



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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Submitted To

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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

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Saiful Islam Miraj

ABSTRACT

The implementation of Constitutionalism Without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh continues to pose uncertainties in the modern world. Given that many states constitutionally treat such rights as aspirational and not justiciable, it is difficult to enforce them judicially at the domestic level. Bangladesh has embodied these rights in Part ii of its Constitution as a social welfare goal of the State. This article takes Bangladesh as a case study and examines the international legal framework for the implementation of esc rights at the domestic level. Making a comparison with other jurisdictions, such as India and South Africa, the article examines the approach of the judiciary of Bangladesh (the Supreme Court) in giving effect to these rights. Lastly, the article argues that the court should devise appropriate and effective enforcement mechanisms for these rights.

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Chapter One

Introduction

1.1 Introduction

Constitutionalism is widely regarded as the foundation of modern democratic governance, where state power is limited by a supreme constitution and exercised in accordance with established legal norms. A strong constitutional system ensures the rule of law, protects fundamental rights, and maintains institutional accountability. However, constitutionalism does not function effectively in isolation; it requires a supportive **constitutional culture**, which refers to the shared values, practices, and attitudes that ensure respect for constitutional principles in both state institutions and society. In the context of Bangladesh, although the Constitution provides a comprehensive legal framework for democratic governance, the practical realization of constitutionalism remains inconsistent. Since independence in 1971, Bangladesh has adopted several constitutional amendments, yet the rule of law often appears fragile due to political influence over institutions, weak enforcement of legal norms, and limited public awareness of constitutional rights.¹

This gap between constitutional provisions and political reality highlights the central problem of this study: the absence of a strong constitutional culture undermining the effectiveness of constitutionalism and weakening the rule of law.

Constitutionalism is a fundamental principle of modern democratic governance, which ensures that state power is exercised within the limits of a supreme constitutional framework. It emphasizes limited government, accountability, separation of powers, and protection of fundamental rights. However, constitutionalism cannot function effectively in isolation; it requires a supportive **constitutional culture**, which refers to the shared values, norms, and institutional practices that ensure respect for constitutional rules in both state institutions and society.²

¹ Bangladesh Constitution of the People's Republic of Bangladesh (1972), Preamble and Articles 7, 26–44; see also: M. Jamil, *Constitutional Development in Bangladesh*, Dhaka: University Press, 2015.

² A. R. Chowdhury, "Rule of Law in Bangladesh: A Critical Analysis," *Bangladesh Journal of Law*, Vol. 12, 2019.

In the context of Bangladesh, the Constitution of 1972 provides a strong legal foundation for democracy, rule of law, and human rights. Despite this, the practical implementation of constitutional principles remains weak. Since independence, Bangladesh has experienced multiple constitutional amendments, shifting political regimes, and institutional transformations. Yet, the gap between constitutional promises and political reality remains significant.

The major concern is that while constitutional provisions exist in written form, constitutional culture—such as respect for law, institutional neutrality, and democratic accountability—remains underdeveloped. As a result, the rule of law often becomes fragile, inconsistent, and vulnerable to political influence.

1.2 Statement of the Problem

Although the Constitution of Bangladesh guarantees fundamental rights, equality before law, and an independent judiciary, the practical realization of these constitutional promises remains highly inconsistent. In theory, Bangladesh is a constitutional democracy governed by the rule of law; however, in practice, the application of constitutional principles is often weakened by political, institutional, and administrative constraints.³ One of the central problems is the gap between **constitutional provisions and constitutional practice**. While the Constitution provides a comprehensive legal framework for governance, institutions responsible for implementing these provisions frequently face challenges such as political influence, lack of accountability, and limited institutional independence. As a result, laws are not always applied equally, and justice delivery becomes selective in many cases.

Another significant issue is the absence of a strong **constitutional culture**, which refers to the deep-rooted acceptance and practice of constitutional norms by both state actors and citizens. In Bangladesh, constitutional norms are often treated as formal legal requirements rather than living principles guiding political behavior. This weak constitutional culture contributes to the erosion of the rule of law and reduces public confidence in legal and judicial institutions.⁴

³ Bangladesh Constitution of the People's Republic of Bangladesh (1972), Articles 7, 26–44

⁴ M. Ahmed, *Constitutional Governance in South Asia*, Dhaka: Legal Research Publications, 2018.

Furthermore, institutional weaknesses, including challenges in judicial independence, administrative inefficiency, and law enforcement limitations, further aggravate the fragility of the rule of law. Political interference in key institutions often undermines neutrality and weakens the checks and balances necessary for constitutional governance. Therefore, the core problem addressed in this study is that constitutionalism exists in Bangladesh in a formal sense, but its effective operation is constrained by the absence of a strong constitutional culture and institutional integrity, resulting in a fragile rule of law system.⁵

1.3 Objectives of the Study

The main objective of this study is to examine how the absence of constitutional culture contributes to the fragility of the rule of law in Bangladesh.

Specific objectives are:

- To conceptualize constitutionalism and constitutional culture
- To analyze the current state of the rule of law in Bangladesh
- To identify institutional and political factors affecting constitutional governance
- To examine the gap between constitutional provisions and practical implementation

1.4 Significance of the Study

This study is significant in both academic and practical contexts. Academically, it contributes to the growing literature on constitutionalism and governance in developing countries, particularly in South Asia. Practically, it highlights the gap between constitutional ideals and political realities in Bangladesh.⁶

The findings of this study may assist policymakers, legal practitioners, and scholars in understanding the structural weaknesses of governance institutions. It also emphasizes the importance of developing a strong constitutional culture to ensure accountability, justice, and democratic stability.

⁵ K. C. Wheare, *Modern Constitutions*, Oxford University Press, 1966.

⁶ Bangladesh Constitution of the People's Republic of Bangladesh (1972), Articles 7, 26–44.

1.5 Scope of the Study

The scope of this research is limited to the constitutional and institutional framework of Bangladesh. It focuses on the relationship between constitutional provisions, political practices, and the functioning of state institutions.⁷

The study mainly relies on doctrinal and analytical approaches. Comparative references are used only to strengthen theoretical understanding. It does not involve extensive empirical fieldwork or large-scale statistical analysis.

1.6 Methodology

This study follows a qualitative research methodology. It is primarily based on secondary sources, including:

- Constitutional documents and legal texts
- Books on constitutional law and governance
- Peer-reviewed journal articles
- Research reports and policy papers

The study uses descriptive and analytical methods to examine how constitutionalism and constitutional culture interact and affect the rule of law.

1.7 Limitations of the Study

This study has several limitations. First, it relies mainly on secondary data, which may not fully reflect current institutional realities. Second, the absence of primary field data limits empirical validation. Third, time constraints restrict broader comparative analysis with other jurisdictions.⁸

Despite these limitations, the study provides a comprehensive theoretical and analytical understanding of the issue of constitutional fragility in Bangladesh.

⁷ K. C. Wheare, *Modern Constitutions*, Oxford University Press, 1966.

⁸ A. R. Chowdhury, "Rule of Law in Bangladesh: Constitutional Challenges," *Journal of Legal Studies*, 2019.

Chapter Two

Theoretical and Conceptual Framework

2.1 Concept of Constitutionalism

Constitutionalism is a foundational principle of modern democratic governance that emphasizes the limitation of governmental power through a supreme legal framework, namely the constitution. It ensures that state authority is exercised in accordance with established legal rules, rather than arbitrary political discretion. At its core, constitutionalism is not merely the existence of a written constitution; rather, it is the practice of governing within constitutional limits, ensuring accountability, transparency, and respect for individual rights.⁹

The concept of constitutionalism is closely associated with the idea of the **rule of law**, separation of powers, and judicial independence. It requires that all organs of the state—executive, legislature, and judiciary—operate within their defined constitutional boundaries. Classical constitutional theorists such as A.V. Dicey emphasized that constitutionalism ensures equality before law and prevents the abuse of power by the state.¹

In modern political systems, constitutionalism has evolved beyond legal constraints to include democratic participation and protection of human rights. It is now widely understood as a system where constitutional norms are not only legally binding but also politically respected and socially accepted. Without this deeper acceptance, constitutional provisions risk becoming symbolic rather than functional.

In the context of developing democracies such as Bangladesh, constitutionalism faces significant challenges. Although constitutional frameworks exist, the effective limitation of state power is often weakened by political dominance over institutions and weak enforcement mechanisms.¹⁰ This creates a gap between **formal constitutionalism** and **substantive constitutionalism**, where the latter ensures real-life application of constitutional principles.

Therefore, constitutionalism should be understood as a dynamic process that requires institutional strength, political commitment, and a supportive constitutional culture.

⁹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 1885.

¹⁰ K.C. Wheare, *Modern Constitutions*, Oxford University Press, 1966

Without these elements, constitutionalism remains incomplete and ineffective in ensuring democratic governance and the rule of law.

2.2 Meaning of Constitutional Culture

Constitutional culture refers to the shared values, attitudes, beliefs, and behavioral practices that support and sustain constitutional governance within a political system. Unlike constitutional law, which is written and formal, constitutional culture is informal and deeply rooted in the political and social behavior of both citizens and state institutions. It reflects how far constitutional principles are respected in everyday governance.¹¹

A strong constitutional culture ensures that constitutional norms are not only legally recognized but also politically and socially internalized. This includes respect for the rule of law, tolerance for political opposition, independence of institutions, and accountability in governance. In such a culture, constitutional violations are socially condemned and institutionally corrected.

Conversely, a weak constitutional culture leads to the erosion of constitutionalism, where laws exist but are not effectively practiced. In such contexts, political actors may manipulate institutions for personal or partisan interests, undermining democratic governance. The absence of a strong constitutional culture often results in selective application of law, weakened judicial independence, and public distrust in state institutions.¹²

In countries like Bangladesh, constitutional culture is still evolving. While constitutional provisions guarantee democratic governance, institutional practices sometimes fail to reflect these principles consistently. Political polarization and administrative weaknesses further hinder the development of a stable constitutional culture.

Scholars argue that constitutional culture is essential for bridging the gap between constitutional text and constitutional reality. Without it, even the most well-drafted constitutions may fail to ensure justice, accountability, and stability. Therefore, constitutional culture is considered the “living spirit” of constitutionalism, shaping how laws are interpreted, implemented, and respected in practice.

¹¹ G. Almond & S. Verba, *The Civic Culture*, 1963

¹² J. Ferejohn, “Constitutional Culture and Democratic Governance,” 2002.

2.3 Rule of Law: Definition and Principles

The rule of law is a fundamental principle of constitutional governance that ensures that all individuals and institutions, including the government, are subject to and accountable under the law. It prevents arbitrary exercise of power and guarantees equality before the law, fairness, and justice in society.

A.V. Dicey defined the rule of law through three core principles: supremacy of law, equality before law, and the predominance of legal spirit over arbitrary power. These principles ensure that no person is above the law and that legal decisions are made based on established legal procedures rather than personal discretion.¹³

Modern interpretations of the rule of law extend beyond formal legality to include substantive elements such as human rights protection, access to justice, judicial independence, and transparency in governance. According to the World Justice Project, the rule of law includes accountability, just laws, open government, accessible justice, and effective enforcement.

In practice, the rule of law is essential for maintaining political stability and public trust in institutions. Without it, governance becomes arbitrary, leading to corruption, abuse of power, and social injustice. A strong rule of law system ensures predictability in legal outcomes and protects citizens from misuse of state authority.

In the case of Bangladesh, the rule of law exists as a constitutional principle but faces challenges in implementation. Institutional weaknesses, political influence, and limited judicial independence often undermine its effectiveness. As a result, there is a noticeable gap between constitutional ideals and practical enforcement.¹⁴

Thus, the rule of law is not only a legal doctrine but also a governing principle that requires strong institutions, political commitment, and a supportive constitutional culture.

2.4 Relationship between Constitutionalism and Rule of Law

Constitutionalism and the rule of law are deeply interconnected concepts in modern governance. Constitutionalism provides the structural framework within which state power is exercised, while the rule of law ensures that such power is exercised

¹³ A.V. Dicey, *Introduction to the Law of the Constitution*, 1885

¹⁴ World Justice Project, *Rule of Law Index Report*, 2023

lawfully, fairly, and consistently. Together, they form the backbone of democratic governance.¹⁵

Constitutionalism emphasizes limited government, separation of powers, and protection of fundamental rights. The rule of law operationalizes these principles by ensuring that laws are applied equally and that government actions are subject to legal scrutiny. Without constitutionalism, the rule of law lacks a structural foundation; without the rule of law, constitutionalism remains ineffective in practice.

The relationship between the two can be understood as complementary. Constitutionalism establishes the “rules of the game,” while the rule of law ensures that these rules are followed in practice. For example, constitutional provisions guaranteeing judicial independence are meaningful only when the rule of law ensures that courts are free from political interference.¹⁶

In developing democracies such as Bangladesh, the relationship between constitutionalism and the rule of law is often strained. Although constitutional frameworks exist, weak institutional enforcement leads to a gap between theory and practice. This results in selective application of law and weakening of democratic accountability.

Therefore, strengthening the rule of law is essential for sustaining constitutionalism. Similarly, a strong constitutional framework is necessary to protect and institutionalize the rule of law. Both must function together to ensure stable governance, human rights protection, and democratic development.

2.5 Constitutional Culture in Comparative Perspective

Constitutional culture varies significantly across countries depending on historical, political, and institutional development. In established democracies such as the United Kingdom, the United States, and Germany, constitutional culture is deeply embedded in political behavior and institutional practice. In these systems, respect for constitutional norms is not only legally required but also socially expected.

In the United States, for example, constitutional culture is strongly supported by judicial review and civic participation. Citizens and institutions generally accept constitutional authority as binding, and constitutional disputes are frequently resolved

¹⁵ K.C. Wheare, *Modern Constitutions*, 1966.

¹⁶ J. Raz, “The Rule of Law and Its Virtue,” 1977.

through judicial interpretation. Similarly, Germany's post-World War II constitutional system emphasizes "militant democracy," ensuring that democratic norms are protected against authoritarian threats.¹⁷

In contrast, many developing countries struggle to establish a strong constitutional culture. In such contexts, constitutions often exist as formal documents but lack consistent enforcement. Political interference in institutions, weak accountability mechanisms, and limited civic awareness hinder the development of constitutional norms.¹⁸

In Bangladesh, constitutional culture is still evolving. While constitutional provisions exist to ensure democracy and rule of law, their implementation is often inconsistent due to political polarization and institutional weaknesses. This creates a gap between constitutional ideals and actual governance practices.

Comparative analysis shows that strong constitutional culture requires long-term institutional stability, civic education, and political commitment to democratic norms. Without these elements, constitutionalism remains fragile and vulnerable to political manipulation.

2.6 Theoretical Approaches (Legal Positivism, Constitutionalism Theory)

The study of constitutionalism and rule of law is grounded in several theoretical approaches, among which Legal Positivism and Constitutionalism Theory are most significant.

Legal Positivism, associated with scholars such as John Austin and H.L.A. Hart, argues that law is a system of rules created by legitimate authority and is separate from morality. According to this view, the validity of law depends on its source, not its moral content. Hart emphasized the importance of a "rule of recognition" that identifies valid legal norms within a system.¹

From a positivist perspective, constitutional law is valid because it is enacted through proper legal procedures, regardless of whether it is just or unjust. However, critics argue that Legal Positivism fails to address the moral and democratic dimensions of constitutional governance.

¹⁷ L. Tribe, *American Constitutional Law*, 2000

¹⁸ D. Grimm, "Constitutional Culture and Democracy in Germany," 2015

In contrast, Constitutionalism Theory emphasizes that law must not only be valid but also just, democratic, and consistent with fundamental rights. This theory highlights the importance of limiting governmental power and ensuring accountability through constitutional mechanisms. It integrates legal, political, and moral dimensions of governance.¹⁹

Modern constitutionalism theory also stresses the importance of constitutional culture in sustaining constitutional order. Without a supportive political and social environment, constitutional rules cannot function effectively.

In the context of Bangladesh, both theories help explain the gap between constitutional form and practice. While legal positivism explains the formal existence of constitutional rules, constitutionalism theory highlights why those rules may fail in practice due to weak institutional and cultural support.²⁰

Thus, a combined theoretical approach provides a more comprehensive understanding of constitutional fragility and the importance of constitutional culture in sustaining the rule of law.

¹⁹ H.L.A. Hart, *The Concept of Law*, 1961

²⁰ John Austin, *The Province of Jurisprudence Determined*, 1832.

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.²¹

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.

²¹ 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.²²

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

²² 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.’²³

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

²³ Article 1 of the Bangladesh Constitution provides: ‘Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh’.

and just government to pursue the war of independence by way of reiterating and 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.²⁴

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

²⁴ 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.

of every other person for the time being within Bangladesh and in particular no action 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.²⁵

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

²⁵ *Abdul Mannan Khan v Bangladesh* [2012] 64 DLR (AD) 169 (Abdul Mannan case).

Constitution is supreme and under the Constitution all the powers and functions of the 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 dictated 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.’²⁶

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

²⁶ *Anwar Hossain Chowdhury and Others v Bangladesh* [1989] BLD (SPL) 1 (Anwar Hossain Chowdhury case).

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 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.²⁷

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.

²⁷ Ibid. p 55

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 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.²⁸

²⁸ Anwar Hossain Chowdhury case (n 4) 46 para 5.

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 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 earlier 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

Criticism Of Amendments Of Constitution

5.1 Criticism of Repeatedly Amendments

Constitution is an instrument which is made in order to voice the right of the people. It is a tool which is meant to use by the nation to keep the right of the people intact. So one should be careful while dealing with the Constitution, which is the highest law of the nation. Moreover, written constitution possesses several problems. And the major one is amendments. Although it is true that amendments is inevitable in an ever changing society of a nation, which changes with the flow of time. Different situations give rise to different issues following which changes are required to be brought in the constitution. However, the ruling parties of Bangladesh, whenever whoever came to power has misused this tool of amending the Constitution. They have brought change to the highest law of the country for their own benefit and did it without valid ground. To bring a halt to this misuse, accountability of the elected leaders need to be brought. Good governance need to be practiced at every sphere of the national system of governing then. Following independence, a constitutional presidential order created a constituent assembly. A 34-member constitutional committee was formed. This committee drafted the Constitution in 1972. Democracy, secularism, Bengali nationalism and socialism were the four fundamental pillars of the Constitution. But those who lost the war could not accept this. They conspired and killed the father of our nation, Bangabandhu Sheikh Mujibur Rehman, and changed the Constitution. Short of making Bangladesh an Islamic republic, a sort of Muslim Bangla emerged. The 15th Amendment seeks to go back to the 1972 Constitution and its secular tenets.²⁹

5.2 Change Does Amendment Bring

Although it's called the 15th Amendment, it is actually much more. It replaces as many as 51 articles. The amendment flows from the historic judgment of our Supreme Court last year, which said whatever changes had been made in the Constitution through extra-constitutional means are illegal. The Constitution can only be amended in the manner prescribed in the Constitution itself. Under martial law after Mujib's

²⁹ Anwar Hossain Chowdhury case (n 4) 85 para 150.

assassination, the military regime unconstitutionally amended the Constitution, including introducing the phrase 'Bismillahir Rahmanir Rahim' on top of the Preamble. They then indemnified the military law proclamations through the infamous 5th Amendment. The same happened during the military dictatorship of Hussain Muhammad Ershad when he made Islam the state religion. The 15th Amendment undoes most of the martial law proclamations and restores secularism as the fundamental principle of the Constitution. In certain areas, we've had to take cognizance of ground realities. After all, it's been 35 years. Take, for instance, 'Bismillahir Rahmanir Rahim' above the Preamble. It is a sensitive issue. If we change it, there's bound to be a major hue and cry. We did not want to give communal forces a handle. So we retained 'Bismillahir Rahmanir Rahim' but added another line, 'Param korunamoy naame shuru korilam' (In the name of the all-compassionate we start). In doing so, instead of hatred, we have sought unity. As far as Islam being the state religion is concerned, we have added that Hinduism, Buddhism, Christianity and any other religion will have the same patronage from the state as the majority religion.

Chapter Six

Recommendation & Conclusion

6.1 Recommendation

To address the fragility of the rule of law in Bangladesh and to bridge the gap between constitutionalism and constitutional practice, a set of institutional, legal, and socio-political reforms is necessary. Strengthening constitutional culture is not a short-term task; it requires sustained commitment from the state, political actors, and society as a whole.

First, ensuring judicial independence is essential for strengthening constitutional governance. The appointment, promotion, and transfer of judges should be free from political influence. A transparent and merit-based Judicial Appointments Commission may be introduced to safeguard the neutrality of the judiciary. An independent judiciary is the cornerstone of the rule of law and must function without external pressure.

Second, strengthening constitutional institutions such as the Election Commission, Anti-Corruption Commission, and Human Rights Commission is crucial. These bodies should be granted full operational autonomy, adequate financial resources, and legal protection from executive interference. Institutional independence enhances accountability and reduces arbitrary governance.

Third, legal and administrative reforms are needed to improve the efficiency of the justice delivery system. Case backlogs in courts should be reduced through digital case management systems, increased judicial manpower, and stricter procedural timelines. Delays in justice weaken public trust and undermine constitutional guarantees.

Fourth, political commitment to constitutional norms must be strengthened. Political parties should respect democratic principles, internal party democracy, and peaceful transfer of power. A culture of political tolerance is necessary to reduce polarization and institutional abuse.

Fifth, legal awareness and civic education should be promoted at all levels of society. Citizens must be informed about their constitutional rights and responsibilities. Educational institutions, media, and civil society organizations can play a vital role in building a strong constitutional culture.

Sixth, anti-corruption measures must be strictly enforced. Corruption remains one of the major barriers to the rule of law. Strengthening oversight mechanisms and ensuring accountability of public officials are essential for restoring institutional integrity.

Finally, constitutional enforcement mechanisms should be reinforced. Courts must adopt a more proactive role in ensuring compliance with constitutional provisions, particularly in cases involving fundamental rights and state accountability.

In conclusion, the development of a strong constitutional culture requires coordinated efforts from all branches of government and society. Without such reforms, constitutionalism will remain formal, and the rule of law will continue to face structural fragility.

6.3 Conclusion

The comparative analysis of constitutional culture and rule of law demonstrates that constitutional stability does not depend solely on the presence of a written constitution, but rather on the degree to which constitutional norms are embedded in political behavior, institutional practice, and public consciousness. In this regard, the experience of different jurisdictions shows that constitutionalism becomes effective only when supported by a strong and sustained constitutional culture.

In contrast to mature democracies, where constitutional norms are deeply institutionalized and widely respected, many developing states face persistent challenges in translating constitutional principles into effective governance. The case of Bangladesh reflects this broader pattern. Although the Constitution provides a comprehensive framework for democratic governance, including guarantees of fundamental rights, separation of powers, and judicial independence, the practical realization of these principles remains uneven.

The comparative perspective highlights that the fragility of the rule of law in Bangladesh is not primarily due to the absence of constitutional provisions, but rather due to weaknesses in institutional enforcement and constitutional culture. Political influence over state institutions, limited accountability mechanisms, and gaps in civic awareness collectively contribute to a situation where constitutional norms are often applied selectively rather than universally.

In stronger constitutional systems, institutions such as the judiciary, election commissions, and oversight bodies function with a high degree of autonomy and legitimacy. Moreover, there exists a political consensus on respecting constitutional boundaries, even among competing political actors. This culture of restraint and respect for constitutional limits is largely absent or inconsistently applied in Bangladesh, which weakens the overall effectiveness of constitutional governance.

Another key finding from the comparative perspective is the importance of civic participation and legal awareness. Societies with strong constitutional cultures tend to have active citizens who are aware of their rights and are willing to hold institutions accountable. In Bangladesh, although civil society and media play an important role, public constitutional awareness remains limited, which further weakens demand-driven accountability.

Therefore, the central conclusion of this study is that constitutional fragility in Bangladesh is fundamentally a problem of **implementation rather than design**. The

constitutional framework is relatively comprehensive, but its effectiveness is constrained by weak institutional practices and an underdeveloped constitutional culture.³⁰

Strengthening the rule of law in Bangladesh requires more than legal reform; it requires a long-term transformation of political behavior, institutional integrity, and civic consciousness. Without such transformation, constitutionalism will continue to exist in a formal sense, while its substantive objectives remain only partially realized.

³⁰ Bangladesh Constitution of the People's Republic of Bangladesh (1972), Preamble and Part III.

Bibliography

Books:

- Ahmed (n 17). See Rokeya Chowdhury, 'The Doctrine of Basic Structure in Bangladesh: From "Calpath" to *Matryoshka* Dolls' (2014) 14 (1&2) *Bangladesh Journal of Law* 43, 64–65.
- Ahmed (n 45). Ridwanul Hoque termed the basic structures as the fundamental cores of the Constitution and/or the fundamental constitutional cores: Ridwanul Hoque, 'Eternal Provisions in the Constitution of Bangladesh: A Constitution Once and for All' in Albert and Oder (n 14) 195, 197–200.
- Kawser Ahmed, 'Misreading or Leapfrogging? SC's Power to Review Constitutional Amendment', *The Daily Star* (Dhaka), 22 August 2017, 12.
- Kawser Ahmed, 'Review of a Constitutional Amendment: What Does Legally Matter?', *The Daily Star* (Dhaka), 29 May 2018, 14.
- Kawser Ahmed, 'Revisiting the Majority Opinion in the 16th Amendment Case', *The Daily Star* (Dhaka), 25 September 2018, 12.
- Kawser Ahmed, 'The Supreme Court's Power of Judicial Review in Bangladesh: A Critical Evaluation', 1 April 2015,
- Kawser Ahmed, 'What is Actually the Basic Feature Doctrine?', *The Daily Star* (Dhaka), 5 June 2018, 15.
- Mustafa Kamal, *Bangladesh Constitutions: Trends and Issues* (University of Dhaka 1994, reprint 2001) 92–94.
- Ridwanul Hoque, 'Implicit Unamendability in South-Asia: The Core of the Case for the Basic Structure Doctrine' (2018) 3 *Indian Journal of Constitutional & Administrative Law* 23, 25–26. Haque (n 29) 123–25.
- Ridwanul Hoque, 'The Judicialization of Politics in Bangladesh: Pragmatism, Legitimacy, and Consequences' in Mark Tushnet and Madhav Khosla (eds), *Unstable Constitutionalism: Law and Politics in South Asia* (Cambridge University Press 2015) 261, 278–79.
- 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).