension of the Constitution or any part thereof in any form. The Perpetrators of such illegalities should also be suitably punished and condemned so that in future no adventurist, no usurper, would dare to defy the people, their Constitution, their Government, established by them with their consent. However, it is the Parliament which can make law in this regard. Let us bid farewell to all kinds of extra constitutional adventure forever.’ The 7th amendment was conducted by another military authority Hussein Muhammad Ershad. There was

not much adding to the constitution unlike the 5th amendments, may be because after the 5th amendment the model of the constitution pretty much suited to Ershad for remaining in the power as president.

Finally in *Siddique Ahmed v Bangladesh* 2010 the 7th amendment was been declared void as it stated that ‘Martial law is totally alien a concept to our Constitution.’¹⁶

4.3 Caretaker Government and the 13th Amendment

Background: In 1991 the historic fifth Parliamentary Election was held under acting president Justice Shahabuddin Ahmad with a view to restoration of liberal democracy from the bondage of military dictatorship forcing President Ershad to resign on the face of mass upsurge against the military rule. The election was nationally and internationally recognized as free and fair. The BNP won majority seats in parliament and formed the government. In the meanwhile there were number of bi-elections run in a manner which could hardly be termed as free and fair. Most naked and glaring violation took place in Magura bi-election. The chief election commissioner himself left Magura in despair soon before the poll. Worst, the chief election commissioner put his rubberstamp on the election result which was known to everyone as being heavily rigged. This election manipulation has earned a branding of ‘Election Magura’ in the election politics of Bangladesh. This further infuriated the opposition who demanded that the following elections ought to be held under a neutral caretaker government, if necessary by amending the constitution. They started boycotting parliament and decided that they would not go back to parliament till a ‘caretaker government’ was introduced in parliament. The government did not pay heed to this demand. On December 28, 1994 about 147 MPs resigned in protest. When the government proceeded to hold by-election in 142 vacant seats the political impasse took more outrageous condition leading to continuous countrywide strike. On November 24, 1995 the government dissolved the 5th parliament and the 6th parliamentary election was scheduled on February 15, 1996. But since the government did not pay any attention to the demand for caretaker government by the opposition, all the opposition parties boycotted election. The ruling party BNP alone proceeded to contest election and the result of the election added fuel to the fire-like opposition movement. All the opposition parties launched their countrywide

¹⁶ *Anwar Hossain Chowdhury and Others v Bangladesh* [1989] BLD (SPL) 1 (*Anwar Hossain Chowdhury case*).

movement and demanded the fall of government as well as the dissolution of the 6th parliament. The whole politico-economic condition of the country was leading towards a complete deadlock. Lastly finding no other way out BNP government introduced the caretaker government Bill (the 13th amendment of the constitution) on March 21 at the first session of the 6th parliament. The bill was passed on March 26. Then the 6th parliament after seven days of its life was dissolved on March 30 and Justice Habibur Rahman, last retired chief justice, was appointed as the chief adviser of the caretaker government as envisaged under the 13th amendment.

4.3.1 The 13th amendment

This amendment was passed with 268-0 votes on March 26, 1996 and it became law on March 28. The amendment added a new chapter (Chapter IIA: Non-Party Caretaker Government) in part IV of the Constitution with 5 new articles (58A, 58B, 58C, 58D and 58E). It also amended articles 61, 99, 123, 147, 152, and the Third Schedule of the constitution.

4.3.2 Controversy Over the Role of Caretaker Government

Caretaker government under our constitution is an institution which is the result of the collective wisdom of our people achieved through a great struggle and sacrifice for the purpose of bringing back democracy on the track. We cannot forget that it was often dislodged and distorted through unconstitutional means. In the past there had been many unconstitutional interventions in which the generals and even some judges (i.e. Justice Sayem, Justice Sattar, Justice Ahsan Uddin) joined. In order to avoid such catastrophe, the interim government was designed as an institution to be composed not only of people but of clear guide lines were provided. That is why former chief justice was designated to head this government, on the assumption that they would exercise prudence and restraint as demanded of them in this circumstance, which the judges are used to by virtue of their own discipline, as expected.

However, during the last caretaker government, the president assumed the office of the chief adviser. It was without any valid legal and constitutional claim to the office. It was challenged by way of a writ petition in the High Court Division on the premises that Justice KM Hasan having expressed his unwillingness and by refusing to assume the office of the chief adviser vide a letter dated 27.10.06 addressed to the

president. This letter was not made public causing an undue delay of one day. And in the evening of 28.10.2006 the president through his military secretary approached Justice Mahmudul Amin Choudhury and enquired whether he will also feel embarrassed to be the chief of the caretaker government, to which Justice Choudhury responded by saying that he never felt embarrassed in hearing of any case before his court, nor would he feel embarrassed now to accept the responsibility as chief adviser. On the same evening the same military secretary to the president approached Justice Hamidul Haque to scout for a letter of embarrassment. However, Justice Hamidul Haque also was willing if it was acceptable to all. In this backdrop it will continue to haunt our history how President Iajuddin could assume or rather usurp the power of chief adviser skipping over all the steps stipulated under the constitution.¹⁷

All the opposition parties instead of going on the street advisedly came before the court for declaring the assumption by President Iajuddin as chief adviser to be declared illegal and for the direction for Justice Mahmudul Amin Chowdhury to be appointed chief adviser according to the constitutional mandate; and for cancellation of the election schedule published without lawful preparation and publication of the voter list as directed by the apex court.

The High Court Division consisting of Justice Awlad Ali and Justice Mainul Islam Chowdhury heard the case for two days and was about to dictate the rule already formulated whereupon the then attorney general pleaded that the rule be issued at 2:00pm after the lunch break when he wanted to cite a precedent. After the break he arrived with a paper containing an order of the chief justice obtained from his residence staying the proceeding in both the writ petitions. The rest of the story that followed since 1/11 is known to all and need not be repeated. On that day, I realised the greatest fault with the interim government to be headed by a former chief justice.

4.3.3 Omitted of Non-party Care-Taker Government on 15th Amendment

The Supreme Court on May 10, 2011 declared that ‘The Constitution (Thirteenth Amendment) Act 1996 (Act 1 of 1996) is prospectively declared void and ultra vires the Constitution’, which means that the constitutional provision for the creation of a

¹⁷ Ibid. p 55

non-party caretaker government system in the country was illegal. The apex court repealed the 13th amendment in the constitution, but observed that the next 10th and 11th parliamentary elections may be held under the system to avoid any chaos. The apex court, however, observed that parliament, meanwhile, is at liberty to amend the law under which the former chief justice or any other former judges of the Appellate Division of the Supreme Court are not involved in the non-party government system in the next two elections.

One has to admit that in the desperate rush in 1996 the 13th amendment was made under the increasing pressure of popular demand for a former chief justice to head the non-party caretaker government without giving heed to the time honoured caution by great constitutional philosophers including Montesquieu about the need for keeping the Judiciary out of politics in whatever form as may be. Even the involvement of a retired chief justice does not give the immunity. Justice Mostafa Kamal is right in saying ‘they shall never be mixed as oil cannot mix with water.’ History in the past has shown that military leaders, social and business elites, bureaucracy as well as the political elites worked for cross purpose and running for inconsistent goalpost which are neither compatible to constitutional aspiration nor in the interest of its continuity or supremacy. It is this lack of understanding on the part of the power elites which makes the constitution of Bangladesh ever so fragile and vulnerable, what however is the redeeming feature that we have always been able to overcome the crisis with courage and confidence, be it man-made or nature-made. But we must remember that we need calm and time to ponder and device various options exploring all the alternatives and bringing all the relevant issues over the table in the parliamentary chambers. However, we also need to keep in mind that too many convulsions in public and political life could be self destructive. Particularly in the existing global order or the lack of order that we live under, one should not allow the luxury of chaos and confusion on an issue of a free and fair election which is not so difficult to ensure without even a non party care taker government as is being practised in other democracy with a powerful, independent election commission with limited governance during election period. There is no reason why the major political parties cannot put their heads together. If it works in other democracies with limited power of the elected government with a small cabinet and the chief election commission strengthened as practised in some neighbouring countries (e.g. India and Sri Lanka).

There is an additional inspector general of police exclusively assigned to the Election Commission in Sri Lanka for regulating and enforcing law in election-related matters maintaining in each police station separate diary with respect to election-related cases and complaints. Why can't our leaders be able to think of various alternatives sitting over the table? Why should there be so much spill-over on the street, particularly on matters which need close deliberation and understanding and accommodating each other's view without compromising the constitutional basics. In dealing with the 13th amendment one should be able to look beyond the next election. Debate regarding the interim caretaker government as it now turns out seem to give an impression that what form would suit the particular party in the next ensuing election asking itself whether 'I love it or love it not'. They often forget that what may seem most attractive choice now may turn out to be most disagreeable in the next round. The 13th amendment, which was forced down upon the government of the day by the opposition, now has become most unattractive and seems to have adverse effect on judicial independence and further offsetting the balance of power which is the basic structure of the constitution. Must we not therefore put our thoughts and efforts together in finding a better option for ensuring of free and fair election empowering the Election Commission to perform its job taking the front seat while the representative party government is limited in its governance for the interim period as is done in other democracies? There may be other options which parties can explore and discuss with experts and on such issue as election as on other. Such vital matters the country must be able to unite on the basis of constitutional integrity so that people may prosper with freedom and dignity under a democratic polity. It is now time for calm when parties must be able to deliberate within the public view and people at the same time must maintain an eternal vigil so that no under current erosion can divert us from the main theme of the constitution.¹⁸

4.4 Case of constitution Article

4.4.1 Case on Articles 27

In the case of M.A. Gafur and others vs. Bangladesh, 56 DLR (AD) 205, the Appellate Division took note of two previous decisions of this Division, namely, 33 DLR (AD) 201 and 35 DLR (AD) 72 and held that retirement with pension benefits

¹⁸ Anwar Hossain Chowdhury case (n 4) 46 para 5.

after completion of 25 years of service is not punishment nor does it contain any stigma and it is altogether different from dismissal, removal or compulsory retirement.

4.4.2 Case on article 102 (2)

High courts power of reconsideration of its own judgement.

In the case of Md. Serajuddin Ahmed and others vs A.K.M saiful Alam and others, 24 BLD (ad)145, md.Ruhul Amin, J. held in para 28 as follows: Moreover provision of Article 102 (2) or any other provisions of the Constitution do not preclude the High Court Division either to reconsider or to review or to see the correctness of its judgement earilier made on furnishing of fresh materials by a party to the case which according to him if were before the the judgement would have been otherwise than the one made.’’ Thus it was observed that the High Court Division was Competent to reconsider or review its judgement on the ground of justice, equity and good conscience.

4.4.3 Case on Articles 104 & 105

In the case of ETV vs Dr. Chowdhry Mahmood Hasan, 55 DLR 99 (AD)-37, K.M.Hasain, J.while Rejecting the review petition observed at para 25, that the fundamental is that an error is necessary to be a ground for review but it must be one, which is apperent on the face of the record, and so obvious that keeping it on the record will be legally wrong Above all the cases are established constitution is supreme over the law of Bangladesh.

Chapter Five

Causes of Fragile Rule of Law

5.1 Weak Constitutional Culture

One of the most significant causes of the fragile rule of law in Bangladesh is the existence of a weak constitutional culture. Although the Constitution provides a comprehensive legal framework for governance, the practical realization of constitutional values remains inconsistent. Constitutional culture refers to the shared beliefs, habits, and institutional practices that ensure respect for constitutional norms. When this culture is weak, constitutional provisions exist only in written form and fail to guide political behavior effectively.¹⁹

In Bangladesh, constitutionalism is often challenged by the dominance of political considerations over legal and institutional boundaries. State institutions are sometimes influenced by political interests, which reduces their neutrality and independence. As a result, constitutional rules are not always followed in practice, and decisions may be shaped more by power dynamics than by legal principles. This creates a gap between constitutional ideals and governance reality.

Another important aspect of weak constitutional culture is the limited internalization of constitutional values among political actors and institutions. Instead of treating the constitution as the highest guiding authority, it is sometimes viewed as flexible or secondary to political objectives. This undermines the supremacy of the constitution and weakens the authority of the rule of law.

Furthermore, public institutions may lack a strong tradition of accountability and transparency. Without a deeply rooted constitutional culture, institutional behavior becomes inconsistent, and enforcement of laws may vary depending on political or administrative influence. This leads to unequal application of justice and erosion of public trust in governance structures.

In addition, civic engagement in constitutional processes remains limited. Many citizens are not fully aware of their constitutional rights and responsibilities, which reduces public pressure on institutions to act within constitutional limits. This weakens democratic accountability and allows institutional inefficiencies to persist.

¹⁹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (1885).

Overall, the absence of a strong constitutional culture prevents the effective functioning of constitutionalism in practice. Strengthening this culture requires not only legal reforms but also long-term institutional discipline, political commitment, and civic education to ensure that constitutional values are deeply embedded in both state and society.²⁰

5.2 Corruption and Accountability Issues

Corruption and weak accountability mechanisms are major factors contributing to the fragility of the rule of law in Bangladesh. Corruption undermines the fairness, transparency, and effectiveness of governance by allowing personal, political, or financial interests to influence public decision-making processes. When corruption becomes systemic, it weakens the credibility of legal and constitutional institutions.

In many cases, corruption affects both administrative and political structures. Public resources may be misused, and decisions may be influenced by bribery, nepotism, or political favoritism. This leads to unequal access to justice and public services, where those with influence or resources may receive preferential treatment compared to ordinary citizens. Such inequality directly contradicts the principle of equality before the law, which is a core element of constitutional governance.²¹

Weak accountability mechanisms further aggravate the problem. Institutions responsible for oversight and enforcement often lack sufficient independence, resources, or authority to effectively monitor and punish corrupt practices. As a result, misconduct may go unaddressed, creating a culture of impunity. When individuals believe they will not be held accountable for violating rules or abusing power, corruption tends to become more widespread.

This situation also reduces public trust in state institutions. Citizens may lose confidence in the fairness of governance systems, leading to decreased willingness to engage with legal processes. Over time, this weakens the legitimacy of the rule of law and creates frustration within society.

Moreover, corruption negatively impacts institutional efficiency. It diverts resources away from development and weakens the capacity of public institutions to deliver services effectively. This reduces the overall quality of governance and contributes to systemic inefficiency.

²⁰ Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (1989).

²¹ Richard Bellamy, *Political Constitutionalism* (2007).

Addressing corruption requires strengthening institutional accountability, ensuring transparency in decision-making, and empowering independent oversight bodies. Without effective reforms, corruption will continue to undermine constitutional governance and weaken the rule of law.

5.3 Delays in Justice Delivery

Delays in justice delivery represent a critical challenge to the rule of law in Bangladesh. The justice system plays a central role in ensuring constitutional rights, resolving disputes, and maintaining public confidence in legal institutions. However, when justice is delayed, its effectiveness is significantly reduced, and public trust in the legal system declines.

One of the main causes of judicial delay is the excessive backlog of cases in courts. A large number of pending cases create pressure on the judicial system, making it difficult to ensure timely hearings and judgments. Limited judicial manpower and insufficient administrative support further worsen the situation. As a result, cases may take several years to reach final resolution.

Procedural complexities also contribute to delays in justice delivery. Legal procedures may involve multiple stages, including filing, hearings, evidence examination, and appeals. While these procedures are important for ensuring fairness, they often lead to prolonged litigation when not managed efficiently.²²

Another factor is the shortage of judges and court resources. Inadequate infrastructure and limited technological integration slow down case management processes. This reduces the efficiency of the judicial system and increases waiting times for litigants.

Delays in justice delivery have serious consequences for the rule of law. When individuals do not receive timely justice, they may lose confidence in legal institutions and become reluctant to seek legal remedies. This weakens access to justice and undermines the credibility of the judiciary.

Furthermore, delayed justice can result in social and economic costs. Prolonged legal disputes may affect livelihoods, business operations, and personal well-being. It can also lead to prolonged uncertainty and instability in society.

To address these challenges, reforms such as increasing judicial capacity, introducing digital case management systems, and promoting alternative dispute resolution

²² Tom Bingham, *The Rule of Law* (2010).

mechanisms are essential. Efficient justice delivery is crucial for strengthening the rule of law and ensuring constitutional justice in practice.

5.4 Lack of Civic Awareness

A lack of civic awareness is another important factor contributing to the fragility of the rule of law in Bangladesh. Civic awareness refers to the understanding of constitutional rights, duties, and responsibilities among citizens, as well as their ability to actively participate in governance processes.

When citizens are not fully aware of their constitutional rights, they are less likely to challenge violations or demand accountability from public institutions. This reduces public pressure on the government to act in accordance with constitutional principles. As a result, institutional inefficiencies and abuses of power may continue without significant resistance.

Limited civic education also affects participation in democratic processes. Citizens who lack knowledge about constitutional provisions may not fully engage in voting, policy discussions, or legal advocacy. This weakens democratic accountability and reduces the effectiveness of governance systems.

In many developing societies, including Bangladesh, civic education is often not adequately emphasized in formal education systems. As a result, awareness of constitutional rights and legal protections remains limited among large sections of the population. This creates a gap between constitutional provisions and public understanding.²³

Mass media and civil society organizations play an important role in raising civic awareness, but their impact may be limited by structural and institutional constraints. Without widespread awareness campaigns and education initiatives, many citizens remain unaware of how to exercise their rights effectively.

The lack of civic awareness also contributes to unequal access to justice. Individuals who are more informed are better able to navigate legal systems, while less informed citizens may face difficulties in seeking legal remedies. This creates inequality in the application of justice.

Strengthening civic education and awareness is therefore essential for improving the rule of law. Educational institutions, government programs, and civil society

²³ Douglass North, *Institutions, Institutional Change and Economic Performance* (1990).

initiatives must work together to promote constitutional literacy and empower citizens to actively participate in governance.

5.5 Institutional Weaknesses

Institutional weaknesses are a fundamental cause of the fragile rule of law in Bangladesh. Strong institutions are essential for implementing constitutional provisions, ensuring accountability, and maintaining effective governance. However, when institutions are weak, constitutional principles cannot be properly enforced.

One major issue is the lack of full institutional independence. Key state institutions, including the judiciary, law enforcement agencies, and administrative bodies, may be influenced by political considerations. This reduces their ability to function impartially and weakens the separation of powers, which is a core principle of constitutional governance.

Another challenge is inadequate institutional capacity. Many institutions suffer from limited manpower, insufficient resources, and outdated administrative systems. These limitations reduce efficiency and hinder effective service delivery. As a result, public institutions may struggle to respond effectively to legal and administrative demands.

Bureaucratic inefficiency is also a significant problem. Complex administrative procedures, lack of coordination among agencies, and weak accountability mechanisms reduce institutional performance. This often leads to delays, corruption risks, and inconsistent enforcement of laws.

In addition, politicization of institutions undermines merit-based recruitment and decision-making processes. When institutional appointments and promotions are influenced by political affiliations rather than qualifications, institutional professionalism is weakened. This affects the overall credibility and effectiveness of governance systems.

Weak institutional coordination further contributes to governance challenges. Different branches of government may fail to cooperate effectively, leading to overlaps, gaps, and inconsistencies in policy implementation. This reduces the overall efficiency of the rule of law system.²⁴

²⁴ World Justice Project, *Rule of Law Index Report*.

Chapter Six

Recommendation & Conclusion

6.1 Recommendation

Based on the analysis of “Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh”, the following recommendations are proposed to strengthen constitutional governance and ensure effective implementation of the rule of law:

1. Strengthening Judicial Independence

The independence of the judiciary should be further ensured by minimizing external influence in judicial appointments, transfers, and administrative decisions. A transparent and merit-based appointment system for judges can enhance public confidence in the justice system.

2. Ensuring Separation of Powers

A clear institutional boundary between the executive, legislature, and judiciary must be maintained in practice, not only in constitutional text. Mechanisms for checks and balances should be reinforced to prevent over-centralization of power.

3. Reforming Law Enforcement Agencies

Law enforcement institutions should be made more professional, accountable, and politically neutral. Training programs emphasizing human rights, constitutional values, and ethical policing can improve institutional behavior.

4. Reducing Case Backlogs and Judicial Delay

Special initiatives should be introduced to reduce pending cases, such as increasing the number of judges, expanding alternative dispute resolution (ADR) mechanisms, and digitalizing court processes to improve efficiency.

5. Promoting Constitutional Awareness

Civic education programs should be strengthened to increase public awareness of constitutional rights and responsibilities. A constitutionally informed citizenry can play an important role in demanding accountability from state institutions.

6. Combating Corruption and Ensuring Accountability

Strong anti-corruption measures should be implemented across all levels of government. Independent oversight bodies should be empowered to investigate and take action against misuse of power.

7. Depoliticization of State Institutions

State institutions should operate free from political influence. Recruitment, promotion, and administrative decisions in public institutions should be based on merit and professionalism rather than political affiliation.

8. Strengthening Constitutional Institutions

Key constitutional bodies such as human rights commissions, anti-corruption commissions, and audit institutions should be made more independent and effective through legal and financial autonomy.

9. Enhancing Digital Governance

The expansion of e-governance and digital judicial systems can reduce corruption, increase transparency, and improve public service delivery efficiency.

10. Developing Constitutional Culture

Long-term efforts should focus on building a strong constitutional culture through education, media awareness, and institutional reform so that constitutional values are deeply embedded in political and social life.

6.2 Conclusion

The study titled **“Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh”** critically examines the gap between constitutional ideals and their practical implementation. Although Bangladesh has a well-structured constitutional framework that guarantees fundamental rights, separation of powers, judicial independence, and accountability, the practical operation of these principles often remains inconsistent. This inconsistency reflects a deeper problem: the absence of a strong constitutional culture that sustains and reinforces constitutionalism in everyday governance.

The analysis shows that the fragility of the rule of law is not primarily due to the absence of constitutional provisions, but rather due to weaknesses in institutional practice, political influence over governance structures, and limited civic awareness. In many cases, institutions do not function with full independence, which undermines fairness, accountability, and transparency in the legal and administrative systems. As a result, the gap between law in theory and law in practice continues to widen.

Furthermore, the study highlights that without a strong constitutional culture, constitutionalism remains largely formalistic. The effectiveness of constitutional governance depends not only on legal frameworks but also on the commitment of political actors, institutions, and citizens to uphold constitutional norms. Where such commitment is weak, constitutional guarantees fail to translate into meaningful protection of rights and justice.

It is also evident that delays in the judicial process, administrative inefficiencies, and unequal access to justice have contributed to declining public trust in legal institutions. This erosion of trust further weakens the authority of the rule of law and creates an environment where accountability is difficult to enforce consistently.

In conclusion, the study finds that strengthening the rule of law in Bangladesh requires more than legal reform alone. It demands a long-term transformation in political behavior, institutional integrity, and civic consciousness. Building a strong constitutional culture is therefore essential for ensuring that constitutionalism becomes a living reality rather than a formal document. Only through such comprehensive efforts can the principles of justice, equality, and accountability be fully realized in practice.

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- Roznai is of the view that unamendability should permit a certain level of flexibility by allowing constitutional amendments to enable constitutional progress on the one hand, and shield the core features of the constitution from amendment on the other: Roznai (n 12) 218. See also Hoque (n 53) 219.

Articles & Journals

- Anwar Hossain Chowdhury case (n 4) 88–89 para 166. Contrariwise, Justice Ahmed and Justice Rahman argued that a constitutional amendment could not be labelled as ‘law’ after incorporation of Article 26(3) in the Constitution: Anwar Hossain Chowdhury case (n 4) 142, 167, paras 339, 421–23. We will discuss this point in Section 3.
- Article 1 of the Bangladesh Constitution provides: ‘Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh’.
- Article 152(1) of the Bangladesh Constitution defines the term, ‘law’ as any Act, ordinance, order, rule, regulation, by-law, notification, or other legal instruments, and any custom or usage, having the force of law in Bangladesh.
- Article 152(2) of the Constitution provides that the General Clauses Act 1897 shall apply in relation to the Constitution as it applies in relation to an Act of Parliament. s 3(1A) of the General Clauses Act 1897 provides that an Act of Parliament shall mean an Act passed by Parliament and shall include any Act passed or made by any legislature or any person having authority to legislate under any Constitutional instrument in force in Bangladesh or any portion thereof.
- Article 7(2) provides that any law inconsistent with the Constitution shall be void to the extent of its inconsistency.
- Bangladesh Italian Marble Works (n 5) 113–14 para 135; Siddique Ahmed (n 21) 612 paras 242–43; Abdul Mannan case (n 23) 257 paras 614–15; Asaduzzaman case (n 1) 86–87 para 77.
- Civil Appeal No 06 of 2017, [2019] 71 DLR (AD) 52 (Asaduzzaman case).
- Civil Petition for Leave to Appeal Nos 1044 & 1045 of 2009, reported as Khondker Delwar Hossain and Another v Bangladesh Italian Marble Works Ltd and Others [2010] 62 DLR (AD) 298.
- Civil Review Petition No. 751 of 2017.
- Constitution of the People's Republic of Bangladesh 1972, arts 101, 103.

- ibid 111 paras 255–57 (Justice Chowdhury); ibid 151, 156–57 paras 361, 378 (Justice Ahmed); ibid 171, 179 paras 443, 483 (Justice Rahman). The Appellate Division allowed the appeal by a 3:1 decision.
- On implicit unamendability and the basic structure doctrine, see Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* (Oxford University Press 2017) 39–49. On interpretative unamendability and the basic structure doctrine, see Richard Albert, *Constitutional Amendments: Making, Breaking and Changing Constitutions* (Oxford University Press 2019) 149–53.
- See Legislative and Parliamentary Affairs Division, *The Constitution of the People's Republic of Bangladesh* (2011) i–ii.
- The Constitution (Fifteenth Amendment) Act 2011, s 31.
- The Constitution (Sixteenth Amendment) Act 2014, s 2.
- The original Article 96(2) of the Bangladesh Constitution provided for the assent of a minimum of two-thirds of the total members of Parliament for removing any Supreme Court judge on the grounds of proved misbehaviour or incapacity.
- The Supreme Court of Bangladesh is made up of two Divisions: the High Court Division and the Appellate Division.
- The term ‘any law’ in Article 7 includes a constitutional amendment: Anwar Hossain Chowdhury case (n 4) 85, 87 paras 150, 166.
- Writ Petition Nos 1252 and 1176 of 1988, Judgment delivered on 15 August 1988: ibid para 1.

Case:

- Abdul Mannan Khan v Bangladesh [2012] 64 DLR (AD) 169 (Abdul Mannan case).
- Anwar Hossain Chowdhury and Others v Bangladesh [1989] BLD (SPL) 1 (Anwar Hossain Chowdhury case).
- Anwar Hossain Chowdhury case (n 4) 46 para 5.
- Anwar Hossain Chowdhury case (n 4) 85 para 150.
- Anwar Hossain Chowdhury case (n 4).
- Anwar Hossain Chowdhury case (n 4).

- Bangladesh Italian Marble Works Ltd v Bangladesh [2010] 62 DLR (HCD) 70.
- Bangladesh Italian Marble Works Ltd (n 5).