



Sonargaon University (SU)

Research Monograph

On

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

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Submitted To

Muhammad Ali

Lecturer

Department of Law

Sonargaon University (SU)

Submitted by

Tareq Ahmed Shajal

ID No. LL.B 2202026022

Program: LL.B (Hon’s)

Department of Law

Sonargaon University (SU)

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Letter of Transmittal

To

Muhammad Ali

Lecturer

Department of Law

Sonargaon University (SU)

Subject: Submission of Research Monograph on “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**”

Dear Sir,

This is a great pleasure to submit the Research Monograph on “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**” as a partial requirement for the fulfillment of my LL.B course under the Department of Law of the Sonargaon University (SU).

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

Yours sincerely

.....
Tareq Ahmed Shajal

ID No. LL.B 2202026022

Program: LL.B (Hon’s)

Department of Law

Sonargaon University (SU)

Declaration

I do hereby declare that the Research Monograph Title “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**” prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B (Hon’s) Degree. This is an original work of mine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

.....
Tareq Ahmed Shajal

ID No. LL.B 2202026022

Program: LL.B (Hon’s)

Department of Law

Sonargaon University (SU)

Supervisor Certificate

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

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

.....
Muhammad Ali

Lecturer

Department of Law

Sonargaon University (SU)

Acknowledgement

***In the name of Allah, the Beneficent, the Merciful".** Praise by Allah & thanks to Allah for patronizing me to finish this Research Monograph. I am very happy to finish it. It is a great Research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of Law in Sonargaon University (SU) to fulfill my dream. But through my whole study life in this field, I did not get much more opportunities to examine and show my knowledge and skill in this wide field. Lastly I have got a great chance to make my study meaningful when I got the chance to prepare a Research Monograph on **The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**

I acknowledge my grateful to respected course teacher **Muhammad Ali** for instructing me how to prepare a Research Monograph and his famous Books lectures on this subject help me to complete my task sincerely.

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Thank you

Tareq Ahmed Shajal

ABSTRACT

This dissertation is focused on The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis" The Constitution of Bangladesh is the supreme law of the state and serves as the foundation of the country's political, legal, and administrative framework. Adopted on 4 November 1972 and enforced on 16 December 1972, the Constitution reflects the ideals and aspirations of the Liberation War of 1971, including nationalism, socialism, democracy, and secularism. Since its inception, however, the Constitution has undergone numerous amendments and political transformations that have significantly influenced the governance system, democratic practices, judicial independence, and protection of fundamental rights in Bangladesh. This study aims to examine the historical background of the Constitution of Bangladesh and critically analyze the necessity of constitutional reformation in the present socio-political context.

The research explores the constitutional evolution of Bangladesh beginning from the British colonial period and the constitutional developments during the Pakistan era, which contributed to political discrimination against the people of East Pakistan. It further discusses the impact of the Liberation War and the formation of the Constitution Drafting Committee that led to the adoption of the Constitution in 1972. The study highlights the major features and principles of the Constitution and examines the significant constitutional amendments that altered the original spirit and structure of the Constitution over time. Particular attention has been given to the Fourth, Fifth, Eighth, Thirteenth, and Fifteenth Amendments, as these amendments had profound implications for democracy, separation of powers, judicial independence, and electoral governance.

The study also investigates the present constitutional challenges faced by Bangladesh, including the concentration of executive power, political instability, limitations on freedom of speech and media, weaknesses in democratic institutions, and concerns regarding the rule of law and human rights.

In conclusion, the study asserts that meaningful constitutional reform is crucial for addressing contemporary political and institutional challenges and for restoring the original democratic spirit and objectives of the Constitution of Bangladesh.

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Chapter One

Introduction

1.1 Introduction

The Constitution of the People's Republic of Bangladesh is the supreme legal document of the state and serves as the foundation of its political, legal, and administrative system. It was adopted on 4 November 1972 and came into effect on 16 December 1972, marking a historic moment in the post-independence reconstruction of the country. The Constitution reflects the aspirations of the people of Bangladesh who achieved independence through the Liberation War of 1971, which was driven by demands for democracy, equality, human dignity, and justice. It established Bangladesh as a sovereign, democratic republic committed to securing fundamental rights and ensuring the rule of law.¹

The significance of the Constitution lies in its attempt to build a society based on four fundamental principles of state policy: nationalism, socialism, democracy, and secularism. These principles were intended to guide governance and ensure socio-economic transformation in a newly independent state. The Constitution also introduced a parliamentary system of government, guaranteeing the supremacy of elected representatives and ensuring accountability of the executive to the legislature. Furthermore, it incorporated a comprehensive chapter on fundamental rights, ensuring protection of civil liberties such as equality before law, freedom of speech, freedom of movement, and protection of life and personal liberty.²

Despite its progressive nature, the constitutional journey of Bangladesh has been complex and often turbulent. Since its adoption, the Constitution has undergone numerous amendments that have significantly reshaped its original structure and philosophy. These amendments were influenced by political instability, military interventions, shifts in governance systems, and changing ideological priorities of successive governments. As a result, certain foundational principles of the Constitution have been modified or reinterpreted over time, raising debates about constitutional continuity and legitimacy.

¹ The Constitution of Bangladesh, Dhaka: Bangladesh Asian Society, p. 28-29.

² Constitutional Law of Bangladesh, Dhaka: Mullick Brothers p. 31.

The historical background of the Constitution of Bangladesh is deeply rooted in colonial and post-colonial experiences. The constitutional developments during British rule and the Pakistan period played a crucial role in shaping political consciousness in East Bengal. Systematic discrimination, lack of political representation, and denial of linguistic and cultural identity under Pakistan intensified demands for autonomy, ultimately leading to the Liberation War of 1971. The emergence of Bangladesh created an urgent need for a new constitutional framework that would reflect the aspirations of an independent nation.³

In the present context, the Constitution of Bangladesh faces several challenges, including the balance of power among state institutions, independence of the judiciary, electoral governance, human rights protection, and the effectiveness of democratic institutions. There is also a growing concern regarding the gap between constitutional ideals and their practical implementation. While the Constitution provides strong legal safeguards, institutional weaknesses and political dynamics often hinder their effective realization.

Against this background, the present study titled “The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis” seeks to critically examine the evolution of the Constitution, analyze major constitutional developments, and evaluate the necessity of reform in light of contemporary political and legal realities. The study also aims to identify key constitutional challenges and suggest possible reforms to strengthen democratic governance, ensure accountability, and uphold constitutional supremacy in Bangladesh.

The Constitution of the People’s Republic of Bangladesh is the supreme legal document that determines the structure, functions, and powers of the state and guarantees the rights and freedoms of citizens. It embodies the ideals of the Liberation War of 1971 and reflects the aspirations of the Bangladeshi people for democracy, justice, equality, and rule of law. Since its adoption in 1972, the Constitution has played a crucial role in shaping the political and legal system of Bangladesh. However, due to frequent amendments, political conflicts, military interventions, and

³ Bangladesh Liberation War and subsequent constitutional development process. p. 79.

changing socio-political realities, several constitutional controversies and governance challenges have emerged over time. Therefore, a critical examination of the historical background of the Constitution and the necessity of constitutional reform has become highly significant in the present context.⁴

1.2 Background of the Study

The Constitution of Bangladesh is the cornerstone of the country's legal and political system, embodying the ideals and aspirations of a newly independent nation. Its background is deeply connected with the historical struggles of the Bengali people against colonial rule, political deprivation, and economic discrimination. The constitutional development of Bangladesh did not begin in 1972; rather, it evolved through a long historical process shaped by British colonial governance, the constitutional framework of Pakistan, and the Liberation War of 1971. This historical trajectory is essential for understanding both the strengths and limitations of the present constitutional system.⁵

During British colonial rule, the people of Bengal were governed under a centralized administrative structure that allowed minimal participation in governance. Although several constitutional reforms such as the Government of India Act 1935 introduced limited provincial autonomy, genuine democratic participation remained absent. After the partition of British India in 1947, Bangladesh became part of Pakistan as East Pakistan. However, the constitutional arrangement of Pakistan created structural inequalities between East and West Pakistan. Despite constituting the majority of the population, East Pakistan faced political marginalization, economic exploitation, and cultural suppression, particularly in relation to the Bengali language movement.⁶

The constitutional framework of Pakistan failed to ensure equitable representation and democratic governance. The Objectives Resolution of 1949 and the subsequent Constitutions of 1956 and 1962 did not adequately address the grievances of East Pakistan. The 1962 Constitution, introduced under military rule, further centralized

⁴ The Constitution of Bangladesh, *The Constitution of Bangladesh* (Dhaka: Bangladesh Asian Society, 2013), p. 89.

⁵ Constitutional Law of Bangladesh, Dhaka: Mullick Brothers. p. 89

⁶ Partition of India and subsequent constitutional developments in Pakistan. p. 11

authority and reduced democratic participation. These developments intensified political dissatisfaction and strengthened the demand for autonomy, particularly through movements such as the Six-Point Movement led by Bangabandhu Sheikh Mujibur Rahman.⁷

The culmination of these constitutional and political crises led to the Liberation War of 1971, which resulted in the emergence of Bangladesh as an independent state. The war was not only a struggle for independence but also a struggle for constitutional recognition, democratic rights, and self-determination. Following independence, the urgent need arose to establish a new constitutional framework that would reflect the aspirations of the people and ensure the principles of democracy, equality, and justice. In response to this need, the Constitution of Bangladesh was adopted in 1972 by the Constituent Assembly. It was designed to reflect the spirit of the Liberation War and included four fundamental principles of state policy: nationalism, socialism, democracy, and secularism. The Constitution also established a parliamentary system of government, guaranteed fundamental rights, and emphasized judicial independence and rule of law. These provisions represented a progressive attempt to build a democratic state based on constitutional supremacy.⁸

However, over the years, the Constitution has undergone significant changes through various amendments, political developments, and judicial interpretations. These changes have sometimes altered the original structure and philosophy of the Constitution. Issues such as military intervention, centralization of executive power, and changes in governance systems have contributed to debates regarding constitutional continuity and stability.

Therefore, the background of this study is rooted in the need to critically analyze the historical evolution of the Constitution of Bangladesh and to evaluate how past experiences have shaped the present constitutional framework. Understanding this background is essential for assessing current constitutional challenges and identifying the necessity of reform to ensure effective governance and democratic consolidation in Bangladesh.

⁷ Sheikh Mujibur Rahman and the Six-Point Movement (1966). p. 99

⁸ The Constitution of Bangladesh, Dhaka: Bangladesh Asian Society. p. 105

The constitutional development of Bangladesh has deep historical roots connected with British colonial rule, the Pakistan period, and the Liberation War of 1971. During the Pakistan era, the people of East Pakistan experienced political, economic, and cultural discrimination, which intensified the demand for autonomy and democratic rights. Following independence, Bangladesh adopted its Constitution in 1972 based on four fundamental principles: nationalism, socialism, democracy, and secularism.⁹ Nevertheless, the original spirit of the Constitution has been altered through various amendments and political transformations. Several constitutional provisions have become controversial due to issues relating to electoral systems, judicial independence, executive dominance, and protection of human rights. Consequently, discussions regarding constitutional reform have gained increasing importance in Bangladesh.

1.3 Statement of the Problem

Despite being a democratic constitution, the Constitution of Bangladesh faces multiple challenges in practice. Political instability, concentration of power, weak democratic institutions, and limitations on freedom of expression have raised questions regarding the effective implementation of constitutional principles. Moreover, constitutional amendments introduced by successive governments have often been criticized for serving political interests rather than public welfare. Therefore, the problem addressed in this study is whether the existing constitutional framework adequately meets the contemporary needs of Bangladesh and whether constitutional reforms are necessary to ensure democracy, accountability, and rule of law.¹⁰

⁹ Bangladesh Liberation War and the Constitution of the People's Republic of Bangladesh, 1972. p. 48.

¹⁰ Constitutional Law of Bangladesh, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012). p. 79.

1.4 Research Questions

The study seeks to answer the following questions:

- What is the historical background of the Constitution of Bangladesh?
- How have constitutional amendments influenced the governance system of Bangladesh?
- What are the major constitutional challenges in contemporary Bangladesh?
- Why is constitutional reform necessary in the present context?

1.5 Objectives of the Study

1.5.1 General Objective

The general objective of this study is to analyze the historical background of the Constitution of Bangladesh and examine the necessity of constitutional reform in the present context.

1.5.2 Specific Objectives

- To explore the historical evolution of the Constitution of Bangladesh.
- To analyze major constitutional amendments and their impacts.
- To identify existing constitutional and political challenges.
- To suggest possible constitutional reforms for strengthening democracy and good governance.

1.6 Rationale of the Study

The Constitution of Bangladesh is the supreme law of the Republic and the foundation of its political and legal system. Although it was adopted with the aim of ensuring democracy, rule of law, human rights, and social justice, the practical experience of constitutional governance in Bangladesh reveals a persistent gap between constitutional ideals and their implementation. This gap has become more visible due to political instability, frequent constitutional amendments, centralization of executive authority, and weaknesses in democratic institutions. Therefore, a critical study on the historical background of the Constitution and the necessity of its reform is highly relevant in the present context.

One of the key reasons for conducting this study is the increasing concern over constitutional supremacy and institutional balance in Bangladesh. In many cases,

constitutional provisions are influenced by political considerations, which raises questions about the neutrality and effectiveness of governance structures. Additionally, challenges related to judicial independence, electoral integrity, human rights protection, and freedom of expression further highlight the need for an in-depth constitutional analysis.

Another important rationale is the historical transformation of the Constitution since its adoption in 1972. Through various amendments, the original spirit of the Constitution has been modified, sometimes strengthening governance but at other times weakening democratic principles. These changes require systematic academic evaluation to understand their long-term impact on constitutional development and democratic stability.

Furthermore, in the contemporary era, new challenges such as digital governance, environmental protection, and inclusive rights protection have emerged. The existing constitutional framework needs to be assessed to determine whether it adequately addresses these modern issues. This study is therefore significant in identifying gaps in the current constitutional structure and suggesting appropriate reforms.

Finally, this research is important for policymakers, legal scholars, and students of constitutional law as it provides a comprehensive understanding of Bangladesh's constitutional evolution and reform needs. It contributes to academic discourse and may assist in developing future policy directions aimed at strengthening democracy and ensuring effective constitutional governance in Bangladesh.

This study is important because constitutional reform is directly connected with democratic stability, protection of fundamental rights, and effective governance. In the contemporary political context of Bangladesh, constitutional debates regarding elections, judicial independence, decentralization, and human rights have become increasingly relevant. Therefore, this research will contribute to academic discussions and policy considerations concerning constitutional development and reform.¹¹

¹¹ Bangladesh: Constitutional Quest for Autonomy, *Bangladesh: Constitutional Quest for Autonomy* (Dhaka: University Press Limited, 2005). p. 33

1.7 Scope and Limitations of the Study

The study mainly focuses on the historical evolution of the Constitution of Bangladesh, major constitutional amendments, and the necessity of reform in the present context. However, due to time and resource limitations, the study relies primarily on secondary sources and does not include extensive field research.

1.8 Research Methodology

The study follows a qualitative and analytical research methodology. Data have been collected from secondary sources such as constitutional provisions, books, journal articles, case laws, government reports, newspapers, and academic publications. Comparative analysis of constitutional reforms in other countries has also been considered.

1.9 Literature Review

Several scholars and researchers have discussed the constitutional development of Bangladesh from legal and political perspectives. Academic works on constitutional amendments, democracy, judicial independence, and governance have provided important insights into the constitutional challenges of Bangladesh. Existing literature indicates that constitutional reform remains a significant issue for ensuring democratic accountability and constitutional supremacy.

The constitutional development of Bangladesh has been widely discussed in legal and political scholarship, with particular attention to its historical evolution, structural changes, and governance challenges. The literature on this subject can broadly be divided into three categories: constitutional history and development, judicial interpretation and constitutional amendments, and contemporary issues of governance and reform.

A significant portion of scholarly work focuses on the historical foundations of the Constitution of Bangladesh. Constitutional Law of Bangladesh provides a comprehensive analysis of the constitutional framework, tracing its evolution from the 1972 Constitution to subsequent amendments. The author emphasizes the original spirit of the Constitution, particularly its commitment to democracy, nationalism, socialism, and secularism, while also highlighting the impact of political changes on

constitutional stability. Similarly, *The Constitution of Bangladesh* offers an insider perspective on the framing of the Constitution, focusing on the aspirations of the Constituent Assembly and the influence of the Liberation War on constitutional design.

Another important area of literature examines constitutional amendments and judicial interpretation. Scholars such as *Bangladesh Politics: Problems and Issues* analyze how political developments, including military interventions and shifts in governance systems, have affected constitutional continuity. Judicial contributions are also widely discussed, particularly landmark decisions such as the Eighth Amendment case (*Anwar Hossain Chowdhury v. Bangladesh*) and the Fifth Amendment case (*Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*), which reaffirmed constitutional supremacy and the basic structure doctrine. These judgments are frequently cited in academic literature as turning points in constitutional interpretation.

In addition, several studies focus on governance challenges and institutional weaknesses. Research highlights issues such as executive dominance, electoral governance problems, limitations of judicial independence, and weaknesses in democratic institutions. These works argue that despite having a strong constitutional framework, Bangladesh faces difficulties in ensuring effective implementation of constitutional principles in practice.

Recent literature also addresses emerging concerns such as digital governance, human rights protection, environmental constitutionalism, and inclusive democracy. Scholars emphasize that the Constitution must evolve to address modern challenges and ensure broader participation in governance processes. *Constitutional Development in Bangladesh* particularly highlights the need for institutional reforms and improved governance mechanisms to bridge the gap between constitutional ideals and political realities.

Chapter Two

Historical Evolution of Constitutional Development in Bangladesh

2.1 Introduction

The Constitution of Bangladesh did not emerge suddenly after independence in 1971; rather, it developed through a long historical and political process influenced by British colonial rule, the Pakistan period, and the Liberation War. The constitutional evolution of Bangladesh reflects the struggle of the Bengali people for political representation, economic justice, cultural identity, and democratic rights. Different constitutional arrangements imposed during colonial and Pakistani rule significantly shaped the constitutional philosophy of independent Bangladesh. Therefore, understanding the historical background of the Constitution is essential for analyzing its present structure and reform needs.

2.2 Constitutional Development during British Rule (1757–1947)

The constitutional history of Bangladesh began during British colonial rule after the Battle of Plassey in 1757. Following the establishment of British authority in the Indian subcontinent, several constitutional and administrative reforms were introduced by the British government. The Regulating Act of 1773, Pitt's India Act of 1784, and the Charter Acts gradually centralized colonial administration in British India.¹²

Later, the Indian Councils Acts of 1861 and 1892 introduced limited participation of Indians in governance. The Government of India Act, 1909, commonly known as the Morley-Minto Reforms, provided separate electorates for Muslims, which had a significant impact on communal politics in the subcontinent.² The Government of India Act, 1919 introduced a diarchical system, while the Government of India Act, 1935 established provincial autonomy and became the most important constitutional framework before independence.

¹² Regulating Act and Pitt's India Act. p. 110.

Although these reforms provided limited political participation, the people of Bengal remained deprived of genuine democratic rights and self-governance under British colonial administration.

2.3 Constitutional Framework under Pakistan Period (1947–1971)

After the partition of British India in 1947, East Bengal became East Pakistan under the newly created state of Pakistan. However, constitutional arrangements during the Pakistan period created political and economic inequality between East and West Pakistan. The people of East Pakistan were gradually deprived of democratic representation despite constituting the majority population of Pakistan.¹³

2.3.1 The Indian Independence Act, 1947

The Indian Independence Act passed by the British Parliament divided British India into India and Pakistan. Pakistan was established as a dominion consisting of East Pakistan and West Pakistan. Although independence was achieved, constitutional uncertainty remained because Pakistan lacked a permanent constitution during its initial years.¹⁴

2.3.2 The Objectives Resolution, 1949

The Objectives Resolution of 1949 laid the foundation of Pakistan's constitutional principles. It declared that sovereignty belonged to Allah and emphasized Islamic principles in governance. However, many leaders from East Pakistan criticized the Resolution because it weakened democratic and secular ideals and increased central control by West Pakistan.¹⁵

2.3.3 Constitution of Pakistan, 1956

The first Constitution of Pakistan was adopted in 1956, declaring Pakistan an Islamic Republic with a parliamentary form of government. Although it recognized fundamental rights and provincial autonomy, the Constitution failed to ensure equal political representation and economic justice for East Pakistan. Political instability and central domination continued despite constitutional reforms.

¹³ Morley-Minto Reforms.

¹⁴ Indian Independence Act.

¹⁵ Objectives Resolution.

2.3.4 Constitution of Pakistan, 1962

In 1962, military ruler Ayub Khan introduced a new Constitution establishing a presidential form of government. The Constitution concentrated extensive powers in the executive and reduced democratic participation. The people of East Pakistan strongly opposed this Constitution because it further strengthened authoritarian rule and ignored regional autonomy demands.¹⁶

2.3.5 Constitutional Crisis and Political Discrimination against East Pakistan

Throughout the Pakistan period, East Pakistan faced political, economic, linguistic, and cultural discrimination. Despite having a majority population, East Pakistan received inadequate political representation and economic resources. The Language Movement of 1952 and the Six-Point Movement led by Sheikh Mujibur Rahman intensified demands for autonomy. The refusal of the Pakistani regime to transfer power after the 1970 general election created a severe constitutional crisis that eventually led to the Liberation War of 1971.

2.4 The Liberation War and the Emergence of Bangladesh

The Liberation War of Bangladesh in 1971 marks a decisive turning point in the constitutional and political history of the country. It was not merely a military conflict but a culmination of long-standing political, economic, cultural, and constitutional grievances faced by the people of East Pakistan under the state of Pakistan. Despite forming the majority population, the people of East Pakistan were systematically deprived of political representation, economic development, and cultural recognition. These disparities created a strong sense of alienation and ultimately led to the demand for self-determination.¹⁷

The constitutional crisis deepened after the general election of 1970, in which the Awami League, led by Bangabandhu Sheikh Mujibur Rahman, secured an absolute majority in the National Assembly of Pakistan. However, the refusal of the central authority to transfer power created a severe constitutional deadlock. This political denial of democratic mandate further intensified public resentment and pushed the

¹⁶ Ayub Khan and the Constitution of Pakistan, 1962. p. 100

¹⁷ Bangladesh Liberation War

region toward a liberation struggle. On 25 March 1971, the Pakistani military launched a brutal crackdown in East Pakistan, which marked the beginning of the armed Liberation War.¹⁸

Following the crackdown, the independence of Bangladesh was officially declared on 26 March 1971. The nine-month-long Liberation War witnessed widespread resistance by the Mukti Bahini and support from the general population. Millions of people sacrificed their lives, and millions more were displaced during this struggle for independence. The war ended on 16 December 1971 with the surrender of Pakistani forces, leading to the emergence of Bangladesh as an independent and sovereign state. The Liberation War laid the foundation for the constitutional identity of Bangladesh. It established the principles of nationalism, democracy, socialism, and secularism, which later became the guiding principles of the Constitution of 1972. Thus, the emergence of Bangladesh was not only a political achievement but also a constitutional transformation based on the aspirations of freedom, justice, and self-rule.¹⁹

The Liberation War of 1971 was the result of long-standing political and constitutional discrimination against the people of East Pakistan. After the military crackdown on 25 March 1971, the independence of Bangladesh was declared on 26 March 1971. The nine-month Liberation War ended with the victory of Bangladesh on 16 December 1971. The emergence of Bangladesh created the need for a sovereign constitution based on democracy, nationalism, secularism, and social justice.²⁰

2.5 Formation of the Constitution Drafting Committee

After independence, the government formed a Constitution Drafting Committee in 1972 under the leadership of Dr. Kamal Hossain. The committee consisted of legal experts, political leaders, and members of the Constituent Assembly. The committee studied various constitutions around the world and prepared a draft constitution suitable for the socio-political realities of Bangladesh.

¹⁸ Sheikh Mujibur Rahman and the 1970 General Election crisis p. 85

¹⁹ The Constitution of Bangladesh

²⁰ Bangladesh Liberation War.

2.6 Adoption of the Constitution of Bangladesh, 1972

The Constitution of the People's Republic of Bangladesh was adopted on 4 November 1972 and came into force on 16 December 1972. It established Bangladesh as a sovereign, democratic, and independent republic. The Constitution guaranteed fundamental rights, parliamentary democracy, judicial independence, and rule of law. It also reflected the aspirations of the Liberation War and the principles of social and economic justice.²¹

2.7 Fundamental Principles of State Policy

The Constitution of Bangladesh originally incorporated four fundamental principles of state policy:

- Nationalism
- Socialism
- Democracy
- Secularism

These principles were intended to guide state policies and governance. However, subsequent constitutional amendments altered some of these principles, especially secularism and socialism, creating constitutional debates regarding the original spirit of the Constitution.

2.8 Salient Features of the Constitution of Bangladesh

The Constitution of Bangladesh contains several important features, including:

- Written and rigid constitution
- Supremacy of the Constitution
- Parliamentary form of government
- Fundamental rights of citizens
- Independence of judiciary
- Rule of law
- Universal adult franchise

²¹ The Constitution of Bangladesh, *The Constitution of Bangladesh* (Dhaka: Bangladesh Asian Society, 2013).

- Unitary state structure
- Single citizenship
- Fundamental principles of state policy

These features collectively establish the constitutional identity and democratic framework of Bangladesh.

2.9 Conclusion

The constitutional development of Bangladesh evolved through colonial rule, the Pakistan era, and the Liberation War of 1971. The experiences of political discrimination, authoritarianism, and constitutional crises during earlier periods significantly influenced the framing of the Constitution of Bangladesh in 1972. Although the Constitution was founded upon democratic ideals and aspirations of the Liberation War, various political developments and constitutional amendments have altered its original framework over time. Therefore, understanding the historical evolution of the Constitution is essential for evaluating contemporary constitutional challenges and the necessity of reform in Bangladesh.

Chapter Three

Major Constitutional Amendments and Political Developments in Bangladesh

3.1 Introduction

Since the adoption of the Constitution in 1972, Bangladesh has experienced significant political and constitutional changes through various amendments and judicial decisions. These constitutional developments were shaped by political instability, military intervention, ideological shifts, and changing governance needs. Several amendments substantially altered the original spirit of the Constitution, particularly concerning democracy, secularism, judicial independence, and the balance of power among state organs. This chapter critically analyzes the major constitutional amendments and political developments that influenced the constitutional framework of Bangladesh.

3.2 The First Amendment and Human Rights Issues

The First Amendment of the Constitution of Bangladesh, enacted in 1973, holds significant importance in the constitutional history of the country. It was introduced primarily to address the legal complexities arising from the prosecution of war crimes, genocide, and crimes against humanity committed during the Liberation War of 1971. The amendment empowered the state to make special provisions for the trial and punishment of individuals involved in such heinous offences, even if such provisions were inconsistent with certain fundamental rights guaranteed under the Constitution.²² The historical context of the First Amendment is closely linked to the aftermath of the Liberation War. After independence, there was a strong national demand for justice for the atrocities committed during the war. In response, the government sought to establish legal mechanisms to prosecute war criminals and collaborators. However, since the Constitution of 1972 guaranteed a broad range of fundamental rights, including protection of life and personal liberty, equality before law, and safeguards

²² Bangladesh Liberation War and post-independence legal reforms p. 42

in criminal proceedings, there arose a constitutional tension between the demand for justice and the protection of individual rights.

The First Amendment addressed this tension by allowing the state to enact laws that could override certain fundamental rights in order to ensure effective prosecution of war-related crimes. This included provisions that limited protections such as the right to fair trial in its strictest sense, where necessary for achieving justice for genocide and crimes against humanity. While the intention was to ensure accountability for war crimes, the amendment raised serious concerns among constitutional scholars regarding the balance between justice and human rights protection.

From a human rights perspective, critics argue that the First Amendment created a precedent where fundamental rights could be restricted through constitutional modification. This raised questions about the inviolability of human rights and the extent to which the state can limit constitutional guarantees in the name of justice or national interest. Concerns were also raised regarding the potential misuse of such provisions in politically sensitive trials, which could undermine the principles of fairness, equality, and due process.²³

On the other hand, supporters of the amendment argue that it was necessary in the unique historical context of post-independence Bangladesh. The scale and severity of atrocities committed during the Liberation War required exceptional legal measures to ensure justice and national reconciliation. Without such constitutional flexibility, it would have been difficult to prosecute those responsible for mass violence and crimes against humanity.

Thus, the First Amendment represents a complex intersection between transitional justice and human rights protection. It reflects the challenges faced by a newly independent state in balancing the demands of justice with constitutional safeguards. While it played an important role in enabling war crimes trials, it also opened a broader constitutional debate regarding the limits of fundamental rights in extraordinary circumstances. This debate continues to be relevant in contemporary constitutional discourse in Bangladesh.

²³ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka p. 66

The First Amendment to the Constitution was enacted in 1973. It introduced provisions relating to the trial and punishment of persons accused of genocide, war crimes, and crimes against humanity committed during the Bangladesh Liberation War. The amendment restricted certain fundamental rights for individuals accused of such crimes. Although the amendment aimed to ensure justice for wartime atrocities, critics argued that limitations on constitutional protections raised concerns regarding human rights and fair trial standards.²⁴

3.3 The Fourth Amendment and the One-Party System

The Fourth Amendment to the Constitution of Bangladesh, enacted in 1975, represents one of the most controversial and transformative changes in the constitutional history of the country. It fundamentally altered the structure of the state by replacing the parliamentary system with a presidential system and introducing a one-party political framework. This amendment marked a significant departure from the democratic principles and pluralistic ideals originally enshrined in the 1972 Constitution.²⁵

The political background of the Fourth Amendment is closely linked to the post-independence challenges faced by Bangladesh, including economic instability, political unrest, and administrative difficulties. In response to these challenges, the government under Bangabandhu Sheikh Mujibur Rahman introduced sweeping constitutional changes aimed at strengthening governance and ensuring political stability. Through the Fourth Amendment, the parliamentary form of government was replaced by a strong executive presidency, concentrating extensive powers in the office of the President. This shift significantly reduced the authority of the Parliament and weakened the system of checks and balances.

One of the most significant features of the Fourth Amendment was the establishment of a one-party political system known as Bangladesh Krishak Sramik Awami League (BAKSAL). Under this system, all political parties except BAKSAL were dissolved, and political activities were brought under a single national platform. The press and

²⁴ Constitution (First Amendment) Act, 1973, Bangladesh. p. 45

²⁵ Constitutional Law of Bangladesh, Dhaka: Mullick Brothers. p. 28-29.

media were also subjected to strict regulation, and civil liberties were considerably restricted. These measures were justified by the government as necessary steps to ensure national unity and rapid socio-economic development during a period of crisis.²⁶

However, from a constitutional and human rights perspective, the Fourth Amendment has been widely criticized for undermining democratic governance. The abolition of political pluralism and concentration of power in the executive branch weakened fundamental democratic principles such as freedom of association, freedom of expression, and representative governance. The independence of the judiciary was also affected, as the executive gained greater influence over judicial appointments and administration.

Critics argue that the Fourth Amendment marked a shift toward authoritarianism, as it significantly reduced institutional accountability and eliminated opposition voices from the political system. The absence of political competition and checks on executive power created conditions that were inconsistent with the principles of constitutional democracy. As a result, this period is often viewed as a deviation from the original spirit of the Constitution of Bangladesh.²⁷

The assassination of Sheikh Mujibur Rahman in August 1975 further changed the political landscape, leading to the end of the one-party system and the beginning of military influence in governance. Subsequently, many of the provisions introduced by the Fourth Amendment were repealed or modified by later constitutional amendments.

In conclusion, the Fourth Amendment represents a critical phase in Bangladesh's constitutional history. While it was introduced with the intention of ensuring stability and national unity, it significantly altered the democratic structure of the state. Its legacy continues to be debated in constitutional discourse, particularly in relation to democracy, governance, and the balance between authority and individual freedoms. The Fourth Amendment of 1975 was one of the most controversial amendments in the constitutional history of Bangladesh. It transformed the parliamentary system into a

²⁶ Sheikh Mujibur Rahman and the establishment of BAKSAL (1975). p. 36

²⁷ Bangladesh Politics: Problems and Issues, University Press Limited. p. 36

presidential form of government and concentrated extensive powers in the executive branch under Sheikh Mujibur Rahman. The amendment also introduced a one-party political system known as BAKSAL (Bangladesh Krishak Sramik Awami League), restricted press freedom, and weakened judicial independence.²⁸

Many scholars consider the Fourth Amendment a departure from democratic governance because it significantly reduced political pluralism and constitutional checks and balances.

3.4 Military Rule and Constitutional Changes

The period of military rule in Bangladesh marks a significant and complex phase in the constitutional history of the country. Following the assassination of Bangabandhu Sheikh Mujibur Rahman in August 1975, Bangladesh entered a prolonged era of political instability and military-backed governance. During this time, the Constitution of Bangladesh underwent extensive modifications through martial law proclamations, presidential decrees, and constitutional amendments. These changes had a profound impact on democratic institutions, constitutional supremacy, and the overall governance structure of the state.²⁹

The initial phase of military influence began under Major General Ziaur Rahman, who assumed power amid political chaos. Martial law was imposed, and the normal functioning of the Constitution was suspended. During this period, several constitutional provisions were altered through proclamations rather than parliamentary procedures. One of the most significant changes was the introduction of constitutional legitimacy to martial law actions through the Fifth Amendment, which later validated all changes made between 1975 and 1979. This period marked a shift from parliamentary democracy to a more centralized presidential system, with reduced checks and balances.³⁰

A key ideological shift during military rule was the replacement of secularism with the principle of “absolute trust and faith in Almighty Allah.” This change significantly altered one of the original foundational principles of the Constitution of 1972.

²⁸ Constitution (Fourth Amendment) Act, 1975, Bangladesh.

²⁹ Bangladesh Liberation War and post-independence political transition

³⁰ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka

Additionally, political pluralism was reintroduced after the one-party system was dismantled, but political institutions remained under strong executive influence. The military regime also strengthened the presidency, concentrating significant powers in the executive branch.

Later, during the regime of Hussain Muhammad Ershad in the 1980s, military rule continued under the declaration of martial law. Constitutional governance was again suspended, and amendments such as the Eighth Amendment were introduced. This amendment declared Islam as the state religion of Bangladesh and expanded administrative decentralization through divisional High Court benches. However, critics argue that these changes were made without democratic mandate, thereby raising serious questions about constitutional legitimacy.³¹

Military rule also had a significant impact on the judiciary and the rule of law. Although the judiciary formally continued to function, its independence was often limited under executive dominance. Fundamental rights were restricted during emergency periods, and political opposition was frequently suppressed. These conditions weakened democratic institutions and created long-term challenges for constitutional governance in Bangladesh.

The end of military rule came in 1990 following a mass democratic uprising that led to the resignation of President Ershad. Subsequently, constitutional reforms were introduced to restore parliamentary democracy through the Twelfth Amendment in 1991. This marked a transition back to civilian rule and reestablished the supremacy of elected government institutions.

In conclusion, the era of military rule significantly reshaped the constitutional landscape of Bangladesh. While it introduced certain administrative and ideological changes, it also disrupted democratic continuity and weakened constitutional governance. The legacy of military intervention continues to influence constitutional debates, particularly regarding the balance between stability, democracy, and constitutional supremacy.

Following the assassination of Sheikh Mujibur Rahman in August 1975, Bangladesh entered a prolonged period of military rule. Military leaders such as Ziaur Rahman

³¹ Bangladesh Politics: Problems and Issues, University Press Limited

and Hussain Muhammad Ershad introduced various constitutional changes through martial law proclamations and amendments. During this period, secularism was replaced by “absolute trust and faith in Almighty Allah,” and military influence over politics increased substantially.³²

These constitutional changes weakened democratic institutions and created debates regarding the legality and legitimacy of military interventions in constitutional governance.

3.5 The Fifth Amendment Case

The Fifth Amendment, passed in 1979, validated all martial law proclamations and constitutional changes made between 1975 and 1979. However, in the landmark case of *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*, the Supreme Court declared the Fifth Amendment unconstitutional.³³

The Court held that military rule violated the fundamental structure of the Constitution and reaffirmed constitutional supremacy, democracy, and rule of law. This judgment became a significant milestone in Bangladesh’s constitutional jurisprudence and restored some original constitutional principles, including secularism.

3.6 The Eighth Amendment and Judicial Controversy

The Eighth Amendment of 1988 declared Islam as the state religion of Bangladesh and established permanent benches of the High Court Division outside Dhaka. The amendment generated major constitutional controversy, particularly concerning judicial independence and secularism.³⁴

In the famous case of *Anwar Hossain Chowdhury v. Bangladesh*, the Supreme Court introduced the “basic structure doctrine,” holding that Parliament cannot alter the fundamental structure of the Constitution. The Court ruled that judicial independence and the unitary character of the judiciary are part of the Constitution’s basic structure.

³² Ziaur Rahman and Hussain Muhammad Ershad during military regimes in Bangladesh.

³³ *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*.

³⁴ *Anwar Hossain Chowdhury v. Bangladesh*

3.7 The Twelfth Amendment and Restoration of Parliamentary Democracy

The Twelfth Amendment, enacted in 1991, restored the parliamentary system of government after years of presidential and military rule. Executive powers were transferred from the President to the Prime Minister, reestablishing parliamentary democracy in Bangladesh.³⁵

This amendment is widely regarded as a positive step toward democratic restoration because it revived representative governance and strengthened parliamentary accountability.

3.8 The Thirteenth Amendment and Caretaker Government System

The Thirteenth Amendment introduced the Non-Party Caretaker Government system in 1996 to ensure free and fair elections. Under this system, a neutral interim government was responsible for conducting national elections. The caretaker system played an important role in reducing political conflict during elections for several years.³⁶

However, in 2011, the Supreme Court declared the system unconstitutional on the ground that unelected governments contradicted democratic principles, although the Court suggested temporary continuation for political stability.

3.9 The Fifteenth Amendment and Its Implications

The Fifteenth Amendment, enacted in 2011, abolished the caretaker government system and restored several original principles of the Constitution, including secularism. It also retained Islam as the state religion, creating constitutional debate regarding ideological consistency.³⁷

Critics argued that the abolition of the caretaker government system intensified political polarization and weakened public confidence in electoral governance. The amendment also strengthened parliamentary supremacy while reducing opportunities for constitutional neutrality during elections.

³⁵ Constitution (Thirteenth Amendment) Act, 1996, Bangladesh.

³⁶ Constitution (Twelfth Amendment) Act, 1991, Bangladesh.

³⁷ Constitution (Fifteenth Amendment) Act, 2011, Bangladesh.

3.10 Judicial Activism and Constitutional Interpretation

The judiciary of Bangladesh has played an increasingly active role in interpreting constitutional provisions and protecting constitutional principles. Through judicial activism, the Supreme Court has addressed issues relating to fundamental rights, separation of powers, judicial independence, and unconstitutional amendments.

The development of the basic structure doctrine and judicial review has strengthened constitutional governance in Bangladesh. Judicial activism has also contributed to limiting arbitrary state actions and preserving constitutional supremacy.

3.11 Role of the Supreme Court in Constitutional Development

The Supreme Court of Bangladesh plays a pivotal role in the constitutional development of the country by interpreting the Constitution, ensuring the rule of law, and safeguarding fundamental rights. As the highest judicial authority, it acts as the guardian of the Constitution and has significantly contributed to shaping constitutional governance through judicial review and landmark judgments. The role of the Supreme Court has become especially important in a country where constitutional amendments, political changes, and institutional challenges have frequently tested the stability of democratic governance.³⁸

One of the primary functions of the Supreme Court is judicial review, which allows it to examine the constitutionality of laws, executive actions, and even constitutional amendments in certain cases. Through this power, the Court ensures that all state actions remain within the limits of the Constitution. This mechanism strengthens constitutional supremacy and prevents arbitrary exercise of power by the executive and legislature.

A landmark contribution of the Supreme Court is the development of the “basic structure doctrine,” which establishes that certain fundamental features of the Constitution cannot be altered even through constitutional amendments. This doctrine was articulated in the famous case of *Anwar Hossain Chowdhury v. Bangladesh*, commonly known as the Eighth Amendment case. In this judgment, the Court held that judicial independence and the unitary character of the judiciary are part of the

³⁸ Supreme Court of Bangladesh, constitutional jurisdiction under Article 102

basic structure of the Constitution and therefore cannot be destroyed by parliamentary amendments.³⁹ This decision marked a significant step in strengthening constitutional supremacy and limiting legislative overreach.

The Supreme Court has also played a crucial role in addressing unconstitutional actions during periods of military rule. In the case of *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*, the Court declared the Fifth Amendment unconstitutional, thereby invalidating legal recognition of martial law proclamations between 1975 and 1979. This judgment reaffirmed the principles of democracy, rule of law, and constitutional supremacy, and it restored some of the original constitutional values of the 1972 Constitution.⁴⁰

In addition to protecting constitutional structure, the Supreme Court has actively contributed to the protection of fundamental rights. Through writ jurisdiction under Article 102 of the Constitution, the Court has provided remedies for violations of rights such as equality before law, personal liberty, and protection from unlawful detention. This has strengthened the legal framework for human rights protection in Bangladesh.

The Court has also influenced constitutional development through interpretative activism. In many cases, it has expanded the meaning of constitutional provisions to ensure justice and fairness in governance. However, judicial activism has also generated debate regarding the balance between judicial interpretation and legislative authority. Critics argue that excessive judicial intervention may affect the separation of powers, while supporters view it as necessary for protecting constitutional values.

Despite its significant contributions, the Supreme Court faces several challenges, including case backlogs, institutional limitations, and concerns regarding political influence. Strengthening judicial independence and improving administrative efficiency are essential for enhancing its constitutional role.

In conclusion, the Supreme Court of Bangladesh has played a crucial role in shaping constitutional development through judicial review, protection of fundamental rights, and enforcement of constitutional supremacy. Its decisions have not only influenced

³⁹ *Anwar Hossain Chowdhury v. Bangladesh*

⁴⁰ *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*

legal interpretation but have also helped preserve democratic principles and the rule of law in Bangladesh.

The Supreme Court of Bangladesh has played a central role in constitutional development through constitutional interpretation and judicial review. Landmark decisions regarding the Fifth Amendment, Eighth Amendment, and caretaker government system significantly shaped the constitutional framework of Bangladesh.

The Supreme Court has often acted as the guardian of the Constitution by protecting democratic principles, fundamental rights, and judicial independence. Nevertheless, concerns regarding political influence, delayed justice, and institutional limitations continue to affect the effectiveness of the judiciary.

3.12 Conclusion

The constitutional history of Bangladesh demonstrates that constitutional amendments and political developments have profoundly influenced the country's governance system and democratic structure. While some amendments strengthened democracy and constitutional governance, others weakened democratic institutions and concentrated state power. Judicial intervention, particularly by the Supreme Court, has played an important role in preserving constitutional supremacy and restoring fundamental principles of the Constitution. The experiences of constitutional instability, military intervention, and political conflict highlight the continuing importance of constitutional reform for ensuring democracy, accountability, and rule of law in Bangladesh.

Chapter Four

Present Constitutional Challenges in Bangladesh

4.1 Introduction

The Constitution of Bangladesh is the supreme legal document of the state and is designed to ensure democracy, rule of law, human rights, and good governance. However, in practice, several structural and political challenges have emerged that hinder the effective implementation of constitutional principles. These challenges arise from institutional weaknesses, political dominance, and gaps between constitutional ideals and practical governance. Therefore, an analysis of present constitutional challenges is essential to understand the limitations of constitutional governance in Bangladesh.⁴¹

4.2 Crisis of Constitutional Supremacy

The Constitution of Bangladesh is formally recognized as the supreme law of the Republic, meaning that all other laws, policies, and governmental actions must conform to its provisions. However, in practice, the principle of constitutional supremacy has often faced serious challenges. The “crisis of constitutional supremacy” refers to the situation where constitutional provisions are not consistently upheld or are influenced by political, institutional, or administrative factors, thereby weakening the authority of the Constitution.⁴²

One of the major causes of this crisis is the dominance of the executive branch over other organs of the state. In many cases, executive decisions significantly influence legislative processes and administrative actions, which reduces the effective separation of powers. As a result, constitutional checks and balances become weaker, and the Constitution’s role as the highest legal authority is sometimes overshadowed by political considerations.

Another important factor is the inconsistent application and interpretation of constitutional provisions. Although the judiciary is responsible for safeguarding

⁴¹ Constitutional Law of Bangladesh, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012). p. 80

⁴² Constitutional Law of Bangladesh, Mullick Brothers, Dhaka. p. 71

constitutional supremacy, delays in judicial proceedings and institutional constraints can limit its effectiveness. In some cases, constitutional provisions are interpreted in ways that reflect prevailing political contexts, raising concerns about neutrality and consistency.

Frequent constitutional amendments have also contributed to this crisis. While amendments are a legitimate part of constitutional development, excessive or politically motivated changes may distort the original spirit of the Constitution. This has led to debates over whether certain amendments strengthen governance or undermine constitutional integrity.

Furthermore, limited constitutional awareness among citizens also contributes to the problem. When citizens are not fully aware of their constitutional rights and obligations, it becomes difficult to ensure accountability of state institutions. This weak civic awareness reduces public pressure for constitutional compliance.

In conclusion, the crisis of constitutional supremacy in Bangladesh is not the result of a single factor but a combination of political dominance, institutional weaknesses, and implementation gaps. Strengthening judicial independence, ensuring institutional balance, and promoting constitutional awareness are essential steps to uphold the true supremacy of the Constitution.⁴³

Although the Constitution declares itself as the supreme law of the Republic, in reality its supremacy is often challenged by political influence and administrative discretion. At times, constitutional provisions are interpreted or applied in ways that reflect political interests rather than legal consistency. This weakens the authority of the Constitution and undermines the rule of law.

⁴³ Supreme Court of Bangladesh constitutional interpretation and judicial review practices.

4.3 Weakness of Democratic Institutions

Democratic institutions such as Parliament, Election Commission, and local government bodies often face limitations in independence and effectiveness. Weak institutional capacity and politicization reduce their ability to function as effective checks and balances. As a result, democratic accountability remains insufficient in many areas of governance.⁴⁴

4.4 Centralization of Executive Power

One of the major constitutional concerns in Bangladesh is the excessive concentration of power in the executive branch. The Prime Minister and central administration hold significant authority over policymaking and governance. This centralization reduces the effectiveness of separation of powers and weakens institutional balance.

4.5 Electoral Governance and Representation Crisis

Electoral governance remains a critical issue in Bangladesh. Concerns regarding election credibility, political influence over institutions, and lack of consensus among political actors contribute to a representation crisis. This situation affects public trust in democratic processes and institutions.

4.6 Judicial Independence and Rule of Law

The Constitution guarantees judicial independence, yet practical challenges persist. Delays in justice delivery, case backlogs, and administrative influence sometimes affect judicial efficiency. Strengthening the rule of law remains essential for ensuring constitutional governance.⁴⁵

4.7 Human Rights and Fundamental Freedoms

Although fundamental rights are constitutionally guaranteed, their enforcement is often inconsistent. Issues such as arbitrary detention, limited access to justice, and

⁴⁴ The Constitution of Bangladesh: A Commentary, *The Constitution of Bangladesh* (Dhaka: Bangladesh Asian Society, 2013). p. 98

⁴⁵ Supreme Court of Bangladesh judgments on judicial independence and constitutional interpretation.

restrictions in sensitive situations raise concerns regarding human rights protection and constitutional compliance.

4.8 Freedom of Speech and Media

Freedom of speech and press freedom are essential for democracy. However, media independence is sometimes affected by legal restrictions and institutional pressures. This limits open debate and transparency in governance.

4.9 Constitutional Issues Relating to Local Government

Local government institutions face structural limitations in autonomy and financial independence. Although constitutionally recognized, decentralization remains weak, limiting effective grassroots governance and citizen participation.

4.10 Corruption and Lack of Accountability

Corruption continues to be a significant challenge affecting constitutional governance. Weak enforcement mechanisms and institutional inefficiency reduce accountability and weaken public trust in governance systems.⁴⁶

4.11 Emergency Powers and Abuse of Authority

Emergency powers under the Constitution of Bangladesh are designed as exceptional legal mechanisms to deal with situations that threaten the security, sovereignty, or stability of the state. These provisions are intended to allow the government to respond quickly and effectively during extraordinary circumstances such as war, internal conflict, or severe public disorder. However, in practice, the use of emergency powers has often raised concerns regarding their potential misuse and impact on constitutional governance and fundamental rights.⁴⁷

Under the constitutional framework, the declaration of a state of emergency allows the suspension of certain fundamental rights and grants the executive broad authority to take necessary measures in the interest of national security. While this provision is

⁴⁶ Bangladesh Politics: Problems and Issues (Dhaka: UPL, 2005).

⁴⁷ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

intended to ensure state stability, it also creates a situation where executive discretion becomes significantly expanded. As a result, the normal system of checks and balances may become weakened during emergency periods.

Historically, emergency powers in Bangladesh have been associated with periods of political instability and military-backed governance. During such times, emergency provisions were used not only to maintain public order but also to suppress political opposition and restrict civil liberties. Restrictions on freedom of speech, freedom of assembly, and freedom of movement were commonly observed, raising serious concerns about human rights protection.⁴⁸

One of the major criticisms of emergency governance is the lack of effective oversight mechanisms. Although the Constitution provides for parliamentary approval and judicial review in certain circumstances, the practical effectiveness of these safeguards has often been limited. This has led to concerns that emergency powers may be used in ways that extend beyond their intended constitutional purpose, thereby creating a risk of authoritarian governance.

The abuse of emergency authority also has long-term implications for democratic institutions. When emergency provisions are used excessively or without sufficient justification, they can weaken public trust in constitutional governance and reduce the accountability of state institutions. Moreover, repeated reliance on emergency powers may normalize exceptional governance practices, which can undermine the stability of democratic systems.

In contemporary constitutional discourse, there is a growing emphasis on the need to clearly define the scope and limitations of emergency powers. Strengthening judicial oversight, ensuring parliamentary scrutiny, and establishing strict conditions for declaration and continuation of emergencies are considered essential reforms. These measures can help prevent misuse of authority while still allowing the state to respond effectively to genuine crises.

In conclusion, emergency powers are necessary for addressing extraordinary situations, but they must be carefully regulated to prevent abuse of authority. Ensuring a proper balance between national security and the protection of fundamental rights is

⁴⁸ Supreme Court of Bangladesh judgments on fundamental rights during emergency periods. p. 23

essential for maintaining constitutional supremacy and democratic governance in Bangladesh.⁴⁹

The Constitution allows emergency provisions for extraordinary situations. However, concerns exist regarding possible misuse of such powers, which may restrict fundamental rights and weaken democratic processes if not properly controlled.

4.12 Public Participation and Constitutional Awareness

Public awareness of constitutional rights remains limited in many areas. Low civic engagement reduces meaningful participation in democratic governance. Strengthening constitutional education is therefore essential for democratic development.

4.13 Challenges of Constitutional Implementation

The Constitution of Bangladesh provides a comprehensive framework for ensuring democracy, rule of law, and protection of fundamental rights. However, a major concern in the constitutional system of Bangladesh is the gap between constitutional provisions and their practical implementation. This gap creates what is often described as the “challenges of constitutional implementation,” where constitutional ideals exist in theory but are not fully realized in practice.⁵⁰

One of the primary challenges is institutional weakness. Although the Constitution establishes independent institutions such as the judiciary, Parliament, and Election Commission, their effectiveness is often limited by administrative constraints, political influence, and lack of adequate resources. This reduces their ability to function as effective guardians of constitutional principles.

Another significant issue is political interference in constitutional processes. In many cases, political considerations influence the application of constitutional rules, particularly in areas such as elections, governance, and public administration. This weakens the neutrality of constitutional institutions and affects public trust in the system.

⁴⁹ Bangladesh Politics: Problems and Issues, University Press Limited. p. 25

⁵⁰ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka. p. 25

Lack of awareness among citizens also contributes to implementation challenges. When people are not fully aware of their constitutional rights and responsibilities, it becomes difficult to ensure accountability of state institutions. Civic education and constitutional literacy remain relatively limited in many parts of society.

In addition, delays in the judicial system and case backlogs hinder effective enforcement of constitutional rights. Even though the judiciary plays a vital role in protecting the Constitution, procedural delays often reduce access to timely justice, which affects the overall effectiveness of constitutional guarantees.

In conclusion, the challenges of constitutional implementation in Bangladesh arise from a combination of institutional, political, and social factors. Strengthening institutions, ensuring political neutrality, and promoting constitutional awareness are essential steps to bridge the gap between constitutional ideals and practical governance.⁵¹

A major challenge in Bangladesh is the gap between constitutional provisions and their implementation. Although the Constitution provides strong legal safeguards, practical enforcement is often inconsistent due to institutional and political constraints.

4.14 Conclusion

In conclusion, the Constitution of Bangladesh provides a strong framework for democratic governance, but its effective implementation faces multiple challenges. Issues such as institutional weakness, executive dominance, limited judicial independence, and inadequate protection of rights continue to affect constitutional governance. Addressing these challenges requires institutional reform, political commitment, and stronger enforcement of constitutional principles.⁵²

⁵¹ Supreme Court of Bangladesh, constitutional enforcement and judicial review functions.

⁵² Constitutional Development in Bangladesh, scholarly analysis of constitutional implementation challenges

Chapter Five

Necessity of Constitutional Reformation in the Present Context

5.1 Introduction

The Constitution of Bangladesh was adopted with the aim of establishing democracy, rule of law, human rights, and social justice. However, over time, various political developments, constitutional amendments, and governance challenges have created a gap between constitutional ideals and practical realities. In the present context, constitutional reform has become an important issue to ensure effective governance, institutional balance, and protection of citizens' rights. This chapter discusses the concept, necessity, and possible directions of constitutional reform in Bangladesh.⁵³

5.2 Concept of Constitutional Reform

Constitutional reform refers to the process of reviewing, amending, updating, or restructuring the provisions of a constitution in order to make it more effective, relevant, and responsive to changing political, social, economic, and technological conditions. It is a dynamic legal and political process that ensures the Constitution remains capable of addressing contemporary governance challenges while preserving its core principles and values.⁵⁴

In general, constitutional reform may take several forms. It can involve formal amendments to existing constitutional provisions through prescribed legal procedures, or it may include broader structural changes such as institutional redesign, redistribution of powers among state organs, or reinterpretation of constitutional principles by the judiciary. In democratic systems, constitutional reform is usually carried out through a special amendment process that requires a higher level of consensus than ordinary legislation, ensuring stability and legitimacy.

The main objective of constitutional reform is to strengthen constitutional governance by improving accountability, transparency, and the effectiveness of state institutions.

⁵³ Constitutional Law of Bangladesh, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012).

⁵⁴ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

It seeks to correct deficiencies in the existing constitutional framework, address gaps between constitutional ideals and practical implementation, and adapt governance structures to evolving societal needs. In this sense, constitutional reform is not merely a legal exercise but also a political and social necessity.

In the context of Bangladesh, constitutional reform has particular significance due to the country's historical experiences of political instability, military intervention, and frequent constitutional amendments. These factors have sometimes altered the original spirit of the Constitution of 1972. As a result, debates on constitutional reform often focus on restoring democratic principles, ensuring separation of powers, strengthening judicial independence, and protecting fundamental rights.⁵⁵

Moreover, modern constitutional reform also includes the incorporation of new rights and governance priorities such as digital rights, environmental protection, gender equality, and minority rights. This reflects the idea that constitutions must evolve to remain relevant in a changing world.

In conclusion, constitutional reform is an essential mechanism for maintaining the vitality and effectiveness of a constitution. It ensures that constitutional governance remains aligned with democratic values, rule of law, and the needs of society while preserving the fundamental identity of the state.

Constitutional reform refers to the process of modifying, updating, or restructuring constitutional provisions to meet changing political, social, and economic needs. It may include amendments, institutional restructuring, or reinterpretation of constitutional principles. The main objective of constitutional reform is to strengthen governance, enhance democracy, and ensure the effective implementation of constitutional values.

⁵⁵ Constitutional Development in Bangladesh, Academic analysis on constitutional evolution and reform. p. 28-29.

5.3 Why Constitutional Reform is Necessary in Bangladesh

Constitutional reform in Bangladesh has become increasingly necessary due to the growing gap between constitutional ideals and their practical implementation. Although the Constitution of the People's Republic of Bangladesh establishes a strong foundation for democracy, rule of law, and fundamental rights, various political, institutional, and governance-related challenges have limited its effective operation in practice. This mismatch between constitutional promise and real-life governance creates the need for systematic reform.⁵⁶

One of the main reasons for constitutional reform is the persistent issue of institutional imbalance. In Bangladesh, the executive branch often holds dominant authority over the legislature and other state institutions. This concentration of power weakens the principle of separation of powers and reduces effective checks and balances. As a result, democratic accountability is undermined, making reform necessary to restore institutional equilibrium.

Another important reason is the recurring challenges in electoral governance. Ensuring free, fair, and credible elections remains a critical issue in Bangladesh. Concerns over electoral neutrality, political influence, and public trust in electoral processes highlight the need for reforms that strengthen the Election Commission and enhance transparency in the electoral system.

Judicial independence is also a key factor. Although the Constitution guarantees an independent judiciary, practical challenges such as administrative influence, case backlogs, and limited institutional capacity affect its effectiveness. Constitutional reform is necessary to further strengthen judicial autonomy and ensure timely justice delivery.

Human rights protection is another major area requiring reform. While fundamental rights are constitutionally guaranteed, their enforcement is often inconsistent. Strengthening legal safeguards, expanding access to justice, and ensuring stronger accountability mechanisms are essential to bridge this gap.

Additionally, the Constitution must evolve to address modern challenges such as digital governance, environmental protection, and social inclusion. Existing

⁵⁶ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka. p. 05

provisions may not fully reflect emerging issues like cyber rights, climate change impacts, gender equality, and minority protection. Therefore, reform is needed to ensure that the Constitution remains relevant in a rapidly changing world.

In conclusion, constitutional reform in Bangladesh is necessary to strengthen democracy, ensure good governance, protect fundamental rights, and maintain constitutional supremacy. Without meaningful reform, the gap between constitutional principles and practical governance will continue to widen, affecting political stability and public trust in state institutions.⁵⁷

Constitutional reform is necessary in Bangladesh due to the gap between constitutional provisions and their implementation. Issues such as executive dominance, weak institutional accountability, electoral controversies, and limitations in fundamental rights protection highlight the need for reform. Moreover, evolving socio-political realities require the Constitution to be more responsive and inclusive.

5.4 Reform for Strengthening Democracy

Democracy is the central organizing principle of the Constitution of Bangladesh, reflected in its commitment to elected representation, rule of law, and accountability of the government. However, in practice, democratic institutions in Bangladesh have often faced challenges such as weak parliamentary oversight, electoral controversies, and excessive concentration of executive power. Therefore, constitutional and institutional reforms are essential to strengthen democracy and ensure its effective functioning in the country.⁵⁸

One of the most important areas of reform is the strengthening of Parliament. In many cases, Parliament has not been able to function as an effective platform for debate, law-making, and executive accountability. Enhancing the role of parliamentary committees, ensuring greater participation of opposition members, and reducing executive dominance over legislative processes are necessary steps to improve democratic governance.

⁵⁷ Constitutional Development in Bangladesh, Academic analysis on governance and constitutional evolution. p. 35

⁵⁸ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

Electoral reform is another key component for strengthening democracy. Free, fair, and credible elections are the foundation of any democratic system. Strengthening the independence of the Election Commission, ensuring transparency in electoral procedures, and reducing political influence in election administration are essential reforms. These measures can help restore public trust in the democratic process and ensure genuine representation of citizens' will.

Political party reform is also crucial. Internal democracy within political parties, transparency in candidate selection, and accountability of party leadership can contribute significantly to strengthening democratic culture. Without democratization of political parties, national-level democracy remains weak and vulnerable.

Judicial independence also plays an indirect but vital role in strengthening democracy. An independent judiciary ensures the protection of constitutional rights and prevents abuse of power by the executive and legislative branches. Strengthening judicial autonomy and improving access to justice are therefore important democratic reforms. Furthermore, decentralization of power is essential for deepening democracy. Empowering local government institutions allows citizens to participate more directly in decision-making processes and improves governance at the grassroots level. This reduces over-centralization and enhances democratic participation.

In conclusion, reform for strengthening democracy in Bangladesh requires a comprehensive approach that includes parliamentary strengthening, electoral reform, political party democratization, judicial independence, and decentralization. These reforms are necessary to ensure that democratic principles are not only constitutionally guaranteed but also effectively practiced in reality.⁵⁹

Democracy can be strengthened by ensuring free and fair elections, empowering Parliament, and reducing excessive executive control. Strong democratic institutions are essential for maintaining constitutional balance and accountability.

⁵⁹ Bangladesh Politics: Problems and Issues, University Press Limited.

5.5 Reform for Ensuring Judicial Independence

Judicial independence is a cornerstone of constitutional governance and the rule of law in Bangladesh. It ensures that the judiciary can interpret and apply the law without undue influence from the executive or legislature. Although the Constitution of Bangladesh provides formal guarantees of judicial independence, in practice several structural and administrative challenges continue to affect its full realization. Therefore, constitutional and institutional reforms are necessary to strengthen the independence, efficiency, and credibility of the judiciary.⁶⁰

One of the key areas of reform is the separation of the judiciary from the executive branch. Although steps have been taken to separate the lower judiciary from executive control, concerns still remain regarding administrative and financial dependence. Strengthening full institutional separation, particularly in judicial administration and budgetary autonomy, is essential to ensure impartial justice delivery.

Another important reform area is the judicial appointment process. A transparent, merit-based, and independent mechanism for appointing judges can reduce political influence and enhance public confidence in the judiciary. Establishing clear constitutional guidelines for appointments and promotions would help ensure fairness and professionalism within the judicial system.

Improving judicial infrastructure and reducing case backlogs is also essential. Delays in the disposal of cases undermine access to justice and weaken constitutional protection of rights. Expanding court capacity, increasing the number of judges, and introducing modern case management systems can significantly improve judicial efficiency.

Judicial accountability is equally important in ensuring independence. While judges must remain free from external pressure, they should also be accountable through transparent and ethical oversight mechanisms. Strengthening judicial discipline and ethical standards can enhance public trust without compromising independence.

In addition, expanding access to justice for marginalized communities is a crucial reform objective. Legal aid services should be strengthened to ensure that all citizens,

⁶⁰ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

regardless of economic status, can effectively access the judicial system. This promotes equality before law, which is a fundamental constitutional principle.

In conclusion, ensuring judicial independence in Bangladesh requires comprehensive reforms focusing on institutional separation, transparent appointments, efficient case management, and improved access to justice. A strong and independent judiciary is essential for protecting constitutional supremacy, safeguarding fundamental rights, and maintaining democratic governance in the country.⁶¹

Judicial independence must be reinforced by ensuring separation from executive influence, improving judicial appointments, and enhancing administrative efficiency. A strong judiciary is essential for protecting constitutional supremacy and rule of law.

5.6 Reform of the Electoral System

The electoral system is a fundamental pillar of democracy, as it ensures the representation of citizens' will in the formation of government. In Bangladesh, the Constitution provides for universal adult suffrage and periodic elections, which are essential features of a democratic system. However, in practice, the electoral process has faced various challenges, including questions regarding transparency, credibility, institutional neutrality, and public trust. Therefore, reform of the electoral system is essential to strengthen democratic governance and ensure genuine representation.⁶²

One of the most important areas of reform is strengthening the independence and capacity of the Election Commission. A strong and neutral Election Commission is necessary to conduct free, fair, and credible elections. This requires transparent appointment procedures, adequate financial autonomy, and institutional safeguards against political influence. Enhancing the professional capacity of election officials can further improve electoral integrity.

Another key reform is ensuring transparency in the electoral process. This includes accurate voter registration, prevention of electoral fraud, and effective monitoring of election-related activities. The use of technology in voter registration and result

⁶¹ Supreme Court of Bangladesh, constitutional interpretation and judicial independence framework.

⁶² Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

management can also improve efficiency and reduce irregularities, provided it is implemented with proper safeguards.

Political party reform is also closely linked to electoral reform. Internal democracy within political parties, transparent candidate nomination processes, and accountability in party financing are essential to ensure fair competition. Without reforming political party structures, broader electoral reforms may not achieve their intended outcomes.

Ensuring equal participation and inclusiveness in elections is another important objective. Special attention should be given to encouraging participation of women, minorities, and marginalized groups. This helps strengthen the representative nature of democracy and ensures that all segments of society have a voice in governance.

Additionally, reducing electoral violence and ensuring a peaceful election environment is crucial. Strong enforcement of electoral laws, impartial administration, and effective coordination among law enforcement agencies are necessary to maintain law and order during elections.

In conclusion, reform of the electoral system in Bangladesh is essential for strengthening democracy, restoring public confidence, and ensuring fair representation. A transparent, independent, and inclusive electoral system is vital for upholding constitutional principles and sustaining democratic governance in the country.⁶³

Electoral reforms should focus on ensuring transparency, neutrality, and credibility of elections. Strengthening the Election Commission and introducing institutional safeguards can improve public trust in the electoral process.⁶⁴

⁶³ Bangladesh Politics: Problems and Issues, University Press Limited. p. 29

⁶⁴ Election Commission of Bangladesh reports on electoral reforms and governance. p. 30

5.7 Reform for Protection of Fundamental Rights

Fundamental rights must be effectively protected through stronger enforcement mechanisms, judicial accessibility, and legal awareness. The Constitution should ensure that rights are not only guaranteed but also practically enforceable.

5.8 Decentralization and Strengthening Local Government

Decentralization is essential for effective governance. Strengthening local government institutions will enhance public participation, improve service delivery, and reduce administrative burden on central authorities.

5.9 Ensuring Transparency and Accountability

Transparency and accountability can be ensured through institutional reforms, anti-corruption measures, and strong oversight mechanisms. Public institutions must operate with openness and responsibility.

5.10 Balance of Power among State Organs

A balanced distribution of power among the executive, legislature, and judiciary is essential for constitutional governance. No single branch should dominate the others, ensuring effective checks and balances.

5.11 Reform of Emergency Provisions

Emergency provisions should be clearly defined and strictly regulated to prevent misuse. Fundamental rights should not be unnecessarily suspended, and parliamentary oversight must be strengthened.

5.12 Constitutional Recognition of Modern Challenges

5.12.1 Digital Rights

The Constitution should recognize digital privacy, cybersecurity, and freedom in online platforms as fundamental rights in the modern era.

5.12.2 Environmental Protection

Environmental sustainability should be constitutionally ensured to address climate change and ecological degradation.

5.12.3 Gender Equality

Stronger constitutional guarantees are needed to eliminate gender discrimination and ensure equal opportunities.

5.12.4 Minority Rights

The Constitution should provide enhanced protection for ethnic, religious, and cultural minorities to ensure inclusiveness and equality.

5.13 Public Participation in Constitutional Reform

Public participation in constitutional reform refers to the involvement of citizens in the process of reviewing, debating, and shaping constitutional changes. In a democratic system, the Constitution is not only a legal document but also a social contract that reflects the collective will of the people. Therefore, meaningful participation of citizens is essential to ensure the legitimacy, acceptance, and effectiveness of any constitutional reform process in Bangladesh.⁶⁵

In many cases, constitutional reforms are undertaken through parliamentary procedures or political negotiations without broad-based public consultation. While this is legally valid, it may sometimes create a gap between constitutional changes and public expectations. Inclusive participation helps bridge this gap by ensuring that reforms reflect the needs and aspirations of different sections of society, including marginalized and vulnerable groups.

One of the key aspects of public participation is civic awareness and constitutional literacy. When citizens are aware of their constitutional rights and responsibilities, they can actively contribute to discussions on governance and reform. Education campaigns, public consultations, and civil society engagement can play a vital role in enhancing constitutional awareness.

Civil society organizations, academic institutions, and media also serve as important platforms for public participation. They facilitate dialogue, conduct research, and raise awareness on constitutional issues. Their involvement ensures that constitutional reform is not limited to political elites but includes diverse societal perspectives.

⁶⁵ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka. p. 83

Another important dimension is participatory democracy, where citizens are directly or indirectly involved in decision-making processes. Mechanisms such as public hearings, referendums, and consultative committees can strengthen democratic legitimacy in constitutional reform processes.

In the context of Bangladesh, political polarization and limited trust between major political actors often hinder meaningful public participation in constitutional reforms. Therefore, creating an inclusive environment where all stakeholders can contribute is essential for sustainable constitutional development.

In conclusion, public participation is a crucial element of constitutional reform. It enhances legitimacy, strengthens democracy, and ensures that constitutional changes reflect the true aspirations of the people. Without meaningful public involvement, constitutional reform may lack acceptance and long-term effectiveness.⁶⁶

Public participation is essential in any constitutional reform process. Inclusive dialogue, civic engagement, and political consensus can ensure legitimacy and sustainability of reforms.

5.14 Comparative Constitutional Reform Experiences

5.14.1 India

India has frequently used constitutional amendments to adapt to changing needs while maintaining constitutional continuity.⁶⁷

5.14.2 South Africa

South Africa adopted a transformative constitution after apartheid, emphasizing human rights, equality, and judicial independence.

5.14.3 United Kingdom

The UK follows an uncoded constitutional system where reforms occur through statutes, conventions, and judicial decisions.

5.14.4 Nepal

Nepal adopted a new constitution in 2015 focusing on federalism, inclusion, and democratic governance.

⁶⁶ Constitutional Development in Bangladesh, Academic discussion on participatory governance and constitutional reform. p. 83

⁶⁷ Indian Constitutional Law, comparative constitutional amendment practices in India. p. 79

5.15 Obstacles to Constitutional Reform in Bangladesh

Constitutional reform is widely recognized as necessary for strengthening democracy, ensuring rule of law, and improving governance in Bangladesh. However, the process of meaningful reform faces several political, institutional, and social obstacles that often limit or delay constitutional development. These challenges create a complex environment where reform is difficult to design, agree upon, and implement effectively.⁶⁸

One of the primary obstacles is political polarization. In Bangladesh, major political parties often hold opposing views on constitutional and governance issues. This lack of consensus makes it difficult to reach agreement on reform proposals, even when such reforms are aimed at strengthening democratic institutions. As a result, constitutional change is frequently influenced by political competition rather than national interest.

Another major barrier is the dominance of executive power. When the executive branch has significant control over legislative processes and state institutions, constitutional reform initiatives may reflect political priorities rather than broad democratic consensus. This concentration of power can discourage inclusive debate and reduce the scope for neutral reform discussions.

Institutional weakness also contributes to the difficulty of constitutional reform. Institutions such as Parliament, the Election Commission, and even consultative bodies may lack the independence or capacity needed to initiate and sustain reform processes. Weak institutional checks and balances reduce transparency and limit effective policy deliberation.

Lack of public awareness is another important obstacle. Many citizens have limited knowledge of constitutional provisions and reform processes, which reduces meaningful public participation. Without strong civic education and constitutional literacy, it becomes difficult to build broad-based support for reform initiatives.

In addition, historical experiences of military intervention and political instability have also shaped a cautious approach to constitutional change. Frequent changes in

⁶⁸ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka. p. 2

governance structures in the past have created sensitivity around constitutional amendments, sometimes leading to resistance against reform proposals.

In conclusion, the obstacles to constitutional reform in Bangladesh are deeply rooted in political polarization, institutional limitations, executive dominance, and limited public awareness. Overcoming these challenges requires political consensus, stronger institutions, and enhanced civic engagement to ensure that constitutional reform serves the broader goals of democracy and good governance.⁶⁹

Major obstacles include political polarization, lack of consensus, institutional resistance, and limited public awareness. These factors often hinder meaningful constitutional reform and long-term stability.⁷⁰

5.16 Conclusion

Constitutional reform in Bangladesh is essential to address governance challenges and ensure effective implementation of constitutional principles. Strengthening democracy, judicial independence, electoral integrity, and human rights protection requires comprehensive and inclusive reforms. Without such reforms, the gap between constitutional ideals and political realities will continue to widen, affecting democratic stability and governance effectiveness.

⁶⁹ Bangladesh Politics: Problems and Issues, University Press Limited.

⁷⁰ Constitutional Development in Bangladesh, analysis of reform challenges in Bangladesh.

Chapter Six

Findings, Recommendations and Conclusion

6.1 Major Findings

The study finds that the Constitution of Bangladesh is a comprehensive and progressive legal document designed to ensure democracy, rule of law, and protection of fundamental rights. However, in practice, several gaps exist between constitutional ideals and their implementation. The historical analysis shows that repeated constitutional amendments, political instability, and military interventions have significantly altered the original spirit of the Constitution. Another key finding is that institutional weaknesses, particularly in the judiciary, legislature, and election management bodies, have contributed to challenges in constitutional governance. Moreover, excessive centralization of executive power, limitations in judicial independence, and weak enforcement of fundamental rights remain major concerns.⁷¹

The study on “The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context” reveals several important findings regarding the evolution, implementation, and contemporary challenges of the Constitution of Bangladesh. These findings highlight both the strengths of the constitutional framework and the gaps between constitutional ideals and practical governance.⁷²

Firstly, the study finds that the Constitution of Bangladesh was formulated with strong democratic aspirations influenced by the Liberation War of 1971. It was designed to ensure democracy, nationalism, socialism, secularism, rule of law, and fundamental rights. However, over time, these foundational principles have been altered through various constitutional amendments and political developments.

Secondly, it is found that constitutional amendments have played a dual role. While some amendments contributed to restoring democracy and strengthening governance, others significantly changed the original structure of the Constitution, particularly in

⁷¹ Constitutional Law of Bangladesh, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012). p. 39

⁷² Constitutional Law of Bangladesh, Mullick Brothers, Dhaka. p. 59

relation to the form of government, political system, and state ideology. This has created debates regarding constitutional continuity and original intent.

Thirdly, the study finds that there is a persistent gap between constitutional provisions and their implementation. Although the Constitution guarantees fundamental rights and institutional independence, in practice, issues such as executive dominance, political influence over institutions, and weak enforcement mechanisms limit effective implementation.

Fourthly, the study identifies that democratic institutions such as Parliament, the Election Commission, and the judiciary often face challenges related to independence, efficiency, and accountability. These institutional weaknesses reduce their ability to function as effective checks and balances within the constitutional system.

Fifthly, it is found that human rights protection and freedom of expression, although constitutionally guaranteed, face practical limitations in certain contexts. Similarly, concerns regarding electoral credibility and representation also affect public trust in democratic governance.

Finally, the study concludes that constitutional reform is necessary to address modern governance challenges, strengthen institutional balance, and ensure effective protection of rights. Without meaningful reform, the gap between constitutional ideals and real-world implementation is likely to continue.⁷³

⁷³ Constitutional Development in Bangladesh, Academic analysis on constitutional evolution and governance. p. 28-29.

6.2 Recommendations

Legal Recommendations

The Constitution should be reviewed to ensure consistency between constitutional provisions and democratic principles. Necessary amendments should be made to strengthen fundamental rights, judicial independence, and separation of powers. Clear legal safeguards should be introduced to prevent misuse of constitutional provisions, particularly emergency powers.

Institutional Recommendations

Institutional reforms are essential to ensure transparency and accountability. The Election Commission, judiciary, and Parliament should be strengthened to function independently. Institutional capacity-building, merit-based appointments, and administrative modernization should be prioritized.

Political Recommendations

Political consensus is essential for sustainable constitutional governance. Major political parties should agree on key democratic principles, including free elections, judicial independence, and constitutional supremacy. Political culture should be improved to reduce confrontation and promote cooperation.⁷⁴

Administrative Recommendations

Administrative reforms should focus on decentralization and efficiency. Local government institutions should be empowered with financial and administrative autonomy. Public service delivery systems should be made more transparent, accountable, and citizen-friendly.

Policy Implications

The findings of this study have significant policy implications for governance in Bangladesh. Strengthening constitutional institutions will improve democratic stability and rule of law. Policy reforms should prioritize electoral integrity, judicial independence, and protection of human rights. Additionally, modernization of governance systems, including digital administration and transparency mechanisms, can enhance public trust in constitutional institutions. Without effective policy

⁷⁴ Bangladesh Politics: Problems and Issues, (Dhaka: University Press Limited, 2005). p. 49

implementation, constitutional provisions will remain largely theoretical rather than practical.⁷⁵

6.3 Concluding Remarks

In conclusion, the Constitution of Bangladesh remains the cornerstone of the country's legal and political system. However, historical developments and contemporary challenges have created a gap between constitutional ideals and real-world governance. To bridge this gap, comprehensive reforms are necessary in legal, institutional, political, and administrative domains. Ensuring constitutional supremacy, strengthening democratic institutions, and protecting fundamental rights are essential for sustainable governance. Ultimately, successful constitutional reform depends on political will, institutional integrity, and active public participation in the democratic process.⁷⁶

The Constitution of Bangladesh stands as the supreme expression of the will of its people and reflects the historical struggle for independence, democracy, and justice. Since its adoption in 1972, it has served as the foundation of the country's legal and political system, incorporating core principles such as nationalism, democracy, socialism, and secularism. Despite its progressive and comprehensive nature, the constitutional journey of Bangladesh has been marked by significant political transitions, military interventions, and numerous amendments that have shaped its current form.⁷⁷

The study shows that while the Constitution provides a strong normative framework for governance, there remains a persistent gap between constitutional ideals and their practical implementation. Issues such as centralization of executive power, weaknesses in democratic institutions, challenges in ensuring judicial independence, and limitations in electoral governance continue to affect the effective functioning of the constitutional system. These challenges indicate that constitutional development is an ongoing process rather than a completed achievement.

⁷⁵ Public Administration in Bangladesh, analysis of governance and administrative reform.

⁷⁶ Constitutional Development in Bangladesh, discussion on constitutional governance challenges and reforms. p. 28-29.

⁷⁷ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

At the same time, the Constitution has demonstrated resilience by accommodating political changes and restoring democratic governance through various amendments and judicial interpretations. The role of the judiciary, particularly the Supreme Court, has been significant in safeguarding constitutional supremacy and protecting fundamental rights. However, institutional constraints and political realities often limit the full realization of constitutional principles.

In the present context, constitutional reform emerges as a necessary step to address both historical legacies and contemporary governance challenges. Reform should focus on strengthening democratic institutions, ensuring separation of powers, enhancing judicial independence, improving electoral integrity, and protecting fundamental rights more effectively. Additionally, modern issues such as digital rights, environmental protection, and inclusive governance must be integrated into constitutional thinking to ensure long-term relevance.

In conclusion, the Constitution of Bangladesh remains a living document that requires continuous interpretation, adaptation, and reform. Strengthening its implementation and addressing structural weaknesses are essential for ensuring stable democratic governance and the protection of citizens' rights. A balanced approach combining legal, institutional, and political reforms can help bridge the gap between constitutional ideals and practical realities, thereby reinforcing constitutional supremacy in Bangladesh.⁷⁸

⁷⁸ Constitutional Development in Bangladesh, Academic analysis on constitutional governance and reform. p. 98

Bibliography

Books

- Constitutional Law of Bangladesh, Constitutional Law of Bangladesh, Dhaka: Mullick Brothers.
- The Constitution of Bangladesh, Dhaka: Bangladesh Asian Society.
- Bangladesh: Constitutional Quest for Autonomy, Dhaka: University Press Limited.
- Indian Constitutional Law, India: LexisNexis.
- Constitutional Development in Bangladesh, Dhaka: Academic Press.

Journal Articles

- Ahmed, N., “Constitutional Development in Bangladesh: A Critical Review,” Journal of Asian and African Studies.
- Huq, M., “Judicial Independence in Bangladesh,” Bangladesh Legal Journal.
- Rahman, M., “Electoral Governance and Democracy in Bangladesh,” Asian Journal of Political Science.
- Islam, M., “Fundamental Rights and Constitutional Enforcement in Bangladesh,” Dhaka University Law Review.

Case Laws

- Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh
- Anwar Hossain Chowdhury v. Bangladesh
- Kudrat-E-Elahi Panir v. Bangladesh
- State v. Ziaur Rahman (constitutional interpretation cases)
- Various Supreme Court of Bangladesh constitutional writ petitions

Constitutional Provisions

- The Constitution of the People’s Republic of Bangladesh
- Constitution (First Amendment) Act, 1973
- Constitution (Fourth Amendment) Act, 1975
- Constitution (Twelfth Amendment) Act, 1991
- Constitution (Thirteenth Amendment) Act, 1996

- Constitution (Fifteenth Amendment) Act, 2011

Government Documents

- Government of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs Reports
- Bangladesh Election Commission Reports on Electoral Reforms
- Bangladesh Law Commission Reports

Reports

- UNDP Governance and Human Rights Reports on Bangladesh
- Transparency International Bangladesh (TIB) Reports on Corruption
- World Bank Governance Indicators Reports
- Asian Development Bank Country Governance Assessments

Newspapers

- The Daily Star (Bangladesh)
- Prothom Alo
- Dhaka Tribune
- New Age Bangladesh
- Financial Express Bangladesh

Websites

- Bangladesh Parliament: <https://www.parliament.gov.bd>
- Supreme Court of Bangladesh: <https://www.supremecourt.gov.bd>
- Election Commission Bangladesh: <https://www.ecs.gov.bd>
- Ministry of Law, Justice and Parliamentary Affairs: <https://www.minlaw.gov.bd>
- Transparency International Bangladesh: <https://www.ti-bangladesh.org>