



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

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

In

**LLB (Honor's)
Department of Law
Sonargaon University (SU), Dhaka.**

Supervised By:

**Md.Sogaor Hossain,
Lecturer, Department of Law
Sonargaon University (SU), Dhaka**

Submitted By:

**Prosonjit Kumar Mondal
ID No: LLB2203027019
Department of law Sonargaon University (SU)**

Date of Submission:

Letter of Transmittal

To,

Md.Sagor Hossain

Lecturer, Department of Law,

Sonargaon University (SU)

Subject: Submission of research paper on “**Constitutionalism without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh**”

Sir,

With due respect, I would like to submit my research paper on “Constitutionalism without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh” as part of the academic requirements of the Department of Law. This paper reflects my effort to examine how constitutional principles in Bangladesh often remain weak in practice because of political influence, institutional limitations, and a lack of strong constitutional culture.

The study focuses on the relationship between constitutionalism and the rule of law, and it highlights the challenges that prevent Bangladesh from fully realizing the ideals promised in its Constitution. Through this paper, I have attempted to analyze the fragility of legal institutions and the gap between constitutional promise and constitutional practice.

I hope this paper will meet the academic standard expected for submission. I would be grateful for your kind evaluation, advice, and suggestions for further improvement.

Thank you for your time and consideration.

Sincerely yours,

Prosonjit Kumar Mondal

ID: LLB2203027019

Program: LLB Honor's

Department of Law

Sonargaon University (SU)

Supervisor Certificate

This is to certify that the Research Monograph on "**Constitutionalism without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh**" is done by **Prosonjit Kumar Mondal** is partial fulfillment the requirements for the degree of **LL. B (Honor's) from Sonargaon University (SU), Dhaka**. The Research Monograph has been carried out under my guidance and is record of the Bonafede work carried out successfully. 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. (Honor's) program.

Md.Sagor Hossain

Lecturer

Department of Law

Sonargaon University (SU)

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. (Honor's) Degree. This is an original work of mine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

Prosonjit Kumar Mondal

ID No. LLB2203027019

Program: LL.B. (Honor's)

Department of Law

Sonargaon University (SU)

Acknowledgement

With a mind of gratitude and a heart grounded in academic integrity, I wish to express my sincere appreciation to those who have guided and supported me throughout the journey of completing this research monograph entitled “Constitutionalism without Constitutional Culture: Explaining the Fragility of Rule of Law in Bangladesh.”

First and foremost, I offer my heartfelt thanks to my **Supervisor, Md. Sagor Hossain, Lecturer Department of Law, Sonargaon University**, for their generous guidance, critical insight, and intellectual rigor. Their mentorship has been instrumental in navigating the complex political and legal theories that shaped the direction and depth of this research.

I extend deep appreciation to my teachers and peers, whose thoughtful debates and encouragement created a vibrant environment for inquiry and growth. To the legal practitioners, academics, and civil society members whose experiences informed this study your professional perspectives were the cornerstone of this critical analysis.

To my classmates, family, and friends, I am grateful for your unwavering support and kind presence in every step of this academic endeavor. Your belief in the importance of this work has been a source of balance and motivation during moments of intellectual challenge.

Last but not least, I dedicate this work as a contribution to the ongoing pursuit of constitutional accountability in Bangladesh. May it serve as a step toward bridging the gap between written law and lived justice, and may the insights gained here contribute to a more robust, transparent, and mindful democratic society.

Thank you
Prosonjit Kumar Mondal

Abstract

Bangladesh possesses a formally sophisticated constitutional framework that, on paper, meets international standards for democratic governance. Yet the rule of law remains persistently fragile. This thesis argues that this paradox—constitutionalism without constitutional culture—explains the gap between constitutional text and lived reality. Drawing on theoretical frameworks from comparative constitutionalism, political culture studies, and democratic backsliding literature, this research examines how the absence of a shared constitutional culture among political elites, judicial actors, and citizens enables the "hollowing out" of constitutional norms. Through analysis of Bangladesh's constitutional trajectory from 1972 to the post-July 2024 period, this thesis demonstrates that constitutional endurance requires not merely institutional design but a foundational normative commitment that Bangladesh has yet to cultivate. The findings suggest that institutional reforms alone, including the recent separation of the judiciary, remain insufficient without corresponding transformation in political culture and constitutional consciousness.

Table of Contents

Chapter one: Introduction	3
1.1 Background and Context	3
1.2 Research Problem	3
1.3 Research Question	4
•Primary Research Question	4
•Secondary Research Question	4
1.4. Research Gap	4
1.5 Theoretical Framework	4
1.6 Methodology	5
1.7 Structure of thesis	5
Chapter Two: Theoretical Framework	6
2.1 Introduction	6
2.2 Constitutionalism: The Institutional Framework	6
2.3Constitutional Culture: The Missing Dimension	6
2.4 The Rule of Law and constitutional culture	7
2.5 The Ground norm and constitutional Validity.	7
2.6 Autocratic of Legislism: The weaponization of constitutionals Forms	8
2.7 Summary	8
Chapter Three: Constitutional History of and the Rule Law in Bangladesh.	9
3.1 Introduction	9
3.2 The Founding Moment: The 1972 constitution	9
3.3 Early Authoritarianism: 1975-1990	9
3.4 The 1990 Transition and its Consequence	10
3.5 Abuse constitutionalism: 2011-2024	10
3.6 The 2024 Transition and it's constitutional Implication	10
3.7 Summary	11
Chapter Four: Judicial Independence and The Rule of Law	12
4.1. Rule of law	12
4.2The Musdar Hossain Judgment and Judicial Separation	12
4.3 The Gap between Separation and Independence	12
4.4 The consequences for the Rule of law	13
4.5 summary	14
Chapter Five: The 2024 Transition and Constitutional Reform	14
5.1 Introduction	14
5.2 The Reform Agenda	14
5.3 Debates on Constitutional Reform	14
5.4 Challenge of Constitutional Culture	15
5.5 Summary	15

Capter Six: Conclusion-----	16
6.1 Summary of Finding -----	16
•Key finding -----	16
6.2 Theoretical Contribution -----	16
6.3 Policy Implications -----	17
6.4 Limitation and Future Research -----	17
•This thesis has several limitations -----	17
•Future Research should Focus On-----	17
6.5 concluding Reflections -----	18
Bibliography-----	19

Chapter One

Introduction

1.1 Background and Context

The fragility of the rule of law in Bangladesh is not a matter of perception but of measurable reality. The World Justice Project's Rule of Law Index 2025 ranks Bangladesh 125th out of 143 countries, placing it among the bottom 20 nations globally and well below the global average score of 0.55. The country's worst performance was in the "Fundamental Rights" category (ranking 133rd) and "Civil Justice" (ranking 132nd), indicating a severe inability to resolve citizens' grievances or protect core human rights. While Bangladesh recorded a modest 1.3% improvement in its overall score—making it the fourth-biggest improver globally this marginal progress barely lifted its position after three consecutive years of stagnation at 127th place.

These statistics reflect a deeper constitutional pathology. Since independence in 1971, Bangladesh's Constitution has been amended seventeen times, often to consolidate rather than constrain power. The Fifteenth Amendment (2011) abolished the caretaker government system that had helped ensure electoral credibility. The Sixteenth Amendment (2014) attempted to restore parliamentary power over Supreme Court judges' removal—a provision the Supreme Court itself struck down. The 2024 political transition, marked by the flight of Prime Minister Sheikh Hasina and the establishment of an extra-constitutional interim government, represents the latest and most dramatic manifestation of constitutional fragility.

1.2 Research Problem

The central puzzle this thesis addresses is: Why does a country with a constitutional framework that meets formal democratic standards experience such persistent fragility in the rule of law?

Conventional explanations weak institutions, executive dominance, political violence are important but incomplete. They fail to explain why institutions designed to constrain power repeatedly fail, why constitutional amendments are used to consolidate rather than limit authority, and why citizens, political actors, and even judges treat the Constitution as a flexible instrument rather than a binding constraint.

This thesis proposes that the answer lies in the absence of what this research terms constitutional culture the shared set of beliefs, practices, and normative commitments that give a constitution living force beyond its text. Bangladesh demonstrates "constitutionalism without constitutional culture": the forms of constitutional

governance exist, but the underlying cultural substrate that makes constitutionalism sustainable is absent.

1.3 Research Questions

Primary Research Question:

Why does the rule of law remain persistently fragile in Bangladesh despite the existence of a formal constitutional framework that meets international standards?

Secondary Research Questions:

1. What constitutes "constitutional culture," and how does it relate to constitutional endurance and the rule of law?
2. How has the absence of constitutional culture contributed to Bangladesh's recurring pattern of authoritarian constitutionalism?
3. What explains the gap between the Supreme Court's formal independence and its perceived vulnerability to political pressure?
4. How does the politicization of the judiciary manifest in practice, and what are its consequences for the rule of law?
5. To what extent does the post-2024 political transition represent a rupture in or continuation of Bangladesh's constitutional trajectory?

1.4 Research Gap

The existing literature on Bangladesh's constitutional politics tends to focus on discrete phenomena: the Masdar Hossain judgment and judicial independence, specific constitutional amendments, the abuse of legal mechanisms, or the 2024 political crisis. While valuable, this scholarship often operates within a legal-institutional paradigm that assumes the rule of law follows from appropriate institutional design.

A significant gap exists in theoretical understanding of why institutional reforms—including the 2007 judicial separation and the 2025 Supreme Court Secretariat—fail to produce constitutional consolidation. The concept of "constitutional culture" has been extensively developed in Western constitutional theory, but its application to post-colonial, non-Western contexts like Bangladesh remains underdeveloped.

Furthermore, the 2024 uprising and its aftermath create an urgent need for scholarly analysis that situates these events within a longer trajectory of constitutional development. This thesis addresses both gaps by providing a theoretically grounded, historically situated analysis of Bangladesh's constitutional fragility through the lens of constitutional culture and its relationship to the rule of law.

1.5 Theoretical Framework

This thesis synthesizes three theoretical traditions:

Constitutional Theory: Drawing on Hans Kelsen's concept of the Grundnorm (basic norm) as the foundational presupposition of legal validity, this thesis examines how Bangladesh's constitutional Grundnorm has been eroded through repeated

constitutional manipulation. The distinction between "constituted power" (authority exercised within an existing constitutional framework) and "constituent power" (the authority to remake that framework) is central to understanding the 2024 crisis.

Political Culture Theory: Following the comparative tradition of political culture studies, this thesis conceptualizes constitutional culture as encompassing elite attitudes toward constitutional constraints, judicial independence, and democratic norms, as well as citizen understanding of constitutional rights and responsibilities.

Democratic Backsliding and Abusive Constitutionalism: Building on the work of Levitsky and Ziblatt, this thesis examines how legal mechanisms were weaponized to dismantle democratic institutions—a phenomenon described as "autocratic legalism."

1.6 Methodology

This research employs a qualitative, doctrinal, and historical-analytical methodology:

- **Doctrinal Analysis:** Examination of constitutional texts, amendments, and Supreme Court judgments, particularly Masdar Hossain, cases concerning the basic structure doctrine, and recent pronouncements on the caretaker government system.
- **Historical Analysis:** Reconstruction of Bangladesh's constitutional trajectory from 1972 to 2025, tracing patterns of constitutional amendment and institutional evolution.
- **Empirical Analysis:** Examination of quantitative data from the World Justice Project Rule of Law Index 2025 and human rights monitoring reports to measure the tangible consequences of constitutional fragility.
- **Secondary Source Analysis:** Review of academic literature, news analysis, expert commentary, and policy documents.

1.7 Structure of the Thesis

This thesis is organized into six chapters. Following this introduction, Chapter Two develops the theoretical framework, distinguishing between constitutional text and constitutional culture. Chapter Three traces Bangladesh's constitutional history from 1972 to the present, identifying recurring patterns of constitutional manipulation. Chapter Four provides a detailed analysis of judicial independence and the rule of law, examining the gap between constitutional provisions and institutional practice. Chapter Five analyzes the 2024 political transition and its constitutional implications. Chapter Six concludes with findings, policy implications, and suggestions for future research.

Chapter Two

Theoretical Framework

2.1 Introduction

To understand why Bangladesh's constitutional framework has proven so fragile, we must first understand what constitutional endurance requires. This chapter develops a theoretical framework distinguishing between two related but distinct concepts: constitutionalism (the institutional and legal framework) and constitutional culture (the shared beliefs, practices, and normative commitments that give that framework living force).

2.2 Constitutionalism: The Institutional Framework

Constitutionalism, in the classical liberal tradition, refers to the limitation of government power through a supreme law that establishes institutions, defines their powers, and protects individual rights. Political scientist David Fellman has described constitutionalism as "**a complicated concept, deeply imbedded in historical experience, which subjects the officials who exercise governmental powers to the limitations of a higher law**". It rests on several core principles:

- Supremacy of the Constitution: The constitution is the highest law, binding all state institutions and citizens.
- Separation of Powers: State power is divided among executive, legislative, and judicial branches.
- Judicial Independence: Courts are free from external influence and can enforce constitutional limits on other branches.
- Fundamental Rights: Citizens have enforceable rights against state action.
- Rule of Law: All persons and institutions are subject to and accountable to law.

Bangladesh's Constitution, on paper, satisfies these criteria. Article 7 establishes constitutional supremacy; Articles 94 and 116A provide for judicial independence; Article 22 mandates the separation of the judiciary from the executive; Part III enumerates fundamental rights. Yet as one scholar notes, "**constitutionalism does not necessarily mean having a written constitution and proclaiming rights**". Many countries include democratic provisions in their constitutions but implement very few in reality.

2.3 Constitutional Culture: The Missing Dimension

Constitutionalism is not merely a matter of institutional design. It requires what this thesis terms constitutional culture. Constitutional culture encompasses:

Elite Constitutional Culture:

- **Constitutional Fidelity:** Political actors treat constitutional provisions as binding constraints, not merely obstacles to be overcome.
- **Institutional Restraint:** Power-holders accept limits on their authority and resolve disputes through constitutional channels.
- **Norms of Governance:** There is a shared understanding of legitimate political conduct, including acceptance of electoral outcomes, respect for opposition, and commitment to peaceful political competition.

Judicial Constitutional Culture:

- **Professional Independence:** Judges see themselves as guardians of the Constitution, not servants of political power.
- **Doctrinal Integrity:** Judicial decisions are grounded in constitutional principle, not political expediency.
- **Institutional Courage:** Courts are willing to resist executive pressure even at political cost.

Citizen Constitutional Culture:

- **Constitutional Literacy:** Citizens understand their constitutional rights and the obligations of the state.
- **Political Participation:** Citizens engage in political life and hold power-holders accountable.
- **Trust in Institutions:** Citizens believe that courts and other institutions will uphold constitutional norms.

2.4 The Rule of Law and Constitutional Culture

The rule of law the principle that all persons and institutions are subject to and accountable to law is the practical manifestation of constitutional culture. A.V. Dicey defined the rule of law as the equal subjection of all individuals to ordinary laws administered by ordinary courts, preventing arbitrary power. Where constitutional culture is weak, the rule of law becomes a "fiction". As one scholar observes, in Bangladesh, "the rule of law has been made a farce by a political culture in which law enforcement by the police is politically influenced to take action against opposition parties and turn a blind eye to the law-breakers if they belong to the ruling party".

The relationship between constitutional culture and the rule of law is reciprocal. Constitutional culture sustains the rule of law by creating normative commitments that constrain power-holders; the rule of law, in turn, reinforces constitutional culture by demonstrating that constitutional norms have practical force.

2.5 The Grundnorm and Constitutional Validity

Hans Kelsen's concept of the Grundnorm (basic norm) provides a powerful framework

for understanding constitutional legitimacy. For Kelsen, a legal system's validity ultimately rests on a presupposed basic norm that is not itself enacted but is assumed to be binding. This Grundnorm gives the entire legal system its coherence and legitimacy.

In stable constitutional systems, the Grundnorm is the commitment to obey the constitution. This commitment is shared by political actors, judges, and citizens. When it is widely held, constitutions endure. When it is contested or eroded, constitutional systems collapse. In Bangladesh, repeated constitutional amendments, particularly the Fifteenth Amendment (2011) that abolished the caretaker government system, eroded faith in the constitutional process. The 2024 events, including the President's dissolution of Parliament and the installation of an extra-constitutional interim government, arguably represent the effective collapse of the old Grundnorm.

2.6 Autocratic Legalism: The Weaponization of Constitutional Forms

A critical insight from the democratic backsliding literature is that authoritarian leaders often operate within constitutional forms, using legal mechanisms to dismantle democracy. This is "autocratic legalism" or "abusive constitutionalism." In Bangladesh, this pattern was evident from the Fifteenth Amendment onward. Legal measures were adopted to restrict freedom of expression; the opposition was persecuted through legal and extra-legal means; the judiciary was "tamed." This is not the suspension of constitutionalism but its hollowing out from within.

The concept of autocratic legalism helps explain why Bangladesh's constitutional framework failed to protect democracy. The Constitution remained intact; its violation was gradual, cumulative, and often technically legal. The absence of constitutional culture—a shared normative commitment to constitutional limits—allowed this to happen.

2.7 Summary

This chapter has developed a theoretical framework for understanding Bangladesh's constitutional fragility and its relationship to the rule of law. The framework distinguishes between:

- (1) constitutionalism—the formal institutional framework that exists in Bangladesh;
- (2) constitutional culture—the shared normative commitments that give that framework living force—which Bangladesh lacks;
- (3) the Grundnorm—the foundational presupposition of constitutional validity—which has been eroded; and
- (4) autocratic legalism—the process by which constitutional forms are weaponized to consolidate authoritarian power. The next chapter applies this framework to Bangladesh's constitutional history.

Chapter Three

Constitutional History and the Rule of Law in Bangladesh

3.1 Introduction

This chapter traces Bangladesh's constitutional trajectory from independence in 1971 to the present, examining how the absence of constitutional culture has enabled repeated constitutional manipulation and the erosion of the rule of law. The narrative reveals a recurring pattern: constitutional reform that consolidates power rather than constrains it, judicial decisions that oscillate between activism and complicity, and a political culture that treats the Constitution as a prize to be captured rather than a contract to be honored.

3.2 The Founding Moment: The 1972 Constitution

Bangladesh's Constitution was adopted on 4 November 1972. The Constitutional Reform Commission appointed after the 2024 transition has controversially argued that "the seeds of the undemocratic tendencies and eventual fascism of the Bangladeshi state in the later years were rooted in the 1972 Constitution". According to the Commission's report, "over time, power became increasingly centralized, bureaucracy grew more prominent, the judiciary faced greater party affiliation, and corruption among those in power intensified due to a lack of accountability". The report further contends that "the focus on individualism has stifled the development of democratic culture within the party, state, and society, and has also led to the destruction of state institutions".

This tension—between the emancipatory ideals of the liberation movement and the centralizing tendencies of the post-independence state—has persisted throughout Bangladesh's constitutional history. The 1972 Constitution, for all its transformative promise, embedded authoritarian tendencies that would resurface repeatedly.

3.3 Early Authoritarianism: 1975-1990

The fragility of Bangladesh's constitutional order was evident almost immediately. In January 1975, the Awami League, with a parliamentary supermajority, amended the Constitution to replace the parliamentary system with a presidential system, concentrating power in the executive. The Fourth Amendment also curtailed fundamental rights and established a one-party state.

During this period, "the rule of law was manipulated by the ruling elite to consolidate political support for them". As Rounaq Jahan observed, "elected political regimes have not attempted to establish the rule of law because that would run counter to their partisan interests. They have compromised the neutrality of the civil bureaucracy and lower judiciary by influencing their recruitment and promotion. Through a partisan administration and judicial system, successive elected governments have rewarded their supporters and oppressed their opponents. Law enforcement became partisan".

In August 1975, President Sheikh Mujibur Rahman was assassinated in a military coup. Martial law was imposed, and the constitutional order was suspended. The period of military rule from 1975 to 1990 represented the most serious assault on the rule of law. As one scholar observed, "Martial Law and an independent judiciary cannot coexist". During this period, both ordinary courts and special Martial Law Courts existed side by side. The independent status of the judiciary, which was supposed to act as the guardian of the Constitution, was reduced and made subservient to the Martial Law Proclamations and orders. The higher courts of Bangladesh were compelled to enforce these Proclamations and orders even if they were "harsh" or even "unjust" laws.

3.4 The 1990 Transition and Its Consequences

The fall of Ershad in 1990 brought hopes of democratic consolidation. However, the institutionalization of constitutionalism remained elusive. As one scholar notes, "Bangladesh has passed over years of its independence, yet its politico-legal authorities have failed to institutionalize constitutionalism". The common agenda of election manifestos of all political parties was the establishment of democracy and upholding of the Constitution, but "they have failed to implement their commitment in fact". The country today is burdened with numerous problems that threaten the very development of institutionalization of democracy, and "as such establishment of constitutionalism is becoming a matter of illusion".

3.5 Abusive Constitutionalism: 2011-2024

The Fifteenth Amendment of 2011, abolishing the caretaker government system and introducing the "basic structure" of the Constitution as unamendable, marked a turning point. The amendment was engineered by the Awami League after its landslide victory in 2008. It effectively eliminated the mechanism that had prevented electoral manipulation.

The consequences were predictable. The 2014 elections were boycotted by the BNP and held amid violence; the 2018 elections were similarly compromised. Legal measures were used to repress opposition, restrict media freedom, and intimidate civil society. Extrajudicial killings and enforced disappearances were reported. Data collected by a Dhaka-based human rights monitoring organization showed 1,897 extra-judicial killings by law enforcement agencies between 2001 and 2011, of which 930 were killed by the Rapid Action Battalion (RAB) alone since its formation in 2004.

This period represents "autocratic legalism" at its most effective: the forms of constitutionalism were maintained while the substance was systematically dismantled. The Constitution was used to legitimize authoritarian rule.

3.6 The 2024 Transition and Its Constitutional Implications

The July 2024 uprising triggered a nationwide movement demanding the resignation of Sheikh Hasina. On 5 August 2024, Hasina fled, and the President dissolved Parliament. An interim government, led by Nobel laureate Muhammad Yunus, was established. The events of August 2024 represent a fundamental constitutional rupture. The interim government is explicitly "extra-constitutional" its authority derives not

from the 1972 Constitution but from the political necessity of the moment.

The post-2024 period has seen significant judicial reforms. On 21 January 2025, the interim government published the 'Supreme Court Judge Appointment Ordinance, 2025,' establishing an independent council led by the Chief Justice to appoint judges to higher courts. Previously, the executive held significant control over judicial appointments, which led to widespread criticism for producing a politicized judiciary. The seven-member council now includes members from the Appellate Division, the High Court, and the Attorney General.

The Supreme Court also acquitted former Prime Minister Khaleda Zia in a graft case on 15 January 2025, overturning a 10-year jail sentence originally handed down by the High Court in 2018. The Supreme Court said that the initial proceedings "manifested a contrived misapplication of the law tantamount to malicious prosecution". This decision followed Zia's acquittal in another corruption case after Sheikh Hasina was ousted from office, clearing the way for Zia to contest in the next election.

3.7 Summary

Bangladesh's constitutional history reveals a pattern of "constitutionalism without constitutional culture": formal institutions have existed, but the normative commitments necessary for their endurance have been absent. The result has been a constitution that is repeatedly manipulated, institutions that are captured, and a rule of law that remains fragile.

Chapter Four

Judicial Independence and the Rule of Law

4.1 Introduction

Judicial independence is central to the rule of law and is explicitly guaranteed by Bangladesh's Constitution. Article 22 provides: "The State shall ensure the separation of the judiciary from the executive organs of the State." Articles 94 and 116A provide for the independence of Supreme Court and subordinate court judges. Yet as one scholar notes, "there is a gap that exists between the theory and practice concerning the independence of the judiciary in Bangladesh". This chapter examines that gap, analyzing how the politicization of the judiciary has undermined the rule of law.

4.2 The Masdar Hossain Judgment and Judicial Separation

The turning point for judicial independence in Bangladesh was the Appellate Division's judgment in *Secretary, Ministry of Finance v. Masdar Hossain* (1999). The Court held that judicial independence was an essential feature of the constitutional structure and issued twelve binding directives to operationalize it. The Court declared that "the judicial service is functionally and structurally distinct and separate service from the civil executive and administrative services of the Republic with which the judicial service cannot be placed on par on any account and that it cannot be amalgamated, abolished, replaced, mixed up and tied together with the civil executive and administrative services".

The Masdar Hossain directives required: the establishment of a separate Judicial Service Commission; the creation of a separate judicial pay scale; the framing of distinct service rules for judicial officers; and the transfer of administrative control over judicial personnel from the executive to the judiciary. The Court identified key characteristics of judicial independence: "security of tenure; recruitment to the Judicial Service as permanent and through a transparent Judicial Service Commission; security of emoluments including pension etc.; institutional functional independence of subordinate judiciary from the Parliament and the Executive; and financial autonomy".

4.3 The Gap Between Separation and Independence

Yet institutional separation did not eliminate all constraints on judicial independence. Several factors continued to qualify judicial autonomy in practice:

Politicization of Appointments: The executive held significant control over judicial appointments, leading to widespread criticism for producing a politicized judiciary. The First Amendment to the Constitution (1975) had given the President exclusive power to select judges of the higher judiciary, removing the requirement for consultation with the Chief Justice. The Fourth Amendment further diluted independence by amending Article 115 to provide that "appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf," removing

the original provision mandating "consultation with the Supreme Court".

Removal of Judges: The original Constitution provided a very rigid procedure for removing judges, but the Fourth Amendment simply provided that "a judge may be removed from his office by order of the President on the grounds of misbehavior or incapacity," removing safeguards for protecting the judiciary from political considerations. During General Ershad's rule from 1982 to 1986, judges of the Supreme Court were unreasonably removed. Some senior Supreme Court judges Justice K.M. Subhan, Justice S.M. Hossain, and Justice Abdur Rahman Chowdhury were unjustly removed exercising power under the Martial Law Proclamation which provided for "removal of a person from office by the Chief Martial Law Administrator without assigning any reason".

Subordinate Judiciary: Article 115 of the original Constitution had provided that the President would appoint judges of the District courts on the recommendation of the Supreme Court, which would exercise control over postings, grant of leave, promotions, etc. in the subordinate courts. These Articles were later amended or substituted by the Fourth (1975) and Fifteenth (2011) Amendments to vest the Executive/President with exclusive power in making appointments to and controlling the lower judiciary. After the restoration of democracy, mainstream political parties had showed their commitment in their manifestoes to make judiciary free from the control of the executive, but "they failed to fulfill this commitment once they came to power".

4.4 The Consequences for the Rule of Law

The politicization of the judiciary has had concrete consequences for the rule of law:

Partisan Law Enforcement: Law enforcement by the police is politically influenced to take action against opposition parties and turn a blind eye to law-breakers if they belong to the ruling party. The rule of law has been made a "farce" by a political culture in which partisan interests trump legal norms.

Violations of Fundamental Rights: Despite constitutional provisions guaranteeing fundamental rights, people's rights have been violated in many ways. Torture in custody and extra-judicial killings by law enforcement agencies have widely been reported. Bangladesh's ranking of 133rd in the "Fundamental Rights" category of the Rule of Law Index 2025 reflects the severity of these violations.

Impunity for Violations: Widespread corruption in government and public administration, lack of answerability and transparency in bureaucracy, and confrontational political culture have made the rule of law "just a fiction".

The 2024 Transition and Judicial Independence: The post-2024 period has been marked by both progress and concerning developments. While the Supreme Court Judge Appointment Ordinance, 2025, established an independent council for judicial appointments, the interim government has faced criticism for politicizing justice in other ways. Critics have accused the government of using the International Crimes Tribunal (ICT) for politically motivated prosecutions. One commentator described the trial of Sheikh Hasina at the ICT as a "sham legal proceeding administered by kangaroo courts for political reasons," noting that the tribunal is "compromised,

staffed by a woefully inexperienced and partial judiciary" . The ICT chief prosecutor "made it clear that this trial was a mere formality and its outcome predetermined," and none of the three judges appointed to the ICT has any experience of dealing with international criminal law matters.

4.5 Summary

Bangladesh's judiciary has made significant institutional progress toward independence, culminating in the 2007 separation and the 2025 Supreme Court Judge Appointment Ordinance. However, independence remains qualified by political culture, the legacy of constitutional amendments that undermined judicial authority, and ongoing concerns about politicization. The judiciary's complicity in, or vulnerability to, authoritarian governance has eroded public trust and undermined the rule of law.

Chapter Five

The 2024 Transition and Constitutional Reform

5.1 Introduction

The July 2024 uprising and the subsequent political transition represent the most significant challenge to Bangladesh's constitutional order since independence. This chapter examines the constitutional significance of these events, analyzing the tensions between continuity and rupture, legal form and popular sovereignty, and the challenges of building constitutional culture in a context of deep political polarization.

5.2 The Reform Agenda

The interim government-initiated state reforms and formed six commissions, one of which was the Constitutional Reform Commission headed by Ali Riaz. The Commission submitted its preliminary report to Chief Advisor Muhammad Yunus on January 15, 2025. The report included several recommendations, including reducing the term of parliament to four years, limiting the prime minister's tenure to a maximum of two terms, and changes in the country's constitutional name and parliamentary structure. The Commission also recommended that the prime minister not be allowed to hold the position of the leader of a political party or parliament during their term.

5.3 Debates on Constitutional Reform

The reform process has sparked significant debate about the appropriate direction of constitutional change:

Bicameral Parliament: The proposal for a bicameral parliament has been questioned by some experts. The Centre for Policy Dialogue (CPD) suggested that the interim government's National Consensus Commission drop the proposal, saying it is "not

realistic considering Bangladesh's political culture". CPD argued that due to long-standing political loyalty, patronage networks, and a "winner takes all" culture, such reforms often become symbolic. "Instead of ensuring accountability and balance, they may lead to political deadlock, greater influence struggles, and increased centralization of power". CPD recommended that the existing unicameral parliament be made stronger through legal, institutional, and structural reforms.

Proportional Representation: Similar concerns have been raised about proposed electoral reforms. CPD argued that proportional representation and inclusion of non-partisan individuals "may sound attractive in principle but are not practical in Bangladesh's political context".

Equality Provisions: The Constitution Reform Commission recommended amending Article 27 and expanding "equal protection of law" to include "equal protection and benefit." However, legal scholars have criticized this proposal, arguing that the inclusion of "benefit" is "superfluous, as entitlement to the law's benefits is already implicit in the rule of law". They warn that "explicitly adding 'benefit' risks creating further ambiguity and obscuring the distinct functions of the two limbs of equality".

5.4 The Challenge of Constitutional Culture

The debates over constitutional reform reveal the deeper challenge of building constitutional culture. As CPD noted, "without structural and cultural change, institutional reforms alone cannot bring effective accountability". The reform process has also raised questions about the legitimacy of the interim government and the inclusivity of the reform process. The Constitutional Reform Commission gathered views from nearly 100,000 people, but concerns have been raised about the exclusion of the Awami League Bangladesh's oldest and largest political party from the process.

5.5 Summary

The 2024 political transition and the subsequent reform process represent both an opportunity for constitutional renewal and a challenge to constitutional legitimacy. The debates over institutional reforms bicameralism, proportional representation, equality provisions reveal the deeper challenge of building constitutional culture in a context of deep political polarization and institutional fragility. Without a shared commitment to constitutional norms, institutional reforms alone will not produce a more robust rule of law.

Chapter Six

Conclusion

6.1 Summary of Findings

This thesis has argued that Bangladesh's constitutional fragility and the fragility of the rule of law stem from the absence of constitutional culture: the shared normative commitments that give a constitution living force beyond its text. The evidence for this argument is drawn from Bangladesh's constitutional history, judicial practice, quantitative measurements of the rule of law, and the current constitutional crisis.

Key findings include:

1. **Constitutional Text vs. Constitutional Reality:** Bangladesh has a formal constitutional framework that meets international standards, but this framework has been systematically hollowed out through autocratic legalism—the weaponization of constitutional forms to consolidate authoritarian power. The World Justice Project's Rule of Law Index 2025 ranks Bangladesh 125th out of 143 countries, placing it among the bottom 20 globally.
2. **The Absence of Constitutional Culture:** Political elites have treated the Constitution as an instrument of power rather than a binding constraint; the judiciary has oscillated between activism and complicity; citizens lack constitutional literacy and trust in institutions. The Grundnorm the foundational commitment to constitutional legitimacy has been eroded. "An under-developed political culture of Bangladesh, her poverty-ridden illiterate and incompetent mass people and lacking of democratic political organizations, institutions and practices are the main barriers to establish constitutionalism".
3. **Judicial Independence Remains Qualified:** The Masdar Hossain judgment and subsequent reforms have improved judicial independence, but significant challenges remain. The Fourth and Fifteenth Amendments undermined constitutional protections for judicial independence; political interference in appointments and removals has persisted; and the subordinate judiciary remains vulnerable to executive control. The post-2024 period has seen progress with the Supreme Court Judge Appointment Ordinance, 2025, but also concerning developments such as the use of the ICT for politically motivated prosecutions.
4. **The Rule of Law is a "Fiction":** "Widespread corruption in government and public administration; lack of answerability and transparency in bureaucracy; and confrontational political culture in the country have made the rule of law just a fiction". Law enforcement is politically influenced; fundamental rights are violated with impunity; and the justice system fails to provide effective remedies for citizens.
5. **Constitutional Culture is the Missing Link:** Institutional reforms alone are insufficient; constitutional endurance requires a transformation in political culture, judicial practice, and citizen engagement. As CPD noted, "without structural and cultural change, institutional reforms alone cannot bring effective accountability".

6.2 Theoretical Contributions

This thesis contributes to the literature on constitutionalism, political culture, and democratic consolidation in several ways:

1. The Concept of "Constitutionalism without Constitutional Culture": This concept captures the paradox of Bangladesh's constitutional experience—the forms of constitutionalism exist, but the cultural substrate that makes them sustainable is absent.
2. Application of the Grundnorm Framework to Bangladesh: This thesis demonstrates the utility of Kelsen's concept in diagnosing constitutional fragility in post-colonial contexts.
3. Integration of Constitutional and Political Culture Approaches: By synthesizing constitutional theory and political culture studies, this thesis provides a more comprehensive explanation of Bangladesh's constitutional experience and the fragility of the rule of law.
4. Analysis of the 2024 Constitutional Transition: This thesis provides one of the first scholarly analyses of the post-2024 political transition and its constitutional implications.

6.3 Policy Implications

The findings of this thesis suggest several policy implications:

1. Beyond Institutional Reform: Institutional reforms are necessary but insufficient. They must be accompanied by efforts to build constitutional culture. "Democracy and constitutionalism are the most uttered words though the nation has failed to put these into practice".
2. Constitutional Education: Efforts to increase constitutional literacy and citizen engagement are essential for constitutional consolidation.
3. Judicial Leadership: The judiciary must demonstrate institutional courage and independence, resisting political pressure and upholding constitutional norms. This requires transparent, merit-based appointment processes and security of tenure.
4. Inclusive Constitution-Making: Any constitutional reform process must be inclusive, transparent, and grounded in popular consent. The exclusion of major political parties from the reform process risks undermining the legitimacy of any new constitutional settlement.
5. Political Party Reform: Political parties must internalize constitutional norms and accept limits on their authority. As one scholar notes, "an under-developed political culture" and "lacking of democratic political organizations, institutions and practices are the main barriers to establish constitutionalism".

6.4 Limitations and Future Research

This thesis has several limitations:

1. Methodological Constraints: As a doctrinal and historical analysis, it does not include primary empirical research such as interviews or surveys.
2. The Complexity of Constitutional Culture: Constitutional culture is a complex, multi-dimensional concept that would benefit from more granular empirical investigation.
3. The 2024 Events are Ongoing: The constitutional situation in Bangladesh is evolving rapidly; this thesis captures a moment in time.

Future research should focus on:

1. Empirical investigation of constitutional culture through surveys, interviews, and comparative analysis.
2. The role of civil society and legal professionals in building constitutional culture.
3. Comparative studies of constitutional culture in post-colonial contexts.
4. Longitudinal studies of Bangladesh's constitutional development and the rule of law.

6.5 Concluding Reflections

Bangladesh stands at a crossroads. The 1972 Constitution, which has served as the formal framework for governance for over five decades, has been discredited by repeated manipulation and authoritarian governance. The 2024 uprising represents both a rejection of the old order and an opportunity for renewal.

The central challenge for Bangladesh is not merely to design better institutions though institutional reform matters but to build a constitutional culture that sustains those institutions and the rule of law. Without a shared commitment to constitutional norms, institutions will continue to be captured, constitutions will continue to be manipulated, and the rule of law will remain fragile.

Constitutional culture is not built overnight. It requires sustained effort, institutional leadership, political restraint, and citizen engagement. It requires political actors who accept the legitimacy of constitutional limits, judges who have the courage to enforce them, and citizens who demand accountability.

The journey from constitutionalism without constitutional culture to constitutionalism with constitutional culture is long and difficult. But it is a journey that Bangladesh must undertake if it is to realize the promise of its founding ideals: democracy, justice, and the rule of law.

Bibliography

Books and Monographs

1. Bari, M.E. (2022). *The Independence of the Judiciary in Bangladesh: Exploring the Gap Between Theory and Practice*. Singapore: Springer.

Journal Articles and Working Papers

2. Chowdhury, M.F.I. (n.d.). "A Critical Approach to Constitutionalism: Bangladesh Perspective." *Metropolitan University Journal*, 146-158.

Book Chapters and Dissertations

3. Jahan, R. (2008). "Challenges to the Constitution and Constitutionalism." In *Constitutional Politics in Bangladesh* (pp. 214-219). Shodhganga.

Reports and Policy Documents

4. Constitutional Reform Commission. (2025). *Report of the Constitutional Reform Commission*. Bangladesh: Interim Government.
5. Centre for Policy Dialogue. (2025). "Ensuring Accountability of the Majority Party in the Parliamentary System of Bangladesh." *National Dialogue Report*. Dhaka: CPD.
6. Centre for Policy Dialogue. (2025). "Proposed Upper House in the National Parliament: Can it Ensure Accountability of the Majority Party?" *National Dialogue Report*. Dhaka: CPD.
7. World Justice Project. (2025). *Rule of Law Index 2025*. Washington, D.C.: World Justice Project.

News Articles and Opinion Pieces

8. Arafat, M.A. (2025, November 7). "Constitution: Reform Commission." *bdnews24.com*.
9. Faruq, M. (2025). "Necessary action for separating the judiciary has not been carried out: Interview with Md Masdar Hossain." *Prothom Alo English*.
10. Rahman, M.I. (2026, January 18). "Our Constitution between resurrection and revolution." *The Daily Star*.
11. The Business Standard. (2025, October 28). "Bangladesh improves in Rule of Law index, yet remains near global bottom." *The Business Standard*.
12. The Daily Star. (2025, November 4). "Experts call for expansion of rights, judicial independence in constitution." *The Daily Star*.

Academic and Policy Analysis

13. Centre for Policy Dialogue. (2025, October 15). "Dysfunctional parliament: Why the solution does not lie in upper house." *CPD Analysis*.
14. Verfassungsblog. (2025, April 18). "Reforming the Legislature in Bangladesh: A Critical Analysis of the Semi-Parliamentary Proposal." *Verfassungsblog*