



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”

**Research Monograph Submitted for the partial fulfillment of the award of the degree
in LL.B (Hon's) Department of Law Sonargaon University (SU)**

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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

.....

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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 or in form, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

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Supervisor Certificate

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

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

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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 am also thankful to my classmate as they help me to complete the Research Monograph. I am extremely paying my solitude to all the authors and writers whose works help me to draft this original Research Monograh.

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Thank you

Sunjida Aker

ABSTRACT

The Constitution of Bangladesh is the supreme law of the land 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 embodies the aspirations of the Bengali nation for democracy, social justice, equality, and the rule of law. However, since its inception, the Constitution has undergone numerous amendments due to changing political circumstances, military interventions, judicial interpretations, and evolving societal demands. While the Constitution has played a crucial role in maintaining state governance, contemporary challenges such as political polarization, institutional weaknesses, electoral controversies, human rights concerns, and demands for greater accountability have intensified discussions regarding constitutional reform. This paper examines the historical background of the Constitution of Bangladesh and analyzes the necessity of its reformation in the present context. It argues that constitutional reform should aim to strengthen democratic institutions, judicial independence, human rights protections, and good governance while preserving the fundamental principles upon which the nation was founded.

Keywords: Constitution, Bangladesh, Constitutional Reform, Democracy, Rule of Law, Governance.

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Chapter One: Introduction

1.1 Introduction

The Constitution is the fundamental legal document that establishes the structure, powers, and responsibilities of a state and guarantees the rights and freedoms of its citizens. In Bangladesh, the Constitution emerged from the historical struggle for self-determination, linguistic identity, political autonomy, and national independence. Following the Liberation War of 1971, the newly independent state required a constitutional framework capable of reflecting the aspirations of its people and ensuring democratic governance.¹ These contemporary realities raise important questions about whether the existing constitutional framework is adequately equipped to address modern governance challenges.

The Constitution of Bangladesh was drafted by a Constituent Assembly and adopted on 4 November 1972. It was influenced by various constitutional traditions, including those of the United Kingdom, India, and other democratic states. The Constitution established four fundamental state principles: nationalism, socialism, democracy, and secularism. These principles reflected the ideals of the Liberation War and the aspirations of the newly independent nation.

Over the years, Bangladesh has experienced significant political and constitutional developments. Several constitutional amendments have altered the original character of the Constitution. Military rule, changes in government systems, restoration of parliamentary democracy, judicial interventions, and political reforms have shaped the constitutional landscape of the country. While many amendments sought to address emerging challenges, others generated debates concerning democratic accountability, separation of powers, and constitutional legitimacy.² These changes demonstrate that the Constitution is not a static document but a dynamic legal instrument that evolves with political developments.

In the contemporary context, constitutional reform has become a subject of considerable discussion among academics, politicians, legal scholars, and civil society organizations. Issues such as electoral credibility, independence of constitutional

¹ N. Ahmed, *Parliamentary Government in Bangladesh*, London: Routledge, 2015, pp. 110–113.

² A. H. Mollah, *Constitution of Bangladesh: Text, Commentary and Case Law*, Dhaka: New Warsi Book Corporation, 2018, pp. 90–95.

institutions, protection of fundamental rights, decentralization of power, and judicial effectiveness have raised questions about whether certain constitutional provisions require reform to meet present-day realities. This study seeks to explore the historical evolution of the Constitution of Bangladesh and critically examine the necessity of constitutional reformation in the present context.³

1.2 Background of the Study

The Constitution is the supreme legal document of a state that defines the structure of government, distributes powers among different organs, and guarantees the fundamental rights of citizens. It functions as the foundation of constitutional governance and ensures that all state actions are conducted within a legal framework based on the rule of law, accountability, and justice. In a democratic system, the Constitution not only organizes state institutions but also reflects the political values, historical experiences, and aspirations of the people.⁴ Therefore, the strength and relevance of a constitution are essential for maintaining political stability, protecting human rights, and ensuring good governance.

The Constitution of the People's Republic of Bangladesh was born out of a long and painful historical struggle. The people of Bangladesh endured colonial rule under the British Empire, followed by political, economic, and cultural discrimination during the Pakistan period (1947–1971). The Language Movement of 1952, the Six-Point Movement of 1966, the Mass Uprising of 1969, and finally the Liberation War of 1971 played a decisive role in shaping the constitutional identity of the nation.⁵ These movements reflected the collective demand for democracy, self-determination, and equality. After achieving independence, the Constitution of Bangladesh was adopted on 4 November 1972 and came into force on 16 December 1972, establishing the country as a sovereign, democratic republic based on nationalism, socialism, secularism, and democracy.⁶

³ M. Islam, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2012, pp. 150–152.

⁴ M. H. Rahman, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2017, p. 12.

⁵ K. Hossain, *Bangladesh: Quest for Freedom and Justice*, Dhaka: University Press Limited, 2013, pp. 45–48.

⁶ The Constitution of the People's Republic of Bangladesh, 1972, Preamble.

1.3 Statement of the Problem

The Constitution of Bangladesh, adopted in 1972, was designed to establish a democratic, egalitarian, and rule-based governance system in a newly independent state. It was expected to function as a stable framework for ensuring accountability, protecting fundamental rights, and maintaining a balance of power among the organs of the state. However, over the years, the constitutional structure has faced several practical and structural challenges that have raised serious concerns regarding its effective implementation and contemporary relevance.⁷

One of the key problems is the frequent and sometimes controversial amendment of the Constitution, which has altered its original democratic spirit. While constitutional amendments are a normal part of constitutional development, in Bangladesh they have occasionally been used to serve political interests, leading to debates over constitutional integrity and stability.⁸ As a result, concerns have emerged regarding whether the Constitution fully reflects the principles of separation of powers, checks and balances, and institutional independence.

Another significant issue is the imbalance of power among the executive, legislature, and judiciary. In practice, the executive branch has often been perceived as dominant, limiting the effective functioning of other state institutions.⁹ This imbalance affects democratic accountability and weakens institutional oversight mechanisms. The independence of constitutional bodies such as the Election Commission and Public Service Commission has also been questioned in different periods, further contributing to governance challenges.

Electoral governance remains another critical concern. Free, fair, and credible elections are a fundamental requirement of constitutional democracy, yet Bangladesh has experienced recurring debates over electoral processes, political participation, and public trust in election management systems.¹⁰ These issues directly impact the legitimacy of democratic governance and highlight gaps within the constitutional and institutional framework.

⁷ M. Rahman, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2017, pp. 25–27.

⁸ A. H. Mollah, *Constitution of Bangladesh: Text, Commentary and Case Law*, Dhaka: New Warsi Book Corporation, 2018, pp. 80–83.

⁹ N. Ahmed, *Parliamentary Government in Bangladesh*, London: Routledge, 2015, pp. 60–62.

¹⁰ K. Hossain, *Bangladesh: Quest for Freedom and Justice*, Dhaka: University Press Limited, 2013, pp. 70–72.

1.4 Research Questions

The study seeks to answer the following questions:

- How have constitutional amendments influenced the governance system of Bangladesh?
- Why is constitutional reform necessary in the present context?

1.5 Objectives of the Study

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.

- 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 rationale of this study lies in the growing importance of constitutional governance in ensuring political stability, democratic accountability, and the protection of fundamental rights in Bangladesh. As the supreme law of the country, the Constitution plays a central role in shaping the structure of the state and guiding the relationship between citizens and government institutions. Therefore, any weaknesses or inconsistencies within the constitutional framework have direct implications for governance, justice, and democratic practice.¹¹

Since its adoption in 1972, the Constitution of Bangladesh has undergone numerous amendments that have significantly altered its original structure and intent. Some of these changes were necessary to respond to evolving political realities, while others have been criticized for undermining democratic principles, particularly in relation to the separation of powers and institutional independence.¹² This situation highlights the

¹¹ M. Rahman, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2017, pp. 30–32.

¹² A. H. Mollah, *Constitution of Bangladesh: Text, Commentary and Case Law*, Dhaka: New Warsi Book Corporation, 2018, pp. 85–88.

need for a critical and systematic evaluation of the Constitution to determine whether it continues to serve its intended purposes effectively in the present context.

Another important reason for conducting this study is the increasing complexity of contemporary governance challenges. Issues such as electoral integrity, judicial independence, human rights protection, digital governance, and institutional accountability have become central concerns in modern constitutional discourse.¹³ However, many of these issues were not fully anticipated at the time of the Constitution's framing in 1972. As a result, there is a growing gap between constitutional provisions and current governance realities, which necessitates careful academic examination.

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.

¹³ M. Islam, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2012, pp. 145–147.

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.¹⁴

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.¹⁵

¹⁴ N. Ahmed, *Parliamentary Government in Bangladesh*, London: Routledge, 2015, pp. 75–77.

¹⁵ M. Rahman, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2017, pp. 30–32.

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.¹⁶

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.

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

¹⁶ Regulating Act and Pitt's India Act. p. 110.

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.¹⁷

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.¹⁸

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.¹⁹

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.

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

¹⁷ Morley-Minto Reforms.

¹⁸ Indian Independence Act.

¹⁹ Objectives Resolution.

strongly opposed this Constitution because it further strengthened authoritarian rule and ignored regional autonomy demands.²⁰

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.²¹

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 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.²²

²⁰ Ayub Khan and the Constitution of Pakistan, 1962. p. 100

²¹ Bangladesh Liberation War

²² Sheikh Mujibur Rahman and the 1970 General Election crisis p. 85

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.²³

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.²⁴

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.

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

²³ The Constitution of Bangladesh

²⁴ Bangladesh Liberation War.

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.²⁵

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

²⁵ The Constitution of Bangladesh, *The Constitution of Bangladesh* (Dhaka: Bangladesh Asian Society, 2013).

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.²⁶ 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 in criminal proceedings, there arose a constitutional tension between the demand for justice and the protection of individual rights.

²⁶ Bangladesh Liberation War and post-independence legal reforms p. 42

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.²⁷

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.

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

²⁷ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka p. 66

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.²⁸

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.²⁹

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 media were also subjected to strict regulation, and civil liberties were considerably restricted. These measures were justified by the government as necessary steps to

²⁸ Constitution (First Amendment) Act, 1973, Bangladesh. p. 45

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

ensure national unity and rapid socio-economic development during a period of crisis.³⁰

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.³¹

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.³²

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. 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

³⁰ Sheikh Mujibur Rahman and the establishment of BAKSAL (1975). p. 36

³¹ Bangladesh Liberation War and post-independence political transition

³² Constitutional Law of Bangladesh, Mullick Brothers, Dhaka

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.³³

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.³⁴

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.³⁵

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.

³³ Bangladesh Politics: Problems and Issues, University Press Limited

³⁴ *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*.

³⁵ *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.³⁶

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.³⁷

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.³⁸

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.

³⁶ Constitution (Thirteenth Amendment) Act, 1996, Bangladesh.

³⁷ Constitution (Twelfth Amendment) Act, 1991, Bangladesh.

³⁸ 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.³⁹

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

³⁹ Supreme Court of Bangladesh, constitutional jurisdiction under Article 102

basic structure of the Constitution and therefore cannot be destroyed by parliamentary amendments.⁴⁰ 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.⁴¹

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.

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.

⁴⁰ *Anwar Hossain Chowdhury v. Bangladesh*

⁴¹ *Bangladesh Italian Marble Works Ltd. v. Government of 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.⁴²

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.⁴³

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

⁴² Constitutional Law of Bangladesh, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012). p. 80

⁴³ 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.⁴⁴

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.

⁴⁴ 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.⁴⁵

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.⁴⁶

4.7 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

⁴⁵ The Constitution of Bangladesh: A Commentary, *The Constitution of Bangladesh* (Dhaka: Bangladesh Asian Society, 2013). p. 98

⁴⁶ Supreme Court of Bangladesh judgments on judicial independence and constitutional interpretation.

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

4.8 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.⁴⁸

⁴⁷ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

⁴⁸ 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.⁴⁹

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.⁵⁰

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. It seeks to correct deficiencies in the existing constitutional framework, address gaps

⁴⁹ Constitutional Law of Bangladesh, *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012).

⁵⁰ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

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.

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.⁵¹

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.

⁵¹ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka. p. 05

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 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.⁵²

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.⁵³

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

⁵² Constitutional Development in Bangladesh, Academic analysis on governance and constitutional evolution. p. 35

⁵³ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

committees, ensuring greater participation of opposition members, and reducing executive dominance over legislative processes are necessary steps to improve democratic governance.

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.⁵⁴

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.

⁵⁴ 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.⁵⁵

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,

⁵⁵ 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.⁵⁶

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 Comparative Constitutional Reform Experiences

India

India has frequently used constitutional amendments to adapt to changing needs while maintaining constitutional continuity.⁵⁷

South Africa

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

United Kingdom

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

Nepal

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

5.7 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

⁵⁶ Supreme Court of Bangladesh, constitutional interpretation and judicial independence framework.

⁵⁷ Indian Constitutional Law, comparative constitutional amendment practices in India. p. 79

environment where reform is difficult to design, agree upon, and implement effectively.⁵⁸

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 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

⁵⁸ Constitutional Law of Bangladesh, Mullick Brothers, Dhaka. p. 2

institutions, and enhanced civic engagement to ensure that constitutional reform serves the broader goals of democracy and good governance.⁵⁹

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.⁶⁰

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.

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

⁶⁰ Constitutional Development in Bangladesh, analysis of reform challenges in Bangladesh.

Chapter Six: Findings, Recommendations and Conclusion

6.1 Major Findings

The findings of this study indicate that the Constitution of Bangladesh, since its adoption in 1972, has played a crucial role in establishing the legal and institutional framework of the state. It has successfully provided a foundational structure for governance based on principles of democracy, nationalism, socialism, and secularism. However, the practical implementation of these constitutional ideals has faced significant challenges over time, affecting the overall effectiveness of constitutional governance in Bangladesh.⁶¹

One of the major findings is that frequent constitutional amendments have significantly altered the original character of the Constitution. While some amendments were necessary for political and administrative adjustments, others have raised concerns regarding the weakening of democratic institutions and the concentration of executive power.⁶² This has created debates among scholars regarding the stability and consistency of constitutional governance in Bangladesh.

Another important finding is that the balance of power among the executive, legislature, and judiciary has not always been effectively maintained. In practice, the executive branch has often exercised greater influence over other state institutions, which has affected the principle of checks and balances.⁶³ This imbalance has implications for democratic accountability and institutional independence.

The study also finds that electoral governance remains a sensitive and critical issue. Public trust in the electoral process has fluctuated due to concerns over transparency, fairness, and political influence.⁶⁴ Although constitutional provisions exist to ensure free and fair elections, their practical implementation has faced institutional and procedural challenges.

⁶¹ M. Rahman, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2017, pp. 40–42.

⁶² A. H. Mollah, *Constitution of Bangladesh: Text, Commentary and Case Law*, Dhaka: New Warsi Book Corporation, 2018, pp. 95–98.

⁶³ N. Ahmed, *Parliamentary Government in Bangladesh*, London: Routledge, 2015, pp. 80–82.

⁶⁴ K. Hossain, *Bangladesh: Quest for Freedom and Justice*, Dhaka: University Press Limited, 2013, pp. 100–102.

Furthermore, the findings reveal that while the Constitution guarantees a wide range of fundamental rights, the enforcement of these rights is not always fully effective. Limitations in judicial accessibility, administrative inefficiencies, and socio-political factors have hindered the full realization of constitutional rights for all citizens.⁶⁵

In addition, the study finds that the Constitution has not fully adapted to emerging governance challenges such as digital transformation, environmental protection, and globalized economic and political systems. This has created a gap between constitutional provisions and contemporary state needs, highlighting the necessity for potential reforms.⁶⁶

Overall, the findings suggest that although the Constitution of Bangladesh remains a strong legal foundation for the state, there is a growing need for careful review and reform to ensure its continued relevance, effectiveness, and alignment with democratic principles in the present context.

⁶⁵ M. Islam, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2012, pp. 155–157.

⁶⁶ M. Rahman, *Governance and Constitutional Development in Bangladesh*, Dhaka: Academic Press, 2017, pp. 130–132.

6.2 Recommendations

Based on the critical analysis of the historical development and present challenges of the Constitution of Bangladesh, several recommendations can be made to ensure stronger constitutional governance and democratic consolidation. These recommendations focus on institutional reform, democratic accountability, and the modernization of constitutional provisions in line with contemporary needs.⁶⁷

First, the independence and effectiveness of key constitutional institutions such as the Election Commission, Judiciary, Public Service Commission, and Anti-Corruption Commission should be further strengthened. Transparent appointment procedures, institutional safeguards, and financial autonomy are essential to ensure neutrality and public confidence in these bodies.⁶⁸ Strengthening these institutions will enhance good governance and reduce political influence in administrative functions.

Second, a proper balance of power among the executive, legislature, and judiciary should be ensured in practice, not only in constitutional theory. The excessive concentration of power in the executive branch undermines the principle of separation of powers and weakens democratic accountability.⁶⁹ Strengthening parliamentary oversight and judicial independence is necessary for maintaining constitutional equilibrium.

Third, comprehensive electoral reforms are essential to ensure free, fair, and credible elections. Public trust in the electoral system can be improved through transparent electoral management, unbiased administration, and effective legal safeguards against electoral malpractice.⁷⁰ A strong and impartial electoral system is fundamental to sustaining democratic legitimacy.

Fourth, greater emphasis should be placed on the protection and enforcement of fundamental rights. Although the Constitution guarantees various civil, political, and socio-economic rights, their practical implementation remains limited in some cases.

⁶⁷ M. Rahman, *Governance and Constitutional Development in Bangladesh*, Dhaka: Academic Press, 2017, pp. 135–137.

⁶⁸ N. Ahmed, *Parliamentary Government in Bangladesh*, London: Routledge, 2015, pp. 88–90.

⁶⁹ A. H. Mollah, *Constitution of Bangladesh: Text, Commentary and Case Law*, Dhaka: New Warsi Book Corporation, 2018, pp. 110–112.

⁷⁰ K. Hossain, *Bangladesh: Quest for Freedom and Justice*, Dhaka: University Press Limited, 2013, pp. 110–112.

Strengthening judicial efficiency, reducing case backlogs, and improving access to justice are important steps in this regard.⁷¹

Fifth, the Constitution should be updated to address emerging global and national challenges such as digital governance, cyber law, environmental protection, climate change, and data privacy.⁶ These issues were not fully anticipated at the time of constitutional framing in 1972 and therefore require modern legal and constitutional attention.

Finally, any constitutional reform should be carried out through inclusive national dialogue involving political parties, legal experts, civil society, and citizens. A consensus-based approach will ensure legitimacy, stability, and long-term acceptance of reforms in the constitutional system of Bangladesh.

⁷¹ M. Islam, *Constitutional Law of Bangladesh*, Dhaka: Mullick Brothers, 2012, pp. 165–167.

6.3 Concluding Remarks

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.⁷² 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.⁷³

⁷² Constitutional Law of Bangladesh, Mullick Brothers, Dhaka.

⁷³ Constitutional Development in Bangladesh, discussion on constitutional governance challenges and reforms. p. 28-29.

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