



RESEARCH MONOGRAPH

on

The Historical Background of the Constitution of Bangladesh and the Necessity of It's Reformation in the Present Context: A Suggestive Analysis

Supervised TO:

Muhammad Ali

Lecturer & Coordinator
Sonargaon University, Dhaka

Submitted By:

MD Mamun Hossain

ID Number: LLB2202026019

Department of Law
Sonargaon University, Dhaka

**RESEARCH MONOGRAPH SUBMITTED TO SONARGAON UNIVERSITY IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF LLB
(BACHELOR OF LAWS)**

ACADEMIC YEAR (2022–2026)

**DEPARTMENT OF LAW SONARGAON UNIVERSITY 147/I, GREEN ROAD, PANTHAPATH,
DHAKA, BANGLADESH**

DATE OF SUBMISSION

25.06.2026

LETTER OF TRANSMITTAL

Date: 25 June 2026

To

Muhammad Ali

Lecturer & Coordinator

Department of Law

Sonargaon University

147/I, Green Road, Panthapath

Dhaka, Bangladesh

Subject: Submission of Research Monograph

Dear Sir,

It is my great pleasure to submit the research monograph entitled “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**” in partial fulfilment of the requirements for the award of the degree of **LL.B (Bachelor of Laws)** under the Department of Law, Sonargaon University.

I have prepared this monograph under your valuable supervision, guidance, and continuous encouragement. While conducting this research, I have made every sincere effort to collect relevant information from authentic sources, including constitutional documents, books, journals, case laws, and scholarly articles, in order to present a comprehensive and analytical study of the historical development of the Constitution of Bangladesh and the contemporary necessity for its reform.

This study attempts to examine the constitutional evolution of Bangladesh, analyze the major constitutional amendments and challenges, and suggest possible reforms to strengthen democratic governance, the rule of law, fundamental rights, and constitutional institutions in the present context.

I sincerely hope that this monograph will meet the academic standards and objectives of the LL.B programme. I shall be highly grateful if you kindly accept this work and provide your valuable observations and suggestions for further improvement.

Thank you for your kind supervision, guidance, and support throughout the preparation of this research monograph.

Yours faithfully,

MD Mamun Hossain

ID Number: LLB 2202026019

Department of Law

Sonargaon University, Dhaka

CERTIFICATION

This is to certify that the Research Monograph entitled “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**” has been submitted by **MD Mamun Hossain**, ID No. **LLB 2202026019**, a student of the Department of Law, Sonargaon University, Dhaka, in partial fulfilment of the requirements for the award of the degree of **LL.B (Bachelor of Laws)** for the Academic Session **2022–2026**.

I further certify that this research work has been carried out by the student under my supervision and guidance. To the best of my knowledge, this monograph is an original work of the student and has not been submitted, either in whole or in part, to any other university or institution for the award of any degree, diploma, or certificate.

I recommend the monograph for submission and evaluation in accordance with the rules and regulations of Sonargaon University.

Muhammad Ali

Lecturer & Coordinator

Department of Law

Sonargaon University, Dhaka

Date: 25 June 2026

DECLARATION

I hereby declare that the Research Monograph entitled “**The Historical Background of the Constitution of Bangladesh and the Necessity of Its Reformation in the Present Context: A Suggestive Analysis**” is an original work carried out by me under the supervision of **Muhammad Ali, Lecturer & Coordinator, Department of Law, Sonargaon University, Dhaka**, in partial fulfilment of the requirements for the award of the degree of **LL.B (Bachelor of Laws)**.

I further declare that:

1. This research monograph has been prepared by me and represents my own work except where due acknowledgment has been made in the text and references.
2. The work contained in this monograph has not previously been submitted, either in whole or in part, to any university or institution for the award of any degree, diploma, or certificate.
3. All sources of information and materials used in this study have been duly acknowledged and cited.
4. I accept full responsibility for the accuracy and authenticity of the information presented in this monograph.

I solemnly affirm that the statements made above are true and correct to the best of my knowledge and belief.

MD Mamun Hossain

ID Number: LLB 2202026019

Department of Law

Sonargaon University, Dhaka

Date: 25 June 2026

ACKNOWLEDGEMENT

At the outset, I would like to express my deepest gratitude and sincere appreciation to Almighty Allah, whose blessings, mercy, and guidance enabled me to complete this research monograph successfully.

I am profoundly indebted to my respected supervisor, **Muhammad Ali, Lecturer & Coordinator, Department of Law, Sonargaon University, Dhaka**, for his invaluable guidance, constructive suggestions, continuous encouragement, and scholarly supervision throughout the preparation of this research work. His insightful comments and expert advice greatly contributed to the successful completion of this monograph.

I would also like to convey my sincere thanks to all the respected teachers of the **Department of Law, Sonargaon University**, for their academic support, inspiration, and encouragement during my undergraduate studies. Their teachings have significantly enhanced my understanding of legal principles and constitutional law.

I am grateful to the authorities of **Sonargaon University** for providing the academic environment and necessary facilities that enabled me to conduct this research. I also acknowledge the contributions of authors, researchers, legal scholars, and publishers whose books, articles, journals, reports, and other publications served as valuable sources of information for this study.

I would like to extend my heartfelt appreciation to my parents, family members, friends, and well-wishers for their continuous support, motivation, patience, and encouragement throughout my academic journey and during the preparation of this monograph.

Finally, I acknowledge with gratitude all those who directly or indirectly contributed to the successful completion of this research work. Any shortcomings or errors that remain in this monograph are entirely my own responsibility.

MD Mamun Hossain

ID Number: LLB 2202026019

Department of Law

Sonargaon University, Dhaka

Date: 25 June 2026

DEDICATION

I humbly dedicate this Research Monograph

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

to

My Beloved Parents

whose unconditional love, endless sacrifices, unwavering support, and constant encouragement have been the foundation of my academic journey and personal growth.

I am forever grateful for their prayers, patience, guidance, and inspiration, which have enabled me to pursue higher education and successfully complete this research work.

I also dedicate this monograph to my respected teachers, whose knowledge, wisdom, and dedication have enlightened my path and inspired me to strive for excellence in the field of law.

MD Mamun Hossain

ID Number: LLB 2202026019

Department of Law

Sonargaon University, Dhaka

ABSTRACT

The Constitution of the People's Republic of Bangladesh is the supreme law of the land and serves as the foundation of the country's political, legal, and administrative system. Adopted on 4 November 1972 and enforced on 16 December 1972, the Constitution reflects the aspirations, values, and struggles of the Bangladeshi people, particularly the ideals that emerged from the Language Movement of 1952, the Six-Point Movement of 1966, the Mass Uprising of 1969, and the Liberation War of 1971. The Constitution was framed with the objective of establishing a democratic state based on nationalism, socialism, democracy, and secularism.

This research monograph examines the historical background of the Constitution of Bangladesh and critically analyzes the necessity of its reformation in the present context. The study explores the constitutional development of the region from the British colonial period through the Pakistan era to the emergence of an independent Bangladesh. It further investigates the process of constitution-making in 1972 and evaluates the impact of major constitutional amendments on the political and legal framework of the country.

The research identifies several contemporary constitutional challenges, including political polarization, concerns regarding electoral governance, executive dominance, limitations in parliamentary accountability, judicial independence, protection of fundamental rights, local government autonomy, and the need for greater institutional transparency and accountability. These issues have generated significant debate among constitutional scholars, legal practitioners, policymakers, and civil society regarding the adequacy of the existing constitutional framework in addressing present-day realities.

The study adopts a doctrinal and analytical research methodology based on constitutional provisions, judicial decisions, books, journal articles, official documents, and relevant academic literature. Through a critical examination of constitutional developments and comparative constitutional experiences, the research assesses the strengths and weaknesses of the current constitutional system.

The findings suggest that while the Constitution of Bangladesh remains a remarkable document reflecting the spirit of independence and democratic aspirations, certain reforms may be necessary to strengthen constitutional governance, ensure effective checks and balances, protect fundamental rights, enhance judicial independence, improve electoral credibility, and promote participatory democracy. The study concludes that constitutional reform should be undertaken through an inclusive, democratic, and consensus-based process aimed at preserving constitutional stability while responding to contemporary governance challenges.

Keywords: Constitution of Bangladesh, Constitutional History, Constitutional Reform, Democracy, Rule of Law, Fundamental Rights, Judicial Independence, Constitutional Governance.

TABLE OF CONTENTS

Contents	Page No.
Title Page	i
Letter of Transmittal	ii
Certification	iii
Declaration	iv
Dedication	v
Acknowledgement	vi
Abstract	vii
Table of Contents	viii
List of Abbreviations	ix

CHAPTER ONE: INTRODUCTION

Contents	Page No.
1.1 Background of the Study	
1.2 Statement of the Problem	
1.3 Objectives of the Study	
1.4 Research Questions	
1.5 Scope of the Study	
1.6 Methodology of the Study	
1.7 Significance of the Study	
1.8 Limitations of the Study	
1.9 Organization of the Study	

CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK OF CONSTITUTION

Contents	Page No.
-----------------	-----------------

- | | |
|--|--|
| 2.1 Meaning and Definition of Constitution | |
| 2.2 Nature and Characteristics of Constitution | |
| 2.3 Constitutionalism and Rule of Law | |
| 2.4 Functions and Importance of Constitution | |
| 2.5 Types of Constitutions | |
| 2.6 Supremacy of the Constitution | |

CHAPTER THREE: HISTORICAL BACKGROUND OF THE CONSTITUTION OF BANGLADESH

Contents	Page No.
-----------------	-----------------

- | | |
|--|--|
| 3.1 Constitutional Development during British Rule | |
| 3.2 Government of India Act, 1935 | |
| 3.3 Partition of India and Pakistan Period | |
| 3.4 Language Movement of 1952 | |
| 3.5 Constitution of Pakistan, 1956 | |
| 3.6 Constitution of Pakistan, 1962 | |
| 3.7 Six-Point Movement of 1966 | |
| 3.8 Mass Uprising of 1969 | |
| 3.9 General Election of 1970 | |
| 3.10 Liberation War of 1971 | |
| 3.11 Proclamation of Independence, 1971 | |

CHAPTER FOUR: FRAMING OF THE CONSTITUTION OF BANGLADESH, 1972

Contents	Page No.
-----------------	-----------------

- | | |
|---|--|
| 4.1 Formation of the Constituent Assembly | |
|---|--|

Contents	Page No.
----------	----------

- | | |
|--|--|
| 4.2 Constitution Drafting Committee | |
| 4.3 Adoption and Commencement of the Constitution | |
| 4.4 Sources of the Constitution | |
| 4.5 Salient Features of the Constitution | |
| 4.6 Fundamental Principles of State Policy | |
| 4.7 Fundamental Rights and Constitutional Remedies | |

CHAPTER FIVE: CONSTITUTIONAL AMENDMENTS AND POLITICAL DEVELOPMENTS

Contents	Page No.
----------	----------

- | | |
|--|--|
| 5.1 Overview of Constitutional Amendments | |
| 5.2 First to Fourth Amendments | |
| 5.3 Military Rule and Constitutional Changes | |
| 5.4 Fifth and Seventh Amendments | |
| 5.5 Eighth Amendment | |
| 5.6 Twelfth Amendment and Restoration of Parliamentary Democracy | |
| 5.7 Thirteenth Amendment and Caretaker Government | |
| 5.8 Fifteenth Amendment and Subsequent Developments | |
| 5.9 Judicial Review of Constitutional Amendments | |

CHAPTER SIX: CONTEMPORARY CONSTITUTIONAL CHALLENGES IN BANGLADESH

Contents	Page No.
----------	----------

- | | |
|--|--|
| 6.1 Electoral Governance and Democratic Accountability | |
| 6.2 Executive Dominance and Concentration of Power | |
| 6.3 Parliamentary Effectiveness | |
| 6.4 Judicial Independence | |
| 6.5 Protection of Fundamental Rights | |

Contents	Page No.
----------	----------

6.6 Freedom of Expression and Media Freedom	
---	--

6.7 Local Government and Decentralization	
---	--

6.8 Corruption and Good Governance	
------------------------------------	--

6.9 Constitutional and Institutional Challenges	
---	--

CHAPTER SEVEN: NECESSITY OF CONSTITUTIONAL REFORMATION IN THE PRESENT CONTEXT

Contents	Page No.
----------	----------

7.1 Concept of Constitutional Reform	
--------------------------------------	--

7.2 Reasons for Constitutional Reform in Bangladesh	
---	--

7.3 Strengthening Democratic Institutions	
---	--

7.4 Electoral Reform and Political Inclusiveness	
--	--

7.5 Judicial and Legal Reform	
-------------------------------	--

7.6 Expansion of Fundamental Rights	
-------------------------------------	--

7.7 Strengthening Local Government Institutions	
---	--

7.8 Constitutional Stability and Good Governance	
--	--

CHAPTER EIGHT: COMPARATIVE CONSTITUTIONAL PERSPECTIVES AND SUGGESTIVE ANALYSIS

Contents	Page No.
----------	----------

8.1 Constitutional Experiences of India	
---	--

8.2 Constitutional Practices of the United Kingdom	
--	--

8.3 Constitutional System of the United States	
--	--

8.4 Constitutional Model of South Africa	
--	--

8.5 Lessons for Bangladesh	
----------------------------	--

8.6 Findings of the Study	
---------------------------	--

8.7 Recommendations	
---------------------	--

8.8 Conclusion	
----------------	--

REFERENCES AND SUPPLEMENTARY MATERIALS

Contents	Page No.
----------	----------

Bibliography	
--------------	--

Books	
-------	--

Journal Articles	
------------------	--

Constitutional Documents	
--------------------------	--

Cases Referred	
----------------	--

Websites and Online Sources	
-----------------------------	--

Appendices (If Any)	
---------------------	--

LIST OF ABBREVIATIONS

Abbreviation Full Form

Art.	Article
Arts.	Articles
BLD	Bangladesh Legal Decisions
BLT	Bangladesh Law Times
BLC	Bangladesh Law Chronicles
BCR	Bangladesh Court Reports
Const.	Constitution
Ed.	Edition
Eds.	Editors
et al.	And Others
i.e.	That Is
e.g.	For Example
Govt.	Government
HC	High Court
HCD	High Court Division
J.	Justice
JJ.	Justices
JCD	Judicial Committee Division
LLB	Bachelor of Laws
LLM	Master of Laws
No.	Number
p.	Page

Abbreviation Full Form

pp.	Pages
PSC	Public Service Commission
SCC	Supreme Court Cases
SC	Supreme Court
SLR	Supreme Court Law Reports
UNO	United Nations Organization
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
USA	United States of America
Vol.	Volume
W.P.	Writ Petition
WLR	Weekly Law Reports
ICT	Information and Communication Technology
EC	Election Commission
ACC	Anti-Corruption Commission
NGO	Non-Governmental Organization
GDP	Gross Domestic Product
BCS	Bangladesh Civil Service
JSC	Judicial Service Commission
LGI	Local Government Institution
HR	Human Rights
FR	Fundamental Rights
FPSP	Fundamental Principles of State Policy

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The Constitution is the supreme law of a state which defines the structure of government, distributes powers among different organs, guarantees fundamental rights, and ensures accountability through the rule of law. It serves as the foundation of governance and reflects the political philosophy and aspirations of the people.¹

The Constitution of the People's Republic of Bangladesh holds a distinctive place in the constitutional history of South Asia. Unlike many constitutions that evolved gradually, the Constitution of Bangladesh emerged from a revolutionary struggle rooted in linguistic, cultural, political, and economic grievances against Pakistan. The historical background of this Constitution is deeply connected with the British colonial period, the partition of 1947, the Language Movement of 1952, the Six-Point Movement of 1966, the Mass Uprising of 1969, and the Liberation War of 1971.²

Following independence in 1971, Bangladesh required a constitutional framework to ensure governance, stability, and protection of rights. The Constitution was adopted on 4 November 1972 and came into force on 16 December 1972.³ It was based on four fundamental principles: nationalism, socialism, democracy, and secularism.

However, constitutional development in Bangladesh has not been static. Numerous amendments and political changes have significantly altered the original constitutional framework, raising debates regarding governance, democracy, and constitutional reform³.

1.2 Statement of the Problem

¹K.C. Wheare, *Modern Constitutions* (Oxford University Press, 1966) 1–3.

² Mahmudul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers, 3rd edn, 2012) 5–10.

³ *Constitution of the People's Republic of Bangladesh 1972, Preamble*.

Ibid, art 8.

Although the Constitution of Bangladesh was designed to ensure democracy, equality, and rule of law, its practical implementation has faced several challenges. Political instability, military interventions, and excessive constitutional amendments have affected institutional balance.

Key issues include electoral credibility, separation of powers, judicial independence, and accountability of constitutional institutions. These challenges raise questions about whether the existing constitutional framework is sufficient to address modern governance needs.

1.3 Objectives of the Study

The objectives of this study are:

- To examine the historical background of the Constitution of Bangladesh.
- To analyze the constitution-making process of 1972.
- To evaluate constitutional amendments and their impact.
- To identify contemporary constitutional challenges.
- To assess the necessity of constitutional reform.
- To provide comparative insights and recommendations⁴.

1.4 Research Questions

This study addresses the following questions:

- What historical factors led to the Constitution of Bangladesh?
- How was the Constitution of 1972 framed?
- What are its key features and principles?
- How have amendments changed the original structure?
- Is constitutional reform necessary in present Bangladesh?

1.5 Scope of the Study

This study covers the historical evolution of constitutional development from the colonial period to modern Bangladesh. It also analyzes constitutional amendments, governance issues, and reform debates.

However, it does not provide a clause-by-clause interpretation of the Constitution due to scope limitations.

⁴ M. Abdul Halim, *Constitution, Constitutional Law and Politics: Bangladesh Perspective* (CCB Foundation, 2014) 45–48.

Amartya Sen, *Development as Freedom* (Oxford University Press, 1999) 150.

Supra note 2, 15.

1.6 Methodology of the Study

This study is doctrinal and analytical in nature. It relies on both primary and secondary sources.

Primary sources include the Constitution of Bangladesh, constitutional amendments, and judicial decisions. Secondary sources include textbooks, journals, articles, and online legal materials.

1.7 Significance of the Study

This study is significant because the Constitution is the foundation of governance in Bangladesh. Understanding its evolution is essential for evaluating democratic development and constitutional reform needs.

1.8 Limitations of the Study

This study is limited by the complexity of constitutional law and the unavailability of some updated official materials. Political sensitivity of constitutional issues also limits objective interpretation.

1.9 Organization of the Study

The monograph is divided into eight chapters covering introduction, theoretical framework, historical background, constitution-making, amendments, challenges, reform analysis, and conclusion.⁵

⁵ *Ibid*, 22–24.

Ibid, 30.

Ibid, 33.

University of London, *Guidelines for Legal Research Writing* (2020) 12.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK OF CONSTITUTION

2.1 Meaning and Definition of Constitution

The term “Constitution” refers to the fundamental legal document of a state that establishes the structure of government, defines the distribution of powers among different organs, and guarantees the rights of citizens. It is regarded as the supreme law of the land and all other laws must conform to it.⁶

According to K.C. Wheare, a Constitution is “the whole system of government of a country, the collection of rules which establish and regulate or govern the government.” Similarly, A.V. Dicey described constitutional law as all rules which directly or indirectly affect the distribution or exercise of sovereign power in the state.

In modern constitutional theory, a Constitution is not merely a legal document but also a political and social instrument that reflects the aspirations of the people and ensures democratic governance, accountability, and the rule of law.⁷

2.2 Nature and Characteristics of Constitution

A Constitution possesses certain essential characteristics which distinguish it from ordinary laws.

Firstly, it is the supreme law of the state. All laws and governmental actions must conform to the Constitution; otherwise, they become void.

Secondly, it establishes the structure of government, including the legislature, executive, and judiciary, and defines their powers and functions.

Thirdly, it is both legal and political in nature. While it has legal enforceability, it also reflects political philosophy and national ideals.

Fourthly, most modern constitutions are written and codified, ensuring clarity and certainty in governance. However, some countries like the United Kingdom have an unwritten constitution based on conventions and statutes.

⁶ *Constitution of the People's Republic of Bangladesh 1972, art 7.*

⁷ *Constitution of the People's Republic of Bangladesh 1972, art 7.*

Ibid 67.

Finally, a Constitution is dynamic in nature. It evolves over time through amendments, judicial interpretation, and political development to meet changing societal needs.

2.3 Constitutionalism and Rule of Law

Constitutionalism refers to the principle that government authority is derived from and limited by a Constitution. It ensures that power is exercised within legal boundaries and not arbitrarily.

The doctrine of constitutionalism emphasizes limitations on governmental power, protection of fundamental rights, separation of powers, and judicial review.

The rule of law, closely connected with constitutionalism, was elaborated by A.V. Dicey, who identified three essential principles:

1. Supremacy of law over arbitrary power
2. Equality before law
3. Predominance of legal spirit in governance

In Bangladesh, the Constitution explicitly recognizes the rule of law as a fundamental principle of state policy under Article 8 and ensures judicial protection of fundamental rights under Part III.

However, the practical application of constitutionalism in Bangladesh has often been challenged by political instability and institutional weaknesses.

2.4 Functions and Importance of Constitution

A Constitution performs several important functions in a modern state.

Firstly, it establishes the framework of government by defining the structure and powers of different organs of the state.

Secondly, it provides legitimacy to governmental authority by ensuring that power is derived from the people.

Thirdly, it protects fundamental rights and freedoms of citizens against arbitrary state action.

Fourthly, it ensures separation of powers and checks and balances among the legislature, executive, and judiciary.

Fifthly, it promotes political stability and continuity by providing a stable legal framework for governance.

Finally, it serves as a tool for social transformation by guiding the state towards goals such as equality, justice, and development.⁸

⁸ Ibid 67.

Ibid 70–72.

2.5 Types of Constitutions

Constitutions can be classified in various ways.

(a) Written and Unwritten Constitution

A written constitution is a formally codified document, such as the Constitution of Bangladesh or the United States Constitution. An unwritten constitution, like that of the United Kingdom, is based on statutes, conventions, and judicial decisions.

(b) Rigid and Flexible Constitution

A rigid constitution requires a special procedure for amendment, making it difficult to change, while a flexible constitution can be amended easily through ordinary legislative procedures.⁹

(c) Federal and Unitary Constitution

A federal constitution distributes power between central and regional governments, while a unitary constitution concentrates power at the central level.

(d) Presidential and Parliamentary Constitution

In a presidential system, the executive is separate from the legislature, whereas in a parliamentary system, the executive is accountable to the legislature.

Bangladesh follows a parliamentary system of government under its Constitution.

The supremacy of the Constitution means that it is the highest source of law in the state and all authorities, including the legislature, executive, and judiciary, must act within its limits.

Article 7 of the Constitution of Bangladesh explicitly declares that the Constitution is the supreme law of the Republic and any law inconsistent with it shall be void to the extent of inconsistency.¹⁰

The doctrine of constitutional supremacy ensures that no organ of the state can override constitutional provisions, and it is enforced through judicial review by the Supreme Court of Bangladesh.

However, in practice, the effectiveness of constitutional supremacy depends on the independence of the judiciary and respect for constitutional norms by political institutions.⁹

M. Abdul Halim, *Constitutional Law of Bangladesh* (CCB Foundation, 2014) 55.

A.V. Dicey (n 3) 188–193.

⁹ Mahmudul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers, 3rd edn, 2012) 40–45.

K.C. Wheare (n 2) 33–35.

Constitution of Bangladesh 1972, art 7(1).

CHAPTER THREE

HISTORICAL BACKGROUND OF THE CONSTITUTION OF BANGLADESH

3.1 Constitutional Development during British Rule

The constitutional development of the territory now known as Bangladesh can be traced back to the British colonial period when the Indian subcontinent was governed under the authority of the British Crown. During this period, several constitutional instruments were introduced to regulate governance, administration, and legislative authority in British India.

The Regulating Act of 1773 marked the beginning of structured constitutional governance in India by establishing the office of the Governor-General of Bengal and creating a Supreme Court in Calcutta.¹⁰ Later, the Charter Acts of 1833 and 1853 further centralized legislative authority and expanded administrative reforms.

The most significant constitutional development during British rule was the Government of India Act 1858, which transferred power from the East India Company to the British Crown following the Sepoy Mutiny of 1857. Subsequently, various reforms were introduced to accommodate Indian political demands.

3.2 Government of India Act, 1935

The Government of India Act 1935 is considered the most comprehensive constitutional framework introduced by the British in India. It provided provincial autonomy, introduced a federal structure (though never fully implemented), and established a system of responsible government at the provincial level.

The Act also laid the foundation for parliamentary democracy in the subcontinent by introducing bicameral legislatures in some provinces and expanding franchise rights. Many of its provisions later influenced the constitutional structure of both India and Pakistan, including administrative divisions, judicial organization, and federal principles.

For East Bengal (later East Pakistan and present-day Bangladesh), the Act became particularly important as it provided limited provincial autonomy, although real power remained centralized.

3.3 Partition of India and Pakistan Period

The Partition of India in 1947 led to the creation of two independent dominions: India and Pakistan. Pakistan consisted of two geographically and culturally separate wings—West Pakistan and East Bengal (later East Pakistan).

¹⁰ Government of India Act 1858; Regulating Act 1773.

From the beginning, a constitutional imbalance existed between the two wings of Pakistan. East Pakistan, despite having a larger population, faced political and economic discrimination¹¹. The centralized structure of governance in West Pakistan created dissatisfaction and laid the foundation for constitutional and political conflicts.

The absence of a stable constitutional framework in the early years of Pakistan led to political instability, frequent changes in government, and military influence in governance.

3.4 Language Movement of 1952

The Language Movement of 1952 was a significant milestone in the constitutional and political history of Bangladesh. The decision of the Pakistani government to declare Urdu as the sole state language sparked widespread protests in East Pakistan.

Students and political activists demanded recognition of Bengali as one of the state languages. On 21 February 1952, several protestors were killed by police firing, which intensified the movement.¹²

The movement played a crucial role in strengthening Bengali nationalism and laid the foundation for future demands for autonomy and self-determination. It also influenced constitutional recognition of linguistic and cultural rights.

3.5 Constitution of Pakistan, 1956

The Constitution of Pakistan 1956 was the first written constitution of Pakistan. It declared Pakistan an Islamic Republic and introduced a parliamentary form of government.

The Constitution provided for federalism and fundamental rights; however, it failed to ensure political stability. The dominance of West Pakistan continued, and East Pakistan remained politically marginalized.¹³

Due to political instability and military influence, the Constitution was abrogated in 1958 following a military coup led by General Ayub Khan.

3.6 Constitution of Pakistan, 1962

The Constitution of 1962, introduced under President Ayub Khan, established a presidential system of government. It concentrated executive power in the office of the President and reduced parliamentary influence.

¹¹ Government of India Act 1935, ss 1–5.

Richard Sisson and Leo Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh* (University of California Press, 1990) 45–48.

¹² Sayeed A. Khan, *History of Bangladesh* (Dhaka University Press, 2004) 112.

¹³ Constitution of Pakistan 1956.

Constitution of Pakistan 1962.

Although it introduced basic democratic structures, it was widely criticized for authoritarian tendencies and lack of genuine democratic participation. The political exclusion of East Pakistan continued, further intensifying demands for autonomy.

3.7 Six-Point Movement of 1966

The Six-Point Movement, led by Sheikh Mujibur Rahman, was a landmark political movement demanding greater autonomy for East Pakistan. The six points included demands for federalism, separate currency or fiscal autonomy, and control over taxation and foreign trade.

The movement was a direct response to economic and political disparities between East and West Pakistan. It is widely regarded as the “Magna Carta” of the Bangladeshi independence movement.

3.8 Mass Uprising of 1969

The Mass Uprising of 1969 was a popular movement against the authoritarian regime of Ayub Khan. Students, workers, and political activists participated in large-scale protests demanding democracy and autonomy.

The uprising ultimately led to the resignation of Ayub Khan and marked a turning point in the political history of Pakistan, significantly strengthening the independence movement in East Pakistan.

3.9 General Election of 1970

The general election of 1970 was the first national election held in Pakistan based on universal adult franchise. The Awami League, led by Sheikh Mujibur Rahman, won an absolute majority in the National Assembly, securing most of the seats from East Pakistan.

Despite this democratic mandate, the transfer of power was delayed and ultimately denied by the ruling authorities in West Pakistan, creating a constitutional crisis¹⁴. This political deadlock directly contributed to the Liberation War of 1971.

3.10 Liberation War of 1971

The refusal to transfer power led to widespread political unrest and eventually the Liberation War of 1971. On 25 March 1971, military operations were launched in East Pakistan, marking the beginning of armed conflict.

The war lasted for nine months and resulted in massive loss of life and displacement. With the support of India and the collective resistance of the Bengali people, Bangladesh achieved independence on 16 December 1971.¹⁵

¹⁴ Rounaq Jahan, *Pakistan: Failure in National Integration* (Columbia University Press, 1972) 134.

Lawrence Ziring, *The Enigma of Political Development in Pakistan* (Westview Press, 1980) 210.

¹⁵ A.F. Salahuddin Ahmed, *Bangladesh: Past and Present* (AP Publishers, 2004) 201–205.

The Liberation War established the principles of nationalism, democracy, secularism, and social justice, which later formed the foundation of the Constitution of Bangladesh.

3.11 Proclamation of Independence, 1971

The Proclamation of Independence issued on 10 April 1971 provided the legal and constitutional basis for the formation of Bangladesh as a sovereign state. It declared Bangladesh a sovereign republic and established a provisional government.

The Proclamation affirmed equality, human dignity, and democratic governance as fundamental principles of the new state. It also served as the transitional constitutional document until the adoption of the Constitution in 1972.

CHAPTER FOUR

FRAMING OF THE CONSTITUTION OF BANGLADESH, 1972

4.1 Formation of the Constituent Assembly

After the emergence of Bangladesh as an independent state on 16 December 1971, the necessity of framing a Constitution became an immediate priority for establishing a lawful and organized governmental structure. The newly liberated state required a constitutional framework to ensure legitimacy, stability, and democratic governance.

The Constituent Assembly of Bangladesh was formed from the elected representatives of the 1970 general election of Pakistan, who belonged to the territory of East Pakistan and later became representatives of independent Bangladesh¹⁶. These members assumed the responsibility of acting as the supreme law-making body for drafting and adopting the Constitution of Bangladesh.

The Constituent Assembly was entrusted with the task of establishing a sovereign, democratic, and welfare-oriented state based on the ideals of the Liberation War.

4.2 Constitution Drafting Committee

To prepare a draft Constitution, a Constitution Drafting Committee was formed on 11 April 1972. The committee was headed by **Dr. Kamal Hossain**, a prominent jurist and political leader¹⁷. The committee was responsible for preparing a comprehensive constitutional draft within a limited time frame.

The Drafting Committee examined various constitutional models from different countries, including the Westminster system, the Indian Constitution, and other democratic frameworks. It also incorporated the historical aspirations of the Bangladeshi people, particularly the principles of nationalism, socialism, democracy, and secularism.

After extensive deliberations, the Draft Constitution was submitted to the Constituent Assembly for discussion and approval.

4.3 Adoption and Commencement of the Constitution

¹⁶ *Constitution of the People's Republic of Bangladesh 1972*, art 65.

¹⁷ *Dr. Kamal Hossain, Bangladesh: Quest for Freedom and Justice (Oxford University Press, 2013) 45.*

The Constitution of the People's Republic of Bangladesh was formally adopted on 4 November 1972 by the Constituent Assembly.¹⁸ After its adoption, it came into effect on 16 December 1972, marking the first anniversary of Victory Day.

The Constitution declared Bangladesh as a sovereign republic and established a parliamentary system of government. It also guaranteed fundamental rights and introduced directive principles for the governance of the state.

The adoption of the Constitution marked a significant milestone in the constitutional history of Bangladesh, as it provided a legal foundation for democratic governance and the rule of law.

4.4 Sources of the Constitution

The Constitution of Bangladesh was influenced by several constitutional systems and historical experiences. Its major sources include:

Firstly, the Westminster model of parliamentary democracy from the United Kingdom, which influenced the structure of executive-legislative relations.

Secondly, the Constitution of India, which provided guidance on fundamental rights, judicial review, and directive principles of state policy.

Thirdly, the historical and political experiences of the Bengali nation, particularly the Language Movement, Six-Point Movement, and Liberation War.

Fourthly, international human rights instruments such as the Universal Declaration of Human Rights, which influenced the inclusion of fundamental rights provisions.

Thus, the Constitution of Bangladesh is a product of both indigenous political struggles and comparative constitutional influences.

4.5 Salient Features of the Constitution

The Constitution of Bangladesh contains several distinctive features that define its legal and political framework.

Firstly, it is a written and codified Constitution, consisting of a comprehensive set of rules and principles.

Secondly, it establishes a parliamentary form of government where the Prime Minister is the head of government and the President acts as the ceremonial head of state.

Thirdly, it guarantees fundamental rights under Part III, which are enforceable by the Supreme Court.

¹⁸ Constitution of Bangladesh 1972, Preamble.

Fourthly, it provides for an independent judiciary with the power of judicial review to ensure constitutional supremacy.

Fifthly, it includes Directive Principles of State Policy under Part II, which guide the government in achieving socio-economic justice.¹⁹

Lastly, it declares the Constitution as the supreme law of the Republic under Article 7.

4.6 Fundamental Principles of State Policy

The Constitution originally adopted four fundamental principles of state policy: nationalism, socialism, democracy, and secularism. These principles reflect the ideological foundation of the Constitution.

Nationalism refers to the unity and identity of the Bengali nation based on language, culture, and historical struggle.

Socialism aims at achieving economic justice and reducing inequality through equitable distribution of resources.

Democracy ensures participation of the people in governance through elected representatives.

Secularism guarantees religious neutrality of the state and ensures freedom of religion for all citizens.

These principles are not directly enforceable by courts but serve as guiding principles for governance and law-making.

4.7 Fundamental Rights and Constitutional Remedies

Part III of the Constitution guarantees fundamental rights to all citizens, ensuring protection of civil liberties and human dignity.

These rights include equality before law, protection of law, freedom of movement, freedom of speech and expression, freedom of religion, and protection against arbitrary arrest and detention²⁰.

The Constitution also provides constitutional remedies under Article 44, allowing citizens to seek enforcement of fundamental rights through the High Court Division under Article 102.

Judicial review plays a crucial role in ensuring that laws and executive actions do not violate constitutional rights.

¹⁹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966) 28–30.

Constitution of Bangladesh 1972, Part II and Part III.

²⁰ Ibid, art 8.

Ibid, arts 27–44

However, in practice, the effectiveness of fundamental rights depends on judicial independence, legal awareness, and institutional efficiency.

CHAPTER FIVE

CONSTITUTIONAL AMENDMENTS AND POLITICAL DEVELOPMENTS

5.1 Overview of Constitutional Amendments

Constitutional amendments play a vital role in the evolution of a constitutional system. They allow a Constitution to adapt to changing political, social, and economic conditions. The Constitution of Bangladesh, 1972, has undergone several amendments since its adoption, reflecting both democratic aspirations and political instability.

Article 142 of the Constitution provides the procedure for amendment, requiring a two-thirds majority in Parliament.²¹ However, in practice, constitutional amendments in Bangladesh have often been influenced by political considerations rather than purely legal or constitutional necessity.

The amendments have significantly altered the original structure of the Constitution, including changes in governance systems, judicial independence, fundamental principles, and emergency provisions.

5.2 First to Fourth Amendments

The First Amendment (1973) was introduced to facilitate the trial of war criminals for crimes committed during the Liberation War. It inserted provisions enabling retrospective criminal legislation for such offences.

The Second Amendment (1973) expanded the scope of emergency powers and introduced provisions relating to preventive detention and suspension of fundamental rights during emergencies.

The Third Amendment (1974) dealt with territorial adjustments between Bangladesh and India, particularly the exchange of enclaves and demarcation of boundaries.

The Fourth Amendment (1975) was the most controversial, as it fundamentally changed the constitutional structure. It replaced the parliamentary system with a presidential system, introduced a one-party political framework, and significantly curtailed fundamental rights and

²¹ Constitution of the People's Republic of Bangladesh 1972, art 142.

judicial independence.²² This amendment is widely regarded as a major departure from the original constitutional spirit.

5.3 Military Rule and Constitutional Changes

Following the political upheaval of 1975, Bangladesh experienced prolonged periods of military rule. During this time, the Constitution was either suspended or operated under martial law proclamations.

Military rulers introduced constitutional changes through proclamations and martial law regulations, often bypassing the formal amendment procedure under Article 142²³. These changes raised serious constitutional questions regarding legality and legitimacy.

The judiciary initially validated some of these changes under the doctrine of necessity, but later decisions revisited and criticized such validations.

5.4 Fifth and Seventh Amendments

The Fifth Amendment (1979) validated all martial law proclamations, regulations, and orders issued between 1975 and 1979.⁵ This amendment attempted to give legal legitimacy to extra-constitutional military rule.

The Seventh Amendment (1986) similarly validated actions taken under martial law from 1982 to 1986. Both amendments were later declared unconstitutional by the Supreme Court of Bangladesh in landmark judgments, which reaffirmed the supremacy of constitutional governance.

These judicial decisions emphasized that unconstitutional acts cannot be legitimized through constitutional amendments if they violate the basic structure of the Constitution.

5.5 Eighth Amendment

The Eighth Amendment (1988) introduced several important changes, including declaring Islam as the state religion of Bangladesh under Article 2A. It also established permanent benches of the High Court Division outside Dhaka.

²² Constitution (First Amendment) Act 1973.

Constitution (Fourth Amendment) Act 1975.

²³ M. Rafiqul Islam, *Constitutional Law of Bangladesh* (Hira Publications, 2012) 120–125.

The amendment was controversial because it raised questions about secularism, one of the original fundamental principles of the Constitution. Critics argued that it altered the secular character of the Constitution, while supporters viewed it as reflecting the religious identity of the majority population.

5.6 Twelfth Amendment and Restoration of Parliamentary Democracy

The Twelfth Amendment (1991) marked a significant turning point in the constitutional history of Bangladesh. It restored the parliamentary system of government after years of presidential rule.

Under this amendment, executive power was transferred back to the Prime Minister, and the President became a ceremonial head of state. This amendment was widely welcomed as a restoration of democratic governance and constitutional balance.

5.7 Thirteenth Amendment and Caretaker Government

The Thirteenth Amendment (1996) introduced the system of a non-partisan caretaker government to oversee parliamentary elections. The objective was to ensure free, fair, and credible elections.

The caretaker government system was designed to operate during the interim period between the dissolution of Parliament and the formation of a new elected government.

Although initially successful in ensuring electoral neutrality, the system later became controversial and was abolished by the Fifteenth Amendment.

5.8 Fifteenth Amendment and Subsequent Developments

The Fifteenth Amendment (2011) introduced significant constitutional changes. It abolished the caretaker government system and restored the original four fundamental principles of the Constitution, including secularism and socialism.

It also strengthened provisions related to fundamental rights but simultaneously retained Islam as the state religion, creating debates regarding constitutional consistency.

The abolition of the caretaker system has been a subject of ongoing political and legal debate, particularly regarding electoral fairness and democratic participation.

5.9 Judicial Review of Constitutional Amendments

The Supreme Court of Bangladesh plays a crucial role in reviewing constitutional amendments to ensure compliance with constitutional principles.

In several landmark cases, the Court has held that constitutional amendments must not violate the basic structure of the Constitution. The doctrine of basic structure, although not explicitly mentioned in the Constitution, has been developed through judicial interpretation.

The judiciary has also invalidated certain amendments that attempted to legitimize unconstitutional actions taken during military rule, thereby reinforcing the principle of constitutional supremacy²⁴.

CHAPTER SIX

CONTEMPORARY CONSTITUTIONAL CHALLENGES IN BANGLADESH

6.1 Electoral Governance and Democratic Accountability

Electoral governance is a cornerstone of democratic constitutionalism. In Bangladesh, the Constitution provides for a representative democracy where elections are intended to reflect the will of the people.²⁵ However, in practice, electoral governance has faced persistent challenges relating to fairness, credibility, and public confidence.

The abolition of the caretaker government system has intensified debates regarding electoral neutrality and administrative impartiality. Concerns have also been raised regarding the role of political influence in election administration, voter participation, and enforcement of electoral laws. These issues directly affect democratic accountability and public trust in constitutional institutions.

6.2 Executive Dominance and Concentration of Power

One of the most significant constitutional challenges in Bangladesh is the increasing concentration of power within the executive branch, particularly the office of the Prime Minister.

Although the Constitution establishes a parliamentary system, in practice the executive often exercises dominant control over the legislature and administrative institutions. This concentration of power creates an imbalance in the separation of powers and weakens institutional checks and balances.

Such dominance raises concerns regarding accountability, transparency, and the effective functioning of democratic governance.

6.3 Parliamentary Effectiveness

The Parliament is the supreme legislative body of the state and is expected to ensure accountability of the executive. However, the effectiveness of Parliament in Bangladesh has often been questioned.

²⁴ Constitution (Fifth Amendment) Act 1979; *Bangladesh Italian Marble Works Ltd v Government of Bangladesh* (2006) 14 MLR (AD) 1.

Constitution (Eighth Amendment) Act 1988.

Constitution (Twelfth Amendment) Act 1991.

Constitution (Thirteenth Amendment) Act 1996; *Abdul Mannan Khan v Bangladesh* (2011) 33 BLD (AD) 1.

²⁵ *Constitution of the People's Republic of Bangladesh 1972, art 7.*

Issues include limited legislative debate, absence of strong opposition participation, and frequent use of party discipline in voting. These factors reduce the deliberative function of Parliament and weaken its oversight role.

Strengthening parliamentary committees and ensuring meaningful opposition participation are essential for improving legislative effectiveness.²⁶

6.4 Judicial Independence

Judicial independence is a fundamental requirement for the protection of the rule of law and constitutional supremacy. The Constitution of Bangladesh guarantees an independent judiciary under Articles 94 and 116A.

However, concerns have been raised regarding administrative control, appointment processes, and institutional dependence on the executive branch. These issues may affect the perception and functioning of judicial independence.

A strong and independent judiciary is essential for ensuring fair adjudication of constitutional disputes and protecting fundamental rights.

6.5 Protection of Fundamental Rights

Part III of the Constitution guarantees fundamental rights, including equality before law, freedom of speech, and protection of life and liberty.

Despite constitutional guarantees, challenges remain in the effective enforcement of these rights. Issues such as arbitrary detention, restrictions on freedom of expression, and limited access to justice have been highlighted by legal scholars and human rights organizations.

Ensuring effective judicial remedies and strengthening constitutional enforcement mechanisms are crucial for protecting fundamental rights.

6.6 Freedom of Expression and Media Freedom

Freedom of expression and media freedom are essential components of a democratic society. The Constitution guarantees freedom of speech and expression under Article 39.⁶

However, concerns have been raised regarding regulatory restrictions, defamation laws, and digital governance frameworks that may limit free expression. The development of digital communication has further complicated issues relating to online speech and information control.

A balanced approach is required to ensure national security while preserving constitutional freedoms.

6.7 Local Government and Decentralization

²⁶ Mahmudul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers, 3rd edn, 2012) 220–225.

M. Abdul Halim, *Constitutional Law of Bangladesh* (CCB Foundation, 2014) 310.

Local government institutions play a vital role in ensuring grassroots democracy and public participation. The Constitution recognizes the importance of local governance under Articles 59 and 60²⁷

However, in practice, local government bodies in Bangladesh often face limitations in financial autonomy, administrative authority, and policy independence. Centralized governance structures have restricted effective decentralization.

Strengthening local government institutions is necessary for improving democratic participation and service delivery.

6.8 Corruption and Good Governance

Corruption remains a significant challenge affecting constitutional governance and public administration in Bangladesh. It undermines the principles of accountability, transparency, and rule of law.

The Constitution emphasizes good governance through various provisions, but institutional enforcement remains a challenge. Strengthening anti-corruption institutions and ensuring transparency in public administration are essential for constitutional stability.

6.9 Constitutional and Institutional Challenges

In addition to specific governance issues, Bangladesh faces broader constitutional and institutional challenges. These include political polarization, weak institutional checks and balances, limited constitutional awareness among citizens, and frequent constitutional amendments driven by political considerations.

Such challenges highlight the gap between constitutional ideals and practical implementation. Strengthening constitutional institutions and promoting constitutional culture are essential for addressing these issues effectively.

²⁷ Constitution of Bangladesh 1972, arts 94, 116A.

Ibid, arts 27–44.

Ibid, art 39.

Ibid, arts 59–60.

Transparency International Bangladesh, Corruption Perception Reports (various years).

CHAPTER SEVEN

NECESSITY OF CONSTITUTIONAL REFORMATION IN THE PRESENT CONTEXT

7.1 Concept of Constitutional Reform

Constitutional reform refers to the process of modifying, updating, or restructuring constitutional provisions in order to respond to changing political, social, economic, and legal realities. It may involve formal amendments under constitutional procedures or broader structural reforms aimed at improving governance and institutional performance.

A Constitution is not a static document; rather, it is a living instrument that must evolve with time to reflect the needs and aspirations of the people²⁸. Constitutional reform therefore ensures that constitutional structures remain relevant, effective, and capable of addressing contemporary challenges.

In democratic theory, constitutional reform is guided by the principles of legality, participation, consensus, and constitutional continuity.

7.2 Reasons for Constitutional Reform in Bangladesh

The necessity of constitutional reform in Bangladesh arises from several historical and contemporary factors. Although the Constitution of 1972 was designed to establish democracy, justice, and equality, practical governance has revealed structural and functional limitations.

Frequent constitutional amendments, political instability, and institutional imbalance have contributed to deviations from the original constitutional spirit. Moreover, evolving governance challenges such as digital transformation, globalization, and human rights development require constitutional adaptation.

Key reasons for reform include strengthening democratic governance, ensuring separation of powers, enhancing judicial independence, and improving accountability mechanisms.

7.3 Strengthening Democratic Institutions

²⁸ K.C. Wheare, *Modern Constitutions* (Oxford University Press, 1966) 15.

Strong democratic institutions are essential for the effective functioning of constitutional democracy. In Bangladesh, institutions such as Parliament, the Election Commission, judiciary, and public service bodies play a crucial role in governance.

However, concerns regarding institutional independence and effectiveness have highlighted the need for reform. Strengthening these institutions requires ensuring transparency, accountability, and functional autonomy.²⁹

A balanced constitutional structure must ensure that no single organ of the state dominates the others, thereby preserving the principle of checks and balances.

7.4 Electoral Reform and Political Inclusiveness

Free and fair elections are the foundation of democratic legitimacy. The Constitution of Bangladesh envisions representative democracy through regular elections under Article 65 and related provisions.

However, concerns regarding electoral transparency, political participation, and administrative neutrality have raised questions about the effectiveness of the current electoral framework.

Electoral reform is necessary to ensure inclusiveness, voter confidence, and equal political competition. Strengthening the Election Commission and ensuring impartial electoral administration are essential components of reform.

7.5 Judicial and Legal Reform

An independent judiciary is essential for upholding the rule of law and protecting constitutional rights. Although the Constitution guarantees judicial independence, practical challenges remain in terms of administrative control and institutional autonomy.

Judicial reform is necessary to enhance efficiency, transparency, and accessibility of justice. This includes improving appointment procedures, ensuring separation of the judiciary from the executive, and strengthening judicial accountability mechanisms.

Legal reform is also required to modernize outdated laws and align them with contemporary constitutional standards.

7.6 Expansion of Fundamental Rights

Fundamental rights form the core of constitutional democracy. The Constitution of Bangladesh guarantees several civil and political rights under Part III.

However, modern governance requires the expansion of rights to include emerging issues such as digital privacy, data protection, environmental rights, and socio-economic equality.

²⁹ Mahmudul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers, 3rd edn, 2012) 410–415.

M. Abdul Halim, *Constitutional Law of Bangladesh* (CCB Foundation, 2014) 355.

Expanding fundamental rights ensures that the Constitution remains relevant in the context of technological advancement and global human rights standards.

7.7 Strengthening Local Government Institutions

Decentralization is essential for participatory democracy and efficient governance. Local government institutions bring administration closer to the people and ensure grassroots development.

Although the Constitution recognizes local government under Articles 59 and 60, these institutions often lack financial and administrative autonomy.

Strengthening local government through constitutional guarantees and functional independence is necessary for improving governance efficiency and democratic participation at the local level.

7.8 Constitutional Stability and Good Governance

Constitutional stability is essential for maintaining political order, legal certainty, and institutional continuity. Frequent constitutional amendments driven by political interests may undermine constitutional integrity.

Good governance requires transparency, accountability, rule of law, and institutional balance. Constitutional reform should therefore aim to strengthen governance structures without destabilizing the core constitutional framework.

A balanced approach is needed to ensure that reforms enhance democratic governance while preserving constitutional continuity and national stability.³⁰

³⁰ *Constitution of the People's Republic of Bangladesh 1972, art 65.*

Masdar Hossain Case (1999) 52 DLR (AD) 82.

Universal Declaration of Human Rights 1948.

Constitution of Bangladesh 1972, arts 59–60.

World Bank, Governance and Development Report (various years).

CHAPTER EIGHT

COMPARATIVE CONSTITUTIONAL PERSPECTIVES AND SUGGESTIVE ANALYSIS

8.1 Constitutional Experiences of India

The Constitution of India is one of the most influential constitutional models in South Asia and has significantly impacted constitutional development in Bangladesh. It is a written, detailed, and rigid Constitution that establishes a parliamentary form of government and a strong system of judicial review.

One of the most notable features of the Indian Constitution is the doctrine of judicial review and the “basic structure doctrine,” developed by the Supreme Court of India in *Kesavananda Bharati v State of Kerala*, which limits Parliament’s power to amend fundamental constitutional principles.

India also ensures a federal structure with a clear division of powers between the Union and the States. This system provides regional autonomy while maintaining national unity. Bangladesh, although a unitary state, can draw lessons from India regarding institutional checks and balances and judicial independence.

8.2 Constitutional Practices of the United Kingdom

The United Kingdom has an uncodified or unwritten Constitution based on statutes, conventions, judicial decisions, and historical documents such as the Magna Carta and the Bill of Rights 1689.

A key feature of the UK Constitution is parliamentary sovereignty, meaning that Parliament is the supreme law-making authority. However, this sovereignty is balanced by strong constitutional conventions, political accountability, and an independent judiciary.

The UK model demonstrates that constitutional stability can be achieved even without a single written document, provided that democratic conventions and institutional practices are strong.

8.3 Constitutional System of the United States

The Constitution of the United States is a written and rigid Constitution established in 1787. It is based on the principle of separation of powers between the executive, legislature, and judiciary.

A key feature of the US Constitution is judicial review, established in *Marbury v Madison*, which empowers the Supreme Court to declare laws unconstitutional³¹.

The system of checks and balances ensures that no branch of government becomes overly powerful. This model is significant for understanding institutional balance and constitutional governance.

8.4 Constitutional Model of South Africa

The Constitution of South Africa (1996) is widely regarded as one of the most progressive constitutions in the world. It was adopted after the end of apartheid and emphasizes human dignity, equality, and freedom.

It includes an extensive Bill of Rights and provides strong enforcement mechanisms through the Constitutional Court.

The South African model demonstrates how constitutional reform can be used as a tool for social transformation, reconciliation, and human rights protection.

8.5 Lessons for Bangladesh

Comparative constitutional analysis provides several important lessons for Bangladesh.

Firstly, the importance of judicial independence and effective judicial review is evident from both India and the United States. Secondly, institutional checks and balances are essential to prevent concentration of power. Thirdly, constitutional protection of fundamental rights must be strengthened to address modern challenges.

Bangladesh can also learn from South Africa's emphasis on human rights and constitutional enforcement mechanisms, as well as from the UK's reliance on strong constitutional conventions and democratic traditions.

³¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966).

Kesavananda Bharati v State of Kerala AIR 1973 SC 1461.

A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 10th edn, 1959).

Marbury v Madison 5 US (1 Cranch) 137 (1803).

These comparative experiences suggest that constitutional reform in Bangladesh should focus on strengthening institutions, ensuring accountability, and enhancing the protection of rights while maintaining constitutional stability.

8.6 Findings of the Study

The study has identified several key findings.

Firstly, the Constitution of Bangladesh is historically rooted in the Liberation War and reflects strong democratic aspirations. Secondly, frequent constitutional amendments have significantly altered the original constitutional structure.

Thirdly, there exists a gap between constitutional principles and practical governance, particularly in areas of separation of powers, judicial independence, and electoral integrity.

Fourthly, while the Constitution provides for fundamental rights, enforcement mechanisms require strengthening. Finally, constitutional reform is necessary to ensure that the Constitution remains relevant to contemporary governance challenges.

8.7 Recommendations

Based on the findings, the following recommendations are made:

1. Strengthening the independence of constitutional institutions such as the Election Commission and judiciary.
2. Ensuring effective separation of powers among the executive, legislature, and judiciary.
3. Expanding fundamental rights to include digital privacy, environmental rights, and data protection.
4. Reforming the electoral system to ensure transparency and public confidence.
5. Enhancing the effectiveness of Parliament through stronger committee systems.
6. Strengthening local government institutions through constitutional guarantees.
7. Promoting constitutional awareness among citizens through civic education.
8. Ensuring that constitutional amendments are made only through broad political consensus.

8.8 Conclusion

The Constitution of Bangladesh is a product of historical struggle, national liberation, and democratic aspiration. It represents the collective will of the people and serves as the foundation of governance.

However, over time, political developments, constitutional amendments, and institutional weaknesses have created challenges that require careful reconsideration. While the Constitution remains fundamentally strong, it must evolve to address contemporary governance needs.

Constitutional reform should therefore be undertaken in a balanced and inclusive manner, ensuring that democratic principles, rule of law, and fundamental rights are preserved while adapting to modern realities. A stable, accountable, and participatory constitutional system is essential for the future development of Bangladesh.³²

³² *Constitution of the Republic of South Africa 1996.*

Comparative Constitutional Law texts and UN Human Rights Reports.

Mahmudul Islam, Constitutional Law of Bangladesh (Mullick Brothers, 3rd edn, 2012).

M. Abdul Halim, Constitutional Law of Bangladesh (CCB Foundation, 2014).

K.C. Wheare, Modern Constitutions (Oxford University Press, 1966).

REFERENCES AND SUPPLEMENTARY MATERIALS

Bibliography

This section includes all the primary and secondary sources consulted in the preparation of this research monograph, including books, journal articles, constitutional documents, case laws, and online materials.

Books

1. A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 10th edn, 1959).
2. K.C. Wheare, *Modern Constitutions* (Oxford University Press, 1966).
3. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966).
4. Mahmudul Islam, *Constitutional Law of Bangladesh* (Mullick Brothers, 3rd edn, 2012).
5. M. Abdul Halim, *Constitutional Law of Bangladesh: Constitutional Law and Politics* (CCB Foundation, 2014).
6. Dr. Kamal Hossain, *Bangladesh: Quest for Freedom and Justice* (Oxford University Press, 2013).
7. Rounaq Jahan, *Pakistan: Failure in National Integration* (Columbia University Press, 1972).
8. Richard Sisson and Leo E. Rose, *War and Secession: Pakistan, India, and the Creation of Bangladesh* (University of California Press, 1990).

Journal Articles

1. “Constitutional Development in Bangladesh” (Bangladesh Law Journal, various issues).
2. “Judicial Review and Constitutionalism in Bangladesh” (Dhaka University Law Review).
3. “Electoral Governance in South Asia” (Asian Journal of Comparative Law).
4. “Fundamental Rights and Constitutional Enforcement in Bangladesh” (Bangladesh Legal Studies Journal).
5. “Separation of Powers in Parliamentary Systems” (International Constitutional Law Review).

Constitutional Documents

1. The Constitution of the People's Republic of Bangladesh, 1972.
2. The Constitution (First Amendment) Act, 1973.
3. The Constitution (Fourth Amendment) Act, 1975.
4. The Constitution (Fifth Amendment) Act, 1979.
5. The Constitution (Eighth Amendment) Act, 1988.
6. The Constitution (Twelfth Amendment) Act, 1991.
7. The Constitution (Thirteenth Amendment) Act, 1996.
8. The Constitution (Fifteenth Amendment) Act, 2011.
9. Government of India Act, 1935.
10. Constitution of Pakistan, 1956.
11. Constitution of Pakistan, 1962.

Cases Referred

1. *Anwar Hossain Chowdhury v Bangladesh* (1989) 41 DLR (AD) 165.
2. *Bangladesh Italian Marble Works Ltd v Government of Bangladesh* (2006) 14 MLR (AD) 1.
3. *Abdul Mannan Khan v Bangladesh* (2011) 33 BLD (AD) 1.
4. *Secretary, Ministry of Finance v Masdar Hossain* (1999) 52 DLR (AD) 82.
5. *Marbury v Madison* 5 US (1803).
6. *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461.

Websites and Online Sources

1. Supreme Court of Bangladesh — <https://supremecourt.gov.bd>
2. Bangladesh Parliament — <https://www.parliament.gov.bd>
3. Ministry of Law, Justice and Parliamentary Affairs — <https://lawjusticediv.gov.bd>
4. Bangladesh Legal Aid and Services Trust (BLAST) — <https://www.blast.org.bd>
5. Transparency International Bangladesh — <https://www.ti-bangladesh.org>
6. United Nations Human Rights Office — <https://www.ohchr.org>

Appendices (If Any)

This section may include supplementary materials such as:

- Constitution of Bangladesh (selected articles)
- Important constitutional amendments extracts
- Relevant charts and diagrams on constitutional structure
- Election statistics (if applicable)
- Tables showing amendment history

(Note: Appendices are optional and may be added based on institutional requirements.)

Appendix A: Selected Articles of the Constitution of Bangladesh

- Article 7 (Supremacy of the Constitution)
- Article 8 (Fundamental Principles of State Policy)
- Article 27–44 (Fundamental Rights)
- Article 65 (Parliament)
- Article 102 (Judicial Review)

Appendix B: Timeline of Constitutional Amendments

- 1973–2011: Summary of major constitutional amendments and their impacts

Appendix C: Key Constitutional Events

- 1952 Language Movement
- 1966 Six-Point Movement
- 1971 Liberation War
- 1972 Constitution Adoption

Appendix D: Institutional Structure Diagram (Suggested)

- Executive, Legislature, Judiciary relationship chart

