



Sonargaon University

Research Monograph

on

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

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Acknowledgement

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

I would like to acknowledge my gratitude to my honorable teacher Muhammad Ali, Lecturer & Coordinator, Department of Law, Sonargaon University for permitting me to undertake this research.

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

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

Signature: _____

CERTIFICATION BY THE RESEARCH ADVISOR

This is to certify that the research monograph titled " **on "The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis"** submitted by Mr. Md.Hassan ,ID: LLB2202026030, has been carried out under my active supervision and guidance as a partial requirement for the fulfilment of the Bachelor of Laws (LL.B.) at the Department of Law, Sonargaon University. To the best of my knowledge, the work presented in this monograph is the original effort of the student and has not been submitted elsewhere for the award of any degree, diploma, or other academic qualification.

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DECLARATION

This is Md.Hassan, student ID: LLB 2202026030 of LL.B. program of Department of Law of Sonargaon University, do hereby declare that the thesis paper titled "The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis" is an original work.

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LETTER OF TRANSMITTAL

To,
Muhammad Ali
Lecturer & Coordinator
Department of Law,
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Subject: Submission of Research Monograph titled "The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis".

Dear Sir,

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

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

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

Yours faithfully,

Md.Hassan
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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
ACC	Anti-Corruption Commission
AL	Awami League
BNP	Bangladesh Nationalist Party
CAA	Constitutional (Amendment) Act
CRC	Convention on the Rights of the Child
DLR	Dhaka Law Reports
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRL	International Human Rights Law
JAC	Judicial Appointments Commission
NGO	Non-Governmental Organization
PIL	Public Interest Litigation
SC	Supreme Court
HC	High Court
TI	Transparency International
UN	United Nations
UNDP	United Nations Development Programme
UK	United Kingdom
US	United States
LLB	Bachelor of Laws
MoLJPA	Ministry of Law, Justice and Parliamentary Affairs

ABSTRACT

The Constitution of Bangladesh, enacted on 4 November 1972, stands as the foundational legal instrument of the independent state that emerged from the Liberation War of 1971. Born out of a people's struggle against colonial subjugation and political oppression, the Constitution enshrined four state principles—nationalism, socialism, democracy, and secularism—as the ideological bedrock of the new republic. However, more than five decades of political turbulence, military interventions, and partisan governance have significantly altered the original constitutional vision, giving rise to a complex and contested constitutional landscape.

This research monograph critically examines the historical background of the Constitution of Bangladesh, tracing its evolution from the colonial era through the Liberation War to its adoption in 1972 and subsequent amendment history. It analyses the foundational principles, constitutional framework for rights and governance, and the transformative impact of seventeen constitutional amendments—particularly the Fourth, Fifth, Seventh, Eighth, Thirteenth, Fifteenth, Sixteenth, and Seventeenth—on democratic governance, separation of powers, and the Rule of Law. The paper further identifies present constitutional challenges including political centralisation, weakened judicial independence, human rights concerns, and structural governance failures.

Through a comparative analysis with India, Pakistan, and developed legal systems, the study draws relevant lessons for Bangladesh and advances a suggestive framework for constitutional reformation. The paper argues that meaningful constitutional reform is not merely desirable but imperative in the present context, requiring comprehensive legal, institutional, and democratic renewal. The study adopts a doctrinal and analytical methodology, drawing on constitutional texts, landmark judicial decisions, scholarly literature, and policy documents.

Keywords: *Constitution of Bangladesh; Constitutional History; Constitutional Amendment; Rule of Law; Judicial Independence; Separation of Powers; Constitutional Reform; Democratic Governance.*

CHAPTER – I

INTRODUCTION

1.1 Background of the Study

The Constitution of Bangladesh occupies a singular position in the nation's political and legal history. Adopted on 4 November 1972 and coming into force on 16 December 1972—the first anniversary of Bangladesh's victory in the Liberation War—the Constitution was the product of immense sacrifice, democratic aspiration, and a profound desire for self-determination.¹ It represented not merely a legal document but a political covenant between the state and its people, crystallising the vision of those who fought and died for an independent Bangladesh.

The Constitution established Bangladesh as a unitary, independent, and sovereign republic with parliamentary democracy as its form of government. It embedded fundamental rights, provided for a separation of powers, guaranteed judicial independence, and anchored governance in four foundational principles: nationalism, socialism, democracy, and secularism.² These principles were not abstract ideals but deliberate choices that reflected the historical experience of the Bengali people, who had endured decades of political marginalisation and cultural suppression under colonial and post-colonial rule.

Yet the constitutional history of Bangladesh since 1972 has been one of extraordinary complexity. The Constitution has been amended seventeen times—some amendments strengthening democratic institutions, others gravely undermining them. Military coups in 1975 and 1982 suspended constitutional governance, introduced martial law proclamations as part of the legal order, and fundamentally altered the constitutional character of the state. Political transitions, partisan amendments, and contested judicial interpretations have collectively produced a constitutional framework that is, in significant respects, distant from the original vision of 1972.

¹ M M Rahman, *Constitutional Law of Bangladesh* (Academic Press 2010) 12–15.

² Constitution of the People's Republic of Bangladesh, Article 8.

In the present political and constitutional context, Bangladesh faces persistent challenges to the Rule of Law, democratic accountability, judicial independence, and fundamental rights. The need for comprehensive constitutional reform has acquired renewed urgency, as structural deficiencies in the constitutional framework continue to obstruct good governance and equitable justice. It is against this background that the present study is undertaken.

1.2 Research Problem

The central research problem of this study concerns the growing gap between the constitutional ideals enshrined in the 1972 Constitution and the political and institutional realities of contemporary Bangladesh. Despite its robust foundational provisions, the Constitution has been manipulated, amended, and reinterpreted over five decades in ways that have frequently served partisan interests rather than constitutional values. The problem is not merely technical or legal; it is political and structural. It concerns the relationship between constitutional text and constitutional practice, between formal law and lived governance.

The study interrogates why, despite possessing a comprehensive constitutional framework, Bangladesh continues to experience deficits in the Rule of Law, democratic accountability, and judicial independence. It asks what the historical roots of these deficits are, how constitutional amendments have contributed to or mitigated them, and what reforms are necessary to address them in a sustainable and democratic manner.

1.3 Objectives of the Study

This research monograph is designed to achieve the following objectives: first, to trace the historical background and evolution of the Constitution of Bangladesh from the colonial period through to its adoption in 1972 and subsequent development; second, to analyse the foundational principles, structural provisions, and rights framework of the Constitution; third, to critically examine the major constitutional amendments and their political and legal impact; fourth, to identify present challenges in the constitutional framework with reference to the Rule of Law, separation of powers, judicial independence, and human rights; fifth, to undertake a comparative constitutional analysis to draw relevant lessons for Bangladesh; and sixth, to propose a suggestive framework for constitutional reformation suited to the present context.

1.4 Research Questions

The study is guided by the following research questions: What is the historical background of the Constitution of Bangladesh, and how did colonial and liberation history shape its content and character? What are the foundational constitutional principles, and how have they been preserved, diluted, or transformed through successive amendments? What are the principal challenges to constitutional governance in Bangladesh today, and what are their structural and political roots? What lessons can be drawn from comparative constitutional experience in India, Pakistan, and developed legal systems? What reforms are necessary and feasible to strengthen the constitutional framework of Bangladesh in the present context?

1.5 Methodology

The study adopts a doctrinal and analytical research methodology. Primary sources include the Constitution of Bangladesh and its amendments, judicial decisions of the Supreme Court, and relevant statutory instruments. Secondary sources include academic books, peer-reviewed journal articles, policy documents, and reports from national and international institutions. Comparative analysis is employed to evaluate the constitutional experience of India, Pakistan, and selected developed legal systems. The methodology is interpretive and critical, seeking not merely to describe constitutional provisions but to evaluate their normative significance and practical operation.

1.6 Scope and Limitations

The study focuses on the constitutional history and reform of Bangladesh, with particular attention to the period from 1947 to the present. Comparative analysis is necessarily selective, drawing on India, Pakistan, and the United Kingdom as the most instructive comparators given historical and structural relevance. The study does not address in detail the full body of statutory law or administrative practice in Bangladesh, focusing instead on constitutional provisions, amendment history, and high-level judicial decisions. Limitations arise from the dynamic nature of constitutional politics in Bangladesh, the constraints of available data on institutional performance, and the inherent difficulty of predicting the outcomes of reform proposals.

CHAPTER – II

HISTORICAL BACKGROUND OF THE CONSTITUTION OF BANGLADESH

2.1 Constitutional Developments During the British India and Pakistan Period

The constitutional history of Bangladesh is inseparable from the broader history of South Asian constitutionalism under British colonial rule. The Bengal Presidency, of which modern Bangladesh formed the eastern portion, was governed under a succession of legislative instruments that reflected imperial administrative interests rather than democratic self-governance.³ The Government of India Act 1858 formally transferred power from the East India Company to the British Crown, establishing a centralised imperial administration. The Government of India Acts of 1909, 1919, and 1935 introduced successive layers of constitutional reform, expanding the scope of legislative councils and progressively—though inadequately—incorporating elected Indian representation.

The Government of India Act 1935 is of particular significance in the constitutional genealogy of Bangladesh. It established a federal structure, provided for provincial autonomy, and introduced the concept of responsible government at the provincial level.⁴ Although never fully implemented in the form envisaged—particularly the all-India federal provisions—the 1935 Act served as the interim constitution of both India and Pakistan upon independence in 1947, and many of its structural features were incorporated into post-independence constitutional frameworks.

The partition of British India in 1947 created two independent dominions: India and Pakistan. Under the Indian Independence Act 1947, East Bengal—present-day Bangladesh—became part of the Dominion of Pakistan as the eastern wing.⁵ The constitutional history of Pakistan from 1947 to 1971 is characterised by political instability, constitutional crises, and the persistent subordination of East Pakistan's interests to those of the western wing. Pakistan's

³ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Liberty Fund 1982) 110.

⁴ Government of India Act 1935.

⁵ Indian Independence Act 1947.

first Constitution was not adopted until 1956, nine years after independence, following a prolonged constitutional impasse.

The Constitution of Pakistan 1956 established a parliamentary system with a unicameral legislature, the National Assembly, and recognised Islam as the state religion. However, this Constitution was abrogated in 1958 by General Ayub Khan's military coup, which imposed martial law and suspended all constitutional governance.⁶ The Constitution of 1962, introduced under Ayub Khan's Basic Democracy scheme, replaced parliamentary government with a presidential system and a system of indirect elections through Basic Democrats. This constitution significantly curtailed political freedoms and was deeply unpopular in East Pakistan.

The constitutional and political marginalisation of East Pakistan during this period was profound. East Pakistan accounted for the majority of Pakistan's population and a substantial share of its export earnings, primarily from jute, yet political power and economic resources were concentrated in West Pakistan.⁷ The Language Movement of 1952, in which students and activists were killed demanding recognition of Bangla as an official state language, became a defining moment in Bengali political consciousness and a precursor to the independence movement.

The political crisis of 1969-1971 brought these tensions to a catastrophic head. The Awami League, led by Sheikh Mujibur Rahman, won an overwhelming majority in the 1970 general elections, which were intended to provide a constitutional settlement for Pakistan. However, the refusal of the military-political establishment to transfer power to the elected majority led to a declaration of independence and a nine-month liberation war of extraordinary brutality, resulting in the emergence of Bangladesh as an independent state on 16 December 1971.

2.2 Impact of the 1971 Liberation War on Constitutional Design

The Liberation War of 1971 was not merely a military conflict; it was a transformative political and social experience that profoundly shaped the content and character of the Constitution of Bangladesh.⁸ The Proclamation of Independence of Bangladesh, issued on 10 April 1971 and backdated to 26 March 1971, established the constitutional basis for the provisional government and declared the people of Bangladesh to be the source of all power in the new

⁶ A Chowdhury, *Rule of Law and Governance in Bangladesh* (Academic Publishers 2018) 30–35.

⁷ *Ibid* 37.

⁸ K Hossain, *Bangladesh: Quest for Freedom and Justice* (Oxford University Press 2013) 45–55.

state. This proclamation affirmed equality, human dignity, and social justice as the foundational values of the republic.

The experience of colonial rule and the specific conditions of the 1971 war left deep imprints on constitutional design. The framers of the Constitution were acutely aware of the dangers of concentrated executive power, military interference in politics, and the abuse of state authority—all of which had been experienced under Pakistani rule. The Constitution accordingly established strong parliamentary accountability, judicial independence, fundamental rights protections, and a clear commitment to the Rule of Law as safeguards against the recurrence of authoritarian governance.

The Constituent Assembly, which drafted the Constitution, was composed of elected representatives from the 1970 election and convened under the chairmanship of Muhammad Ullah.⁹ The drafting process was notable for its relative speed—the Constitution was adopted within one year of independence—reflecting both the urgency of establishing constitutional governance and the broad political consensus that existed, at least initially, around the foundational principles of the new state.

2.3 Framing and Adoption of the 1972 Constitution

The Constitution of Bangladesh was adopted by the Constituent Assembly on 4 November 1972 and came into operation on 16 December 1972.¹⁰ The drafting committee, chaired by Dr. Kamal Hossain, drew extensively on comparative constitutional models—particularly the Indian Constitution of 1950 and the British constitutional tradition—while also reflecting the specific historical and political circumstances of Bangladesh.

The 1972 Constitution established Bangladesh as a unitary republic with a parliamentary form of government. The President was designated as the constitutional head of state but with largely ceremonial functions, while effective executive power was vested in the Prime Minister, who was required to command the confidence of the Parliament (Jatiya Sangsad).¹¹ The Constitution provided for a single-chamber legislature with 315 members, including reserved seats for women, elected by direct popular vote.

The four foundational principles—nationalism, socialism, democracy, and secularism—were enshrined in Article 8 of the Constitution as the fundamental principles of state policy. These

⁹ M M Rahman, *Constitutional Law of Bangladesh* (Academic Press 2010) 18–22.

¹⁰ Constitution of the People's Republic of Bangladesh (adopted 4 November 1972, in force 16 December 1972).

¹¹ *Ibid*, Articles 55–58.

principles were understood as complementary and mutually reinforcing: nationalism grounded the state in the collective identity and aspirations of the Bengali people; socialism committed the state to reducing inequality and ensuring economic justice; democracy established the people as the ultimate source of political authority; and secularism guaranteed freedom of religion and the separation of religion from state affairs.

The Constitution also provided a comprehensive framework of fundamental rights in Part III (Articles 27–44), including equality before the law, prohibition of discrimination, right to life and personal liberty, freedom of movement, freedom of assembly and association, freedom of thought and conscience, and freedom of religion.¹² These rights were made enforceable through the writ jurisdiction of the Supreme Court under Article 102, providing citizens with direct access to the highest court for the protection of their constitutional rights.

The judiciary was established as an independent branch of government, with the Supreme Court possessing appellate, original, and advisory jurisdiction as well as the power of judicial review. The framers' intention was clear: a strong, independent judiciary would serve as the guardian of the Constitution and the protector of citizens' rights against executive overreach—a deliberate response to the judicial subordination that had characterised the Pakistani legal system.

¹² Ibid, Articles 27–44.

CHAPTER – III

FUNDAMENTAL PRINCIPLES OF THE CONSTITUTION

3.1 Nationalism, Socialism, Democracy, and Secularism

The four fundamental principles enshrined in Article 8 of the original 1972 Constitution—nationalism, socialism, democracy, and secularism—constituted not merely abstract values but a comprehensive political philosophy that defined the character and purpose of the Bangladeshi state.¹³ Understanding these principles in their original historical context is essential to evaluating the constitutional transformations that have occurred since their adoption.

Nationalism, as understood in the 1972 Constitution, was Bengali nationalism—a cultural, linguistic, and political identity rooted in the shared history, language, and heritage of the Bengali people. This was explicitly distinguished from Pakistani-style nationalist ideology, which had subsumed Bengali identity within an overarching Islamic national identity. The framers' commitment to Bengali nationalism was a direct expression of the cultural and political struggle that had culminated in independence. However, this conception of nationalism would become a significant site of constitutional contestation in subsequent decades, as political groups sought to replace or supplement it with Bangladeshi nationalism—a broader, more territorially-defined identity less closely tied to secular Bengali cultural identity.

Socialism, as incorporated in the 1972 Constitution, did not signify a commitment to Marxist-Leninist ideology but rather a broadly social-democratic orientation emphasising state-led economic development, redistribution of wealth, reduction of inequality, and protection of the socially and economically disadvantaged.¹⁴ Article 10 committed the state to establishing a socialist economic system, and various provisions of Part II (Fundamental Principles of State Policy) elaborated this commitment through obligations regarding food, clothing, shelter, education, and medical care.

Democracy, the third foundational principle, was understood in both formal and substantive terms. Formally, it required free and fair elections, parliamentary accountability, and protection

¹³ Ibid, Article 8.

¹⁴ M M Rahman, *Constitutional Law of Bangladesh* (Academic Press 2010) 45–50.

of political rights. Substantively, it implied a commitment to political equality, civic participation, and the supremacy of the people as the source of governmental authority. The commitment to democracy was reinforced by specific constitutional provisions establishing the structure of Parliament, the accountability of the executive to the legislature, and the independence of the judiciary as a check on both executive and legislative power.

Secularism, perhaps the most contested of the four principles, committed Bangladesh to a separation of religion from the affairs of the state and guaranteed freedom of religion to all citizens.¹⁵ This principle was directly responsive to the experience of state religion under Pakistan, where Islam had been instrumentalised as a source of political authority and used to delegitimise Bengali cultural identity. The secular character of the state was affirmed in Article 12, which prohibited the political use of religion and discrimination on grounds of religion.

3.2 Rule of Law and Constitutional Supremacy

The Rule of Law is a foundational principle woven throughout the constitutional fabric of Bangladesh, though its expression is not confined to a single provision but distributed across multiple articles and structural arrangements.¹⁶ Article 7 is of fundamental importance: it declares that all powers of the Republic belong to the people, establishes the Constitution as the supreme law, and provides that any law inconsistent with the Constitution shall be void to the extent of the inconsistency. This provision establishes constitutional supremacy as the legal framework within which all state action must occur.

The Rule of Law in the constitutional framework encompasses several interconnected dimensions. First, it requires that all state action—legislative, executive, and judicial—be authorised by and consistent with legal norms. Second, it demands equality before the law: Article 27 guarantees that all citizens are equal before the law and are entitled to equal protection of the law without discrimination. Third, it requires that the law be applied through independent and impartial institutions, particularly courts. Fourth, it demands that fundamental rights be protected against arbitrary interference by the state.¹⁷

Constitutional supremacy, operationalised through judicial review, is the mechanism by which these Rule of Law commitments are enforced. The Supreme Court's power to strike down legislation or executive action that violates constitutional provisions transforms the

¹⁵ Constitution of the People's Republic of Bangladesh, Article 12.

¹⁶ Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press 2004) 3–10.

¹⁷ Constitution of the People's Republic of Bangladesh, Article 27.

Constitution from a political document into a legally enforceable framework of governance. This power, exercised by the courts in a number of landmark decisions, has been central to the functioning of the Rule of Law in Bangladesh, notwithstanding the political pressures and structural limitations that have at times compromised its effectiveness.

3.3 Fundamental Rights and Separation of Powers

Part III of the Constitution (Articles 26–47A) provides a comprehensive framework of fundamental rights. These rights, justiciable before the Supreme Court through writ jurisdiction under Article 102, represent the Constitution's commitment to protecting individual liberty and dignity against state power.¹⁸ The fundamental rights include equality before the law and non-discrimination (Articles 27–29), protection of the right to life and personal liberty (Article 32), safeguards against arbitrary arrest and detention (Articles 33–35), freedom of movement (Article 36), freedom of assembly and association (Articles 37–38), freedom of thought, conscience, and speech (Article 39), freedom of profession and occupation (Article 40), freedom of religion (Article 41), and rights in property (Article 42).

The separation of powers, though not explicitly articulated as a doctrine in a single provision, is established structurally by the Constitution's allocation of governmental functions to three distinct branches.¹⁹ The legislature (Jatiya Sangsad) exercises legislative power; the executive (the President and Cabinet headed by the Prime Minister) exercises executive power; and the judiciary (the Supreme Court and subordinate courts) exercises judicial power. Each branch is constitutionally defined in terms of its powers, composition, and accountability mechanisms.

The separation of powers serves two related purposes in the constitutional scheme: it prevents the concentration of power in any single institution or individual, thereby guarding against tyranny; and it creates a system of checks and balances whereby each branch can restrain and hold accountable the actions of the others. The effectiveness of this system depends critically on the independence of each branch, particularly the judiciary, which serves as the ultimate arbiter of constitutional compliance. The extent to which this independence has been maintained or compromised in practice is one of the central concerns of the present study.

¹⁸ Ibid, Articles 26–47A.

¹⁹ M Shah Alam, Separation of Powers in Bangladesh (University Press 2015) 20–30.

CHAPTER – IV

CONSTITUTIONAL AMENDMENTS AND POLITICAL TRANSFORMATION

4.1 Overview of the Amendment History

The Constitution of Bangladesh has been amended seventeen times since its adoption in 1972, a frequency that reflects the extraordinary political turbulence of the country's post-independence history.²⁰ While some amendments represent genuine constitutional development or necessary adaptation to changing circumstances, others represent deliberate attempts to entrench political power, legitimise unconstitutional acts, or fundamentally alter the character of the state in ways that contravene the founding vision of 1972. A critical examination of the major amendments is essential to understanding the present state of Bangladesh's constitutional framework.

4.2 The Fourth Amendment (1975) – Presidential Authoritarianism

The Fourth Amendment, enacted in January 1975, was the most fundamental constitutional transformation in the country's history up to that point. It abolished the parliamentary system and replaced it with a presidential system, concentrated executive power in the office of the President, established a one-party state under the Bangladesh Krishak Sramik Awami League (BAKSAL), and severely curtailed fundamental rights, including freedom of the press and freedom of political activity.²¹ The amendment was passed by the Jatiya Sangsad in circumstances of considerable political pressure, and its enactment marked the end of Bangladesh's initial experiment with democratic parliamentary governance.

The political context of the Fourth Amendment is crucial to its evaluation. The period following independence had been marked by severe economic difficulty, political instability, and law and order problems. Sheikh Mujibur Rahman, who had led the independence movement and enjoyed enormous popular legitimacy, increasingly resorted to authoritarian measures to address these crises. The Fourth Amendment represented the culmination of this authoritarian

²⁰ M M Rahman, *Constitutional Law of Bangladesh* (Academic Press 2010) 200–205.

²¹ Constitution (Fourth Amendment) Act 1975; A Chowdhury, *Rule of Law and Governance in Bangladesh* (Academic Publishers 2018) 55–60.

turn, transforming Bangladesh from a parliamentary democracy into a one-party presidential state.

The constitutional significance of the Fourth Amendment extends beyond its immediate political impact. It established a precedent—subsequently followed on several occasions—of using constitutional amendment as a tool for concentrating political power rather than for strengthening democratic institutions. It also demonstrated the vulnerability of the constitutional framework to manipulation by a parliamentary majority acting without genuine democratic deliberation or public consultation.

4.3 The Fifth Amendment (1979) – Legalisation of Martial Law

The Fifth Amendment, enacted by the military-backed government of General Ziaur Rahman in April 1979, retrospectively legitimised the martial law proclamations and orders issued following the military coup of August 1975.²² By incorporating these proclamations into the Fourth Schedule of the Constitution, the amendment attempted to regularise a period of unconstitutional governance and protect those responsible for the 1975 coup and the subsequent martial law administration from legal accountability.

The Fifth Amendment also altered the four foundational principles of the Constitution by replacing Bengali nationalism with 'Bangladeshi nationalism,' introducing the phrase 'Bismillah-ar-Rahman-ar-Rahim' at the beginning of the Constitution, and otherwise modifying the secular character of the state.²³ These changes reflected the political ideology of the Bangladesh Nationalist Party (BNP) under Ziaur Rahman, which sought to distinguish itself from the Awami League's secular Bengali nationalist orientation by emphasising territorial identity and Islamic values.

The Fifth Amendment was ultimately declared unconstitutional by the Supreme Court in *Bangladesh Italian Marble Works Ltd v Government of Bangladesh*²⁴ and definitively addressed in the Fifteenth Amendment, though its political legacy has continued to shape constitutional discourse in Bangladesh.

4.4 The Seventh Amendment (1986) – Legalisation of the Ershad Regime

²² Constitution (Fifth Amendment) Act 1979.

²³ A Chowdhury, *Rule of Law and Governance in Bangladesh* (Academic Publishers 2018) 60–65.

²⁴ *Bangladesh Italian Marble Works Ltd v Government of Bangladesh* 33 DLR (AD) 1 (1978).

The Seventh Amendment, enacted in November 1986 under the government of General Hussain Muhammad Ershad, followed the pattern established by the Fifth Amendment in retrospectively legitimising a period of unconstitutional military rule.²⁵ Ershad had seized power in March 1982, abrogating the Constitution and imposing martial law. The Seventh Amendment incorporated the martial law proclamations issued between March 1982 and November 1986 into the constitutional framework, effectively transforming unconstitutional acts into part of the constitutional order.

The Seventh Amendment represents a particularly egregious example of constitutional manipulation, as it sought to legitimise a regime that had come to power through an unconstitutional military coup and governed for four years in complete disregard of the Constitution. The use of constitutional amendment—a mechanism intended to refine and improve democratic governance—to legitimise authoritarian rule reflects a fundamental distortion of constitutional purpose.

4.5 The Eighth Amendment (1988) – State Religion

The Eighth Amendment, enacted in June 1988 under the Ershad government, inserted Article 2A into the Constitution, which declared Islam as the state religion of Bangladesh.²⁶ This amendment represented a direct contradiction of the secular principle that had been one of the four foundational pillars of the 1972 Constitution. While the amendment preserved nominal religious freedom for non-Muslims, the declaration of a state religion fundamentally altered the constitutional character of Bangladesh from a secular to a nominally Islamic state.

The adoption of a state religion has been criticised on both principled and practical grounds. Principally, it contradicts the constitutional commitment to secularism and threatens the equal citizenship of non-Muslim minorities, who constitute approximately ten percent of Bangladesh's population. Practically, it has been used to justify discriminatory practices and has emboldened religious extremist groups. The Eighth Amendment remains in force, as the Fifteenth Amendment, despite restoring secularism as a fundamental principle, did not remove the state religion provision—creating a significant constitutional inconsistency that has yet to be resolved by the courts.

4.6 The Thirteenth Amendment (1996) – Caretaker Government

²⁵ Constitution (Seventh Amendment) Act 1986.

²⁶ Constitution (Eighth Amendment) Act 1988; Constitution of the People's Republic of Bangladesh, Article 2A.

The Thirteenth Amendment, enacted in March 1996 during a brief session of a parliament boycotted by the opposition parties, introduced the system of caretaker government for conducting general elections.²⁷ Under this system, a non-party caretaker government headed by the last retired Chief Justice would assume executive power during the period between the dissolution of parliament and the completion of general elections, with the purpose of ensuring neutral and impartial electoral administration.

The caretaker government system was a pragmatic response to the deep distrust between the major political parties—the Awami League and the BNP—and to the widespread perception that incumbent governments could not be trusted to administer elections fairly. The system was employed successfully in the elections of 1996 and 2001, and was generally regarded as an important safeguard for electoral integrity in Bangladesh's highly polarised political environment.

4.7 The Fifteenth Amendment (2011) – Restoration and Controversy

The Fifteenth Amendment, enacted in June 2011 by the Awami League government, was the most extensive constitutional revision since the 1972 Constitution's adoption.²⁸ It made several significant changes: it reinstated the four original state principles (nationalism, socialism, democracy, and secularism) while simultaneously retaining the Eighth Amendment's state religion; it abolished the caretaker government system; it introduced provisions protecting the Constitution from future military coups; it restored the unamendable core provisions of the Constitution (the 'basic structure' doctrine); and it made various other institutional changes.

The abolition of the caretaker government system proved to be the most controversial aspect of the Fifteenth Amendment. The Supreme Court had declared the Thirteenth Amendment unconstitutional in *Khondaker Delwar Hossain v Bangladesh Italian Marble Works Ltd*²⁹ but recommended its retention for two further elections to allow for alternative arrangements to be developed. The Awami League government used this judicial ruling to justify abolishing the system without waiting for the development of alternative safeguards, a decision that was vigorously opposed by the BNP and other opposition parties.

²⁷ Constitution (Thirteenth Amendment) Act 1996.

²⁸ Constitution (Fifteenth Amendment) Act 2011.

²⁹ *Khondaker Delwar Hossain v Bangladesh Italian Marble Works Ltd* (Thirteenth Amendment Case) Writ Petition No 800 of 2011.

The abolition of the caretaker system has had profound consequences for electoral democracy in Bangladesh. The 2014 and 2024 general elections, conducted without the caretaker mechanism, were boycotted by the principal opposition parties or conducted in circumstances that were widely criticised as insufficiently competitive. This has contributed to a deepening democratic deficit and heightened political polarisation.

4.8 The Sixteenth and Seventeenth Amendments

The Sixteenth Amendment, enacted in 2014, sought to restore Parliament's power to remove Supreme Court judges, replacing the Supreme Judicial Council established by the Fifth Amendment as the mechanism for judicial removal.³⁰ This amendment was declared unconstitutional by the Supreme Court's Appellate Division in 2017, which held that parliamentary control over judicial removal violated judicial independence as a basic feature of the Constitution. The government's response to this decision—including political pressure on the judiciary and eventual changes in the composition of the Supreme Court—raised serious concerns about executive interference with judicial independence.

The Seventeenth Amendment, enacted in 2018, extended the reserved seats for women in the National Assembly from 45 to 50 and continued the system of indirect election to these seats.³¹ While the expansion of women's reserved seats is a positive development in principle, the continuation of the indirect election system has been criticised for failing to address the structural underrepresentation of women in Bangladesh's political life and for maintaining a system of patronage-based selection that limits women's independent political voice.

4.9 Impact of Military Regimes and Judicial Responses

The two periods of direct military rule—under General Ziaur Rahman (1975-1981) and General Hussain Muhammad Ershad (1982-1990)—had devastating and lasting effects on Bangladesh's constitutional development. Beyond the immediate suspension of constitutional governance, these periods normalised the use of executive power without democratic accountability, weakened the culture of constitutionalism, and established practices of political patronage and institutional manipulation that continued to influence governance long after the return of civilian rule.

³⁰ Constitution (Sixteenth Amendment) Act 2014.

³¹ Constitution (Seventeenth Amendment) Act 2018.

The judiciary's response to military rule and unconstitutional constitutional amendments has been complex and, at times, contradictory. In the landmark case of *Anwar Hossain Chowdhury v Bangladesh*³², the Supreme Court articulated the doctrine of the basic structure of the Constitution, holding that certain fundamental features—including judicial independence, the democratic character of the state, and fundamental rights—could not be abrogated even through constitutional amendment. This decision was of immense constitutional significance, establishing the judiciary as a guardian of the Constitution's core identity against parliamentary manipulation.

However, the judiciary's actual performance in resisting unconstitutional governance has been inconsistent. Courts have at various times legitimised martial law proclamations, deferred to executive pressure in politically sensitive cases, and declined to exercise their supervisory jurisdiction effectively. The gap between the constitutional theory of judicial independence and the political reality of judicial subordination remains one of the most significant challenges for Bangladesh's constitutional development.

³² *Anwar Hossain Chowdhury v Bangladesh* 1989 BLD (Spl) 1 (Appellate Division).

CHAPTER – V

PRESENT CHALLENGES IN THE CONSTITUTIONAL FRAMEWORK

5.1 Weak Rule of Law and Enforcement Issues

Despite its comprehensive constitutional framework, Bangladesh continues to face profound challenges in the effective enforcement of the Rule of Law.³³ The gap between constitutional text and constitutional practice is wide and persistent. Laws are selectively enforced; constitutional rights are frequently violated with impunity; and legal remedies, while formally available, are practically inaccessible for a large proportion of the population, particularly those who are poor, rural, or socially marginalised.

The institutional capacity for law enforcement is severely constrained by inadequate resources, pervasive corruption, and a culture of impunity that protects those with political connections from legal accountability. The police service, which is the primary institution for law enforcement at the ground level, suffers from chronic underfunding, poor training, and a legacy of politicisation that has compromised its effectiveness and independence. Law enforcement agencies have been used as instruments of political repression rather than neutral organs for the protection of citizens' rights, a pattern that persists across different political administrations.

5.2 Political Interference and Centralisation of Power

One of the most persistent structural challenges to constitutional governance in Bangladesh is the extreme centralisation of political power. The Westminster parliamentary system, as adapted in Bangladesh, concentrates effective decision-making authority in the Prime Minister's office, with Parliament playing a limited role in holding the executive to genuine account.³⁴ Constitutional provisions intended to ensure parliamentary accountability—including the requirement for regular sessions, question time, and parliamentary committee oversight—have in practice been insufficient to constrain executive dominance.

Political interference in the judiciary, the civil service, law enforcement agencies, and constitutional oversight bodies represents a systemic distortion of the constitutional order. Judicial appointments have been made on the basis of political loyalty rather than merit; civil servants have been transferred or disadvantaged for failing to comply with political directives;

³³ M M Rahman, *Constitutional Law of Bangladesh* (Academic Press 2010) 200–210.

³⁴ A Chowdhury, *Rule of Law and Governance in Bangladesh* (Academic Publishers 2018) 100–110.

and the Anti-Corruption Commission and other oversight bodies have been selectively deployed against political opponents rather than used as neutral instruments of accountability. These patterns of politicisation undermine the constitutional commitments to independence, impartiality, and the Rule of Law.

5.3 Judicial Independence and Accountability Concerns

Judicial independence is both a constitutional requirement and a practical necessity for the Rule of Law. The Constitution provides formal guarantees of judicial independence through security of tenure (Articles 95-99), financial autonomy, and procedural protections. However, the practical independence of the judiciary in Bangladesh has been repeatedly compromised by executive interference in appointments and promotions, selective pressure in politically sensitive cases, and the use of contempt powers to suppress criticism of judicial conduct.³⁵

The landmark case of *Secretary, Ministry of Finance v Masdar Hossain*³⁶ established that the separation of the subordinate judiciary from executive control was a constitutional imperative. The Supreme Court issued twelve directives to the government to implement this separation. However, compliance with these directives was delayed for over a decade, illustrating the gulf between judicial pronouncement and executive implementation that characterises much of Bangladesh's constitutional experience.

Accountability within the judiciary itself presents a complementary challenge. Judicial independence must be balanced with mechanisms to ensure that judges exercise their powers responsibly, impartially, and in accordance with the Constitution. The constitutional provision for judicial removal through the Supreme Judicial Council was abolished by the Sixteenth Amendment and restored following the Amendment's invalidation, but the practical functioning of accountability mechanisms remains inadequate. Delays, backlogs, and a perception of inconsistency in judicial decision-making further undermine public confidence in the courts as neutral arbiters of constitutional rights.

³⁵ Constitution of the People's Republic of Bangladesh, Articles 94–100.

³⁶ *Secretary, Ministry of Finance v Masdar Hossain* 51 DLR (1999).

5.4 Human Rights Issues and Misuse of Laws

Bangladesh has a comprehensive constitutional framework for the protection of fundamental rights and has ratified several major international human rights instruments. However, the practical protection of human rights remains seriously deficient in several areas.³⁷ Arbitrary detention, enforced disappearances, and custodial violence have been documented by both domestic and international human rights organisations as persistent problems in Bangladesh's law enforcement landscape.

The misuse of broadly worded penal legislation to suppress political dissent and restrict freedom of expression is a matter of serious constitutional concern. The Digital Security Act 2018—subsequently replaced by the Cyber Security Act 2023—was widely criticised by journalists, civil society organisations, and international human rights bodies for its chilling effect on freedom of expression and its use against critical voices. These laws provide for criminal penalties for a wide range of online activities that may be characterised as defamatory or contrary to national interests, with insufficient safeguards against abuse.

Preventive detention legislation, including the Special Powers Act 1974, permits the detention of individuals without trial for extended periods on the basis of executive order, subject only to limited judicial oversight. The tension between such provisions and the constitutional protection of personal liberty has been a persistent source of legal controversy. Courts have in some instances intervened to protect detainees from arbitrary detention, but the executive's power to detain without trial remains a significant departure from the Rule of Law ideal.

³⁷ Human Rights Watch, Bangladesh: Human Rights in Law and Practice (Human Rights Watch 2020) 10–20.

CHAPTER – VI

COMPARATIVE CONSTITUTIONAL PERSPECTIVE

6.1 Rule of Law in South Asian Jurisdictions

A comparative analysis of constitutional frameworks in South Asia provides valuable context for evaluating Bangladesh's constitutional experience and identifying possibilities for reform.³⁸ India, Pakistan, and Bangladesh share a common constitutional heritage rooted in British colonial administration and the Government of India Act 1935, yet their constitutional trajectories since independence have diverged significantly, offering both cautionary lessons and positive models.

6.2 Comparative Study with India and Pakistan

India's constitutional experience offers the most instructive comparator for Bangladesh, given the shared historical and legal heritage, geographical proximity, and broadly similar parliamentary constitutional framework.³⁹ The Constitution of India 1950, which drew significantly on the Government of India Act 1935 and incorporated extensive fundamental rights protections and judicial review, has proven remarkably resilient despite the country's extraordinary social, linguistic, and political diversity. The Indian Supreme Court's development of the basic structure doctrine in *Kesavananda Bharati v State of Kerala*⁴⁰ provides the most important constitutional precedent for limiting parliamentary power to amend the fundamental features of the constitutional order—a doctrine that the Bangladesh Supreme Court has adopted and applied.

India's experience with judicial independence is instructive in both its strengths and its limitations. The collegium system for judicial appointments, while imperfect, has provided a significant measure of protection against executive interference in judicial selection at the higher court level. The Supreme Court's activist jurisprudence in the areas of public interest litigation, environmental protection, and social rights has expanded the reach of constitutional justice to disadvantaged groups and has compelled executive action in areas of governance

³⁸ A Chowdhury, *Rule of Law and Governance in South Asia* (Academic Publishers 2020) 45–50.

³⁹ M M Rahman, *Constitutional Law of India and Bangladesh* (Academic Press 2015) 78–82.

⁴⁰ *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461.

failure. However, India also illustrates the risks of excessive judicial activism—a concern relevant to Bangladesh's own experience of judicial overreach in certain constitutional contexts.

Pakistan's constitutional history presents a more cautionary parallel. Like Bangladesh, Pakistan has experienced multiple periods of military rule—in 1958, 1969, 1977, and 1999—each accompanied by the abrogation of the Constitution and the imposition of martial law.⁴¹ The repeated subordination of the constitutional order to military power has produced a political culture in which constitutional norms are instrumentalised rather than internalised, and in which formal constitutional provisions frequently fail to constrain actual political behaviour. The experience of Pakistan suggests that constitutional resilience depends not merely on the quality of constitutional text but on the political culture and institutional norms that determine whether constitutional provisions are genuinely respected.

A significant difference between Pakistan and Bangladesh is that Bangladesh has, since the 1990 restoration of civilian rule, maintained an unbroken period of constitutional governance—withstanding the serious democratic deficits identified in this study. This represents a notable achievement, and one that provides a foundation for further constitutional development. However, the experience of the 1/11 military-backed caretaker government of 2007-2008 demonstrates that the threat of unconstitutional governance has not entirely receded.

6.3 Lessons from Developed Legal Systems

The constitutional experience of developed democracies—particularly the United Kingdom, the United States, and Germany—provides additional insights, though the applicability of these models to Bangladesh must be carefully evaluated given the very different historical, social, and institutional contexts.⁴²

The United Kingdom's constitutional model is of particular relevance given the shared common law heritage. The British system is characterised by the absence of a codified constitution, parliamentary sovereignty, and a strong culture of constitutional conventions. The constitutional reforms of the late 1990s—including the Human Rights Act 1998, the Constitutional Reform Act 2005, and the devolution arrangements—have strengthened institutional accountability and judicial independence while preserving the essential features of

⁴¹ A Chowdhury, *Rule of Law and Governance in South Asia* (Academic Publishers 2020) 52–62.

⁴² Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press 2004) 150–165.

parliamentary government. The creation of the Supreme Court as a fully independent institution separate from the legislature, and the establishment of an independent Judicial Appointments Commission, are directly relevant to Bangladesh's need for institutional reform.

Germany's Basic Law of 1949 and the Federal Constitutional Court provide perhaps the most instructive model for constitutional entrenchment and judicial protection of core constitutional values.⁴³ The Basic Law explicitly identifies certain provisions as unamendable—including the federal structure, the democratic character of the state, and the protection of human dignity—thereby constitutionally entrenching the basic structure doctrine. The Federal Constitutional Court has exercised this jurisdiction robustly, striking down legislation that violates fundamental rights or the basic constitutional order. The German model suggests the value of explicit constitutional entrenchment of unamendable provisions, rather than leaving the basic structure doctrine to develop through judicial implication.

6.4 Applicability of Comparative Models in Bangladesh

The comparative insights drawn from India, Pakistan, the United Kingdom, Germany, and other jurisdictions must be evaluated critically against Bangladesh's specific historical, political, social, and institutional context. Wholesale transplantation of foreign constitutional models is neither feasible nor desirable; what is needed is a contextually sensitive adaptation of comparative lessons to Bangladesh's particular circumstances and needs.

Bangladesh's constitutional reform agenda must address specific national challenges: the polarisation between the Awami League and the BNP that has produced cycles of political confrontation and electoral controversy; the legacy of military rule and the persistent vulnerability of constitutional institutions to executive manipulation; the challenge of ensuring judicial independence in a political culture characterised by strong party loyalty and patronage networks; and the need to strengthen constitutional literacy and democratic culture at the popular level. Comparative models can provide frameworks and mechanisms for addressing these challenges, but the design and implementation of reforms must be grounded in Bangladesh's own constitutional history and political realities.

⁴³ Ibid 160–165.

CHAPTER – VII

NECESSITY OF CONSTITUTIONAL REFORMATION

7.1 Gap Between Constitutional Ideals and Reality

The case for constitutional reformation in Bangladesh rests, first and foremost, on the demonstrable gap between the ideals enshrined in the Constitution and the political and institutional realities of governance.⁴⁴ The Constitution commits Bangladesh to the Rule of Law, equality before the law, judicial independence, democratic accountability, and the protection of fundamental rights. These are not merely aspirational statements but legally binding provisions supported by judicial enforcement mechanisms. Yet the persistent failures of governance—the selective enforcement of laws, the politicisation of institutions, the suppression of political opposition, the violations of fundamental rights—indicate a fundamental disconnect between constitutional norm and constitutional practice.

This gap is not merely the result of insufficient political will or individual failures of leadership, though these are certainly contributing factors. It reflects structural deficiencies in the constitutional framework itself—deficiencies that have been created or exacerbated by decades of constitutional manipulation and that cannot be addressed simply through better implementation of existing provisions. Constitutional reform is necessary not only to strengthen constitutional provisions but to address the structural incentives that have produced the patterns of governance failure that Bangladesh has experienced.

7.2 Democratic Deficit and Governance Crisis

Bangladesh's democratic institutions face a crisis of legitimacy and effectiveness that is rooted in constitutional and structural factors.⁴⁵ The extreme centralisation of executive power in the Prime Minister's office, the weakness of parliamentary accountability mechanisms, the politicisation of the civil service and law enforcement agencies, the dependence of the judiciary on executive favour for appointments and administrative matters, and the electoral controversies of the 2014 and 2024 elections—all these factors contribute to a democratic

⁴⁴ R Parvin, 'Rule of Law in Bangladesh: Challenges and Prospects' (2023) Rajshahi University Law Journal 112.

⁴⁵ A Chowdhury, Rule of Law and Governance in Bangladesh (Academic Publishers 2018) 150–160.

deficit that undermines the constitutional promise of popular sovereignty and accountable governance.

The abolition of the caretaker government system without establishing adequate alternative mechanisms for ensuring electoral integrity has been particularly damaging. Free and fair elections are the foundation of democratic governance, and the erosion of confidence in electoral processes directly undermines the democratic legitimacy of the constitutional order. Restoring this confidence requires institutional arrangements that are capable of commanding the trust of all major political parties and the broader electorate—a requirement that the current framework demonstrably fails to meet.

7.3 Justification for Reform in Present Context

The justification for constitutional reform in Bangladesh's present context is compelling on both principled and practical grounds.⁴⁶ On principled grounds, reform is necessary to restore fidelity to the constitutional vision of 1972—a vision of democratic, secular, rights-respecting governance that has been repeatedly compromised by partisan manipulation, military interference, and structural deficiencies. On practical grounds, reform is necessary to address the institutional failures that are impeding Bangladesh's social, economic, and political development.

Constitutional reform is not, in itself, a novel or controversial idea in Bangladesh. The history of constitutional amendment demonstrates that all major political parties have been willing to engage in fundamental constitutional change when doing so served their political interests. The challenge is to develop a reform agenda that commands broad political support precisely because it is designed to serve constitutional rather than partisan interests—to strengthen the institutions and mechanisms that protect all citizens, regardless of party affiliation, from the abuse of state power.

The present moment offers particular opportunities for reform. The political transition following the 2024 elections, the growing awareness within civil society and the legal community of the need for constitutional strengthening, and the international community's increasing engagement with Bangladesh's governance challenges all create conditions in which meaningful reform is both necessary and potentially feasible.

⁴⁶ M M Rahman, *Constitutional Law of Bangladesh* (Academic Press 2010) 220–230.

CHAPTER – VIII

SUGGESTIVE ANALYSIS AND RECOMMENDATIONS

8.1 Legal and Constitutional Reforms

A comprehensive programme of constitutional and legal reform is essential to address the structural deficiencies identified in this study.⁴⁷ The following recommendations are offered as the foundation of a reform agenda that is both principled—grounded in the constitutional values of the 1972 Constitution—and practical—capable of generating the political consensus necessary for successful implementation.

First, the constitutional inconsistency created by the Fifteenth Amendment—which simultaneously restored secularism as a fundamental principle and retained the Eighth Amendment's declaration of Islam as the state religion—requires resolution.⁴⁸ This inconsistency is not merely a textual anomaly but a source of genuine legal uncertainty that affects the equal citizenship of religious minorities. A reformed constitution should resolve this tension clearly and unequivocally, either by removing the state religion provision or by establishing with constitutional clarity that all citizens enjoy equal rights and opportunities regardless of religion, and that the state religion provision carries no legal consequences for the equality of citizens.

Second, the constitutional framework for constitutional amendment should be reformed to strengthen the protection of the constitution's basic structure against partisan manipulation. Building on the judicial doctrine established in *Anwar Hossain Chowdhury v Bangladesh*, the constitution should explicitly identify unamendable provisions—including judicial independence, the democratic character of the state, the separation of powers, and the fundamental rights guarantees—and establish that these cannot be abrogated even by a parliamentary supermajority. The German Basic Law model of explicitly enumerated unamendable provisions offers a valuable precedent for this reform.

⁴⁷ Bangladesh Law Commission, Report on Judicial Reforms and Access to Justice (Government Press 2016).

⁴⁸ Constitution of the People's Republic of Bangladesh, Articles 8 and 2A (as amended by the Eighth and Fifteenth Amendments).

Third, legislation that has been systematically misused to restrict freedom of expression and suppress political dissent should be reformed or repealed. The Cyber Security Act 2023 and the Special Powers Act 1974, among other legislative provisions, require critical review against international human rights standards and Bangladesh's own constitutional commitments to ensure that they do not provide avenues for the suppression of legitimate political and journalistic activity.

8.2 Strengthening Judicial Independence

The independence of the judiciary is both a constitutional requirement and a practical necessity for the Rule of Law. Reforms to strengthen judicial independence should operate at multiple levels: the structural, concerning the institutional arrangements for judicial appointment, promotion, transfer, and discipline; the financial, concerning the funding and administrative autonomy of the courts; and the cultural, concerning the norms and expectations that govern judicial conduct and executive-judicial relations.⁴⁹

The most important structural reform is the establishment of an independent Judicial Appointments Commission for appointments to the Supreme Court. Such a commission, composed of a transparent mix of judges, legal professionals, and public members, would reduce the scope for executive influence over judicial selection and strengthen public confidence in the impartiality of the judiciary. The composition, powers, and procedures of such a commission should be specified in constitutional legislation to protect it from executive manipulation.

The constitutional provisions governing the tenure, conditions of service, and removal of judges should be strengthened to ensure that judicial independence is genuinely protected in practice, not merely in form. The mechanism for judicial removal through the Supreme Judicial Council requires procedural reform to ensure that it operates transparently, with appropriate safeguards for accused judges and effective accountability for genuine misconduct. The backlog of cases in the Supreme Court and subordinate courts requires urgent attention through additional judicial appointments, modernised case management systems, and procedural reforms to reduce delay.

8.3 Election System Reform

⁴⁹ M Shah Alam, *Judicial Independence and Accountability in Bangladesh* (University Press 2015) 90–100.

The restoration of public confidence in electoral processes is a prerequisite for democratic legitimacy and constitutional stability in Bangladesh.⁵⁰ The abolition of the caretaker government system without establishing adequate alternative mechanisms has been the single most damaging constitutional change for Bangladesh's democratic health in recent decades. Reform of the electoral framework should be the highest priority in any comprehensive constitutional reform agenda.

A reformed electoral framework requires, at minimum, a genuinely independent Election Commission with secure tenure, adequate funding, and effective enforcement powers; robust legal provisions against electoral fraud, voter suppression, and abuse of state resources for partisan purposes; and an arrangement for the administration of elections during the transitional period between governments that commands the confidence of all major political parties. Whether this should take the form of a restored caretaker system, an enhanced non-partisan Election Commission with expanded powers, or some other mechanism should be determined through broad political consultation rather than by the incumbent government acting unilaterally.

8.4 Anti-Corruption and Accountability Mechanisms

Corruption in legal, administrative, and political institutions represents one of the most significant practical barriers to the Rule of Law in Bangladesh.⁵¹ The Anti-Corruption Commission, established under the Anti-Corruption Commission Act 2004, requires constitutional entrenchment and institutional strengthening to enable it to function as a genuinely independent accountability mechanism rather than a politically manipulable instrument.

Constitutional reform should provide for the ACC's independence through secure tenure for commissioners, an autonomous budget allocated directly by Parliament rather than through the executive, and protection from political interference in its investigative and prosecutorial functions. The ACC should be accountable to Parliament rather than to the executive, with regular reporting requirements and parliamentary oversight of its operations.

More broadly, a culture of accountability requires transparency as its foundation. The Right to Information Act 2009 represents an important legislative step toward government

⁵⁰ A Chowdhury, *Rule of Law and Governance in Bangladesh* (Academic Publishers 2018) 170–180.

⁵¹ Transparency International Bangladesh, *Corruption in Bangladesh: Legal and Administrative Challenges* (TI Bangladesh 2018).

transparency, but its effective implementation has been inconsistent. Constitutional entrenchment of the right to information, combined with stronger enforcement mechanisms and genuine political commitment to transparency, would strengthen the accountability framework significantly.

8.5 Use of Technology in Governance

The integration of technology into governance and justice delivery offers significant opportunities to improve efficiency, transparency, and access to justice in Bangladesh.⁵² Digital case management systems can reduce the enormous backlog of pending cases in the courts; online filing and hearing systems can expand access for litigants in rural and remote areas; electronic publication of judicial decisions can improve legal transparency and predictability; and digital procurement and financial management systems can reduce corruption in public administration.

The Bangladesh government has made significant investments in digital governance infrastructure, and these initiatives provide a foundation for further technology-enabled reform. However, technology is not a substitute for institutional integrity; digital systems can only function effectively in support of constitutional governance if the underlying institutions are themselves committed to legality, transparency, and accountability. Technology-enabled reform must therefore be pursued as a complement to, rather than a replacement for, the institutional and constitutional reforms recommended in this study.

8.6 Civil Society, Media, and Legal Education

The Rule of Law ultimately depends not only on formal legal and institutional arrangements but on a culture of constitutionalism that is internalised by citizens, legal professionals, public officials, and political leaders.⁵³ Strengthening this culture requires investment in legal education, civic awareness, and the capacity of civil society organisations and the media to hold power to account.

⁵² UNDP, *Strengthening Rule of Law in Bangladesh: Challenges and Prospects* (UNDP 2017).

⁵³ M Shah Alam, *Public Interest Litigation and Judicial Activism in Bangladesh* (University Press 2015) 60–70.

Legal education in Bangladesh should be reformed to place greater emphasis on constitutional law, human rights, and legal ethics, equipping future lawyers and judges with the knowledge, values, and commitment necessary to uphold the Rule of Law in their professional practice. Continuing professional development for serving lawyers, judges, and public officials should similarly emphasise constitutional values and the practical requirements of the Rule of Law.

Civil society organisations and an independent media play a critical role in monitoring governance, exposing corruption and rights violations, and advocating for constitutional accountability. The legal framework governing civil society and media must be reformed to ensure that these organisations can operate freely and effectively, without the threat of arbitrary restriction or closure by the state. Freedom of the press and freedom of association are not merely constitutional rights in themselves; they are essential conditions for the functioning of all other constitutional rights and mechanisms of accountability.

CHAPTER – IX

CONCLUSION AND FINDINGS

9.1 Summary of Major Findings

This research monograph has undertaken a comprehensive examination of the historical background of the Constitution of Bangladesh and the necessity of its reformation in the present context. The study has traced the constitutional history of Bangladesh from the colonial period through the Liberation War and the adoption of the 1972 Constitution, analysed the foundational principles and structural provisions of the constitutional framework, critically evaluated the major constitutional amendments and their political and legal impact, identified present challenges to constitutional governance, and proposed a framework for constitutional reformation.

The principal findings of the study may be summarised as follows. First, the 1972 Constitution was a product of extraordinary historical circumstances—colonial subjugation, political marginalisation, and a liberation war of immense sacrifice—and reflected a genuine commitment to democratic, secular, and rights-respecting governance. The foundational principles of nationalism, socialism, democracy, and secularism were not abstract ideals but deliberate responses to the historical experiences of the Bengali people.

Second, the constitutional history of Bangladesh since 1972 has been marked by repeated manipulation of the constitutional order for partisan and authoritarian purposes. The Fourth, Fifth, Seventh, Eighth, and Fifteenth Amendments, in particular, have fundamentally altered the character of the Constitution in ways that have departed significantly from the founding vision. The retrospective legitimisation of unconstitutional military rule through constitutional amendment represents a particularly egregious distortion of constitutional purpose.

Third, the present constitutional framework faces serious structural challenges that cannot be addressed through better implementation of existing provisions alone. The centralisation of executive power, the weakness of parliamentary accountability, the politicisation of constitutional institutions, the democratic deficit in electoral arrangements, and the persistent violations of fundamental rights all reflect structural deficiencies that require constitutional and institutional reform.

Fourth, comparative analysis with India, Pakistan, the United Kingdom, and Germany provides valuable lessons for Bangladesh's constitutional reform agenda, though these lessons must be adapted to Bangladesh's specific historical, political, and institutional context.

9.2 Concluding Observations

The Constitution of Bangladesh remains, at its core, a remarkable document—the product of a people's determination to govern themselves through law rather than through arbitrary power. Its foundational commitments to democracy, the Rule of Law, fundamental rights, and constitutional supremacy continue to provide a normative framework that is both legally binding and politically significant. The challenge is to restore and strengthen the constitutional framework in a manner that is faithful to the founding vision while addressing the structural deficiencies that have accumulated over five decades of political turbulence.

Constitutional reform is not a panacea. The deepest problems of governance in Bangladesh—the political polarisation, the culture of impunity, the institutional weaknesses—are not susceptible to purely legal solutions. They require sustained political commitment, institutional investment, and cultural change that goes beyond constitutional text. However, constitutional reform can create the structural conditions within which these broader changes become possible: by strengthening the institutional independence and accountability mechanisms that protect the Rule of Law; by resolving constitutional inconsistencies that provide opportunities for legal manipulation; and by entrenching constitutional values in a manner that makes them more resistant to partisan subversion.

The present moment in Bangladesh's political and constitutional history offers a significant opportunity. The growing awareness within civil society, the legal community, and the political sphere of the need for constitutional strengthening, combined with the international community's engagement with Bangladesh's governance challenges, creates conditions in which meaningful reform is both necessary and potentially achievable. The recommendations advanced in this study are offered as a contribution to the national conversation about constitutional reform that Bangladesh urgently needs—a conversation that must be conducted with fidelity to constitutional values, commitment to democratic inclusiveness, and recognition that the Constitution belongs not to any political party but to the people of Bangladesh.

In conclusion, the Constitution of Bangladesh is both the product and the promise of the Liberation War of 1971—a promise of governance through law rather than force, of equality

before the law rather than privilege, and of the protection of rights rather than their arbitrary violation. Honouring that promise in the present context requires not only the faithful implementation of existing constitutional provisions but the courageous pursuit of constitutional reform that addresses the structural barriers to its realisation. The Rule of Law, democratic accountability, judicial independence, and the protection of fundamental rights are not luxuries that Bangladesh cannot afford; they are the foundations upon which sustainable development, social justice, and genuine national progress must be built.

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