Sonargaon University

Research Monograph

On

"Constitutionalism in Bangladesh: Trend of Deviation from Commitment"

This Research paper is submitted in partial fulfillment of the requirements of the degree of LLB (Honors) under Sonargaon University.

Supervised By:

MD.DEEDARUL ISLAM BHUIYAN

Head and Assistant Professor,

Department of Law,

Sonargaon University

Submitted By:

Mht.Mariom Akter

ID:LLB 1802014016

Batch: 15(A)

Department of Law

Sonargaon University

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

Signature

CERTIFICATION BY THE RESEARCH ADVISOR

This is hereby certified that the research Monograph on the topic **Constitutionalism in Bangladesh: Trend of Deviation from Commitment** submitted by **Mht.Mariom Akter ,ID:LLB 1802014016** in fulfillment of the requirements for LLB (hones from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted any place earlier, as far as i know.

Md.Deedarul islam Bhuiyan
Head and Assistant Professor,
Department of Law
Sonargaon University, Dhaka.

DECLARATION

This is, a student by Mht.Mariom Akter ,ID:LLB 1802014016 of LL.B program of Department of Law of Sonargaon University, do hereby declare that the Research Monograph Titled, **Constitutionalism in Bangladesh: Trend of Deviation from Commitment"** an original work. The assigned work has done by me for partial requirement of my LLB degree, as a part of academic curriculum. I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where dereference is made in the text.

I also declare that the presented work do not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

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LETTER OF TRANSMITTAL

To,

Md.Deedarul Islam Bhuiyan
Head and Assistant Professor,
Department of Law,
Sonargaon University, Dhaka.

Subject: For the submission of research Monograph titled Concept of ‘‘Constitutionalism in Bangladesh: Trend of Deviation from Commitment”.

Dear Sir,

This is a matter of joy for me to submit the research monograph on the title **‘Constitutionalism in Bangladesh: Trend of Deviation from Commitment** “While doing this research monograph, I have tried my level best to keep the required standard. I Hope, this dissertation will fulfill your expectation. I hope that you would be kind enough to go through this dissertation for your kind evaluation. I am always available for any clarification or any other necessity of any part of this research Monograph at your convenience.

Yours obediently

Student by

Mht.Mariom Akter ,
ID: LLB 1802014016
Batch: 15

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CHAPTER -1

INTRODUCTORY

1.1 Abstract

Constitutionalism is a very significant politico-legal theory related with continuous political and legal processes, Though Bangladesh has passed 52 years of its independence, it's politico-legal authorities have failed to institutionalize constitutionalism in the context of Bangladesh. First of all, I have discussed the conceptual basis of constitutionalism. I have tried to identify the barriers to institutionalization of constitutionalism in Bangladesh. Then I have suggested some policy measures for overcoming these problems. The main aim of this paper is to find out the real scenario of constitutionalism in Bangladesh and improvement of the situation by various effective means. This paper is based on secondary sources of information like books, e-books, journals-both printed and online, research reports, newspapers etc. Relevant literature has also been collected through internet browsing.

Constitution is not only the supreme law of the land but also the embodiment of the political philosophy of a state. Constitutionalism is, as well, not only the rule of law consistent with the Constitution but also in adherence to this political philosophy of the state in all its legislative, executive and judicial actions. The great expedition of constitutionalism in Bangladesh is described and analyzed in this article after a brief theoretical discussion on constitutionalism, short descriptions on the history of framing of the constitution of Bangladesh and its salient features. The practice of constitutionalism under the periods of different rulers of Bangladesh like Sheikh Mujibur Rahman, Ziaur Rahman, H. M. Ershad have been quite elaborately discussed and analyzed. Leading cases on constitutional law have also been shortly described focusing the role of higher judiciary in protecting the Constitution. Thereafter some recommendations have been made for proper practice and advancement of constitutionalism in Bangladesh.

1.2 Objectives of Research:

1) In order to get the whole meaning regarding the concept of the right to life.

2) To know what is the main motive of the cases given in the Articles given in the

constitution of Bangladesh.

3) To examine the views of Supreme Court regarding the field of the rights such as the right to life in detail.

4) To identify and find out the ways out to enforce the spirit of right to life in wide extent.

5) To get the thorough idea of ongoing practice regarding the protection of right to life in Bangladesh.

6) To look for the best way to make sure the easiest enforcement of right to life throughout the world including Bangladesh.

1.3 Research Methodology:

There are accepted truths and theories in all field of knowledge. The intellectuals of the society are always inclined to probe for facts of the empirical world and confirm the proved truth of his investigations by acceptors correcting the existing theories. Such probing is termed as research.

According to the Webster's International Dictionary –

"Research is a careful critical inquiry or explanation in seeking facts or principles; diligent investigation in order to ascertain something"

Research methodology is a systematized investigation to gain new knowledge about the phenomena or problems after finalization of subject matter or study the next step is to Research Methodology – the method, of data collection. Data Collection is the process of obtaining

valuable information for the purpose of research. To carry into effect in this research, I have tried to follow the guidelines of my supervisor and at the very outset, I have set my action and research plan and then I made a table of contents by the guidance of my Supervisor. In fact, the way and method by which I tried to carry out my research monograph was very comfortable to me.

I tried to get data, select the sources of information, talk to the resource persons of this matter. Also I stormed my brain to have the filtered thought an d idea to put into this thesis. Likewise, all the modern approaches of research in particular was followed by me. Studying and analyzing books, journals, resources, etc. were my fuel of thinking to come into the conclusion at large in respect of the research. Above all. Concerted efforts, whole-hearted trying on the objective analysis of my assigned topic of research helped me to reach my triggered point of wrapping up the research monogram.

1.4 Scope and limitation of research:

There had been satisfactory scope of twisting the topic. In fact, analysis of the vital points and issues were pleasing to me as all these were more or less known to me. To travel into the bottomless pit of knowledge, I had to struggle a bit but had been able to win over with fruits of my research work.

In this research, I had to stick to gun with the point of right to life. That is why, to browse the idea a lot was quite difficult but I made it apt for my research to carry the day

CHAPTER -2

DEFINITION, BEGINNING, RELATION BETWEEN CONSTITUTION AND CONSTITUTIONALISM PRINCIPLES OF CONSTITUTIONALISM

2.1. Introduction:

Bangladesh is an independent country where Constitution is the supreme law of the land. Fourty-two years have been passed since our independence but our achievements in the aspects of implementation of constitutionalism are not noteworthy. Constitutionalism has a close relation with democracy. In Bangladesh, we can see that democracy and constitutionalism are the most uttered words thought he nation has failed to put these into practice. The common agenda of election manifesto of all political parties is the establishment of democracy and upholding of Constitution but they have failed to implement their commitment in fact. The country today is burdened with numerous problems. These problems are threatening the very development of institutionalization of democracy and as such establishment of constitutionalism is becoming a matter of illusion which is totally unacceptable. An under-developed political culture of Bangladesh, her poverty-ridden illiterate and incompetent mass people and lacking of democratic political organizations, institutions and practices are the main barriers to establish constitutionalism in the context of Bangladesh. Hossain, 2005)

2.2. Constitutionalism: Meaning and Concept

The term 'Constitutionalism' has various meanings. It is based on the principle that the authority of government derives from and is limited by a body of fundamental law (Fehrenbacher, 1989). "Political scientist and constitutional scholar David Fellman has described 'Constitutionalism' nicely in the following way: 'Constitutionalism is descriptive of a complicated concept, deeply imbedded in historical experience, which subjects the officials who exercise government powers

to the limitations of a higher law. Constitutionalism proclaims the desirability of the rule of lawas opposed to rule by the arbitrary judgment or mere fiat of public officials."(Philip, 1973-74)Therefore it is easily understood that the core point of the concept of constitutionalism is that government officials are not at liberty to do anything as they are bound to observe substantive and procedural limitations set out in the constitution or supreme law of the country. So the cornerstone of constitutionalism is the concept of limited government under the supreme law. Therefore it was stated by Li (2000) that "constitutionalism means a system of political arrangements in which there is a supreme law by which all are governed, which can be superseded and changed only by the people's will and in which there are separation of power, checks and balances and an independent judiciary to safeguard the supremacy of the constitution meaning constitutionalism."

From the above discussion of constitutionalism, we can understand several things. First, constitutionalism is an institutional realization of people's rights, liberty and sovereignty by limiting the government's power within a boundary prescribed by the supreme constitution so that the government cannot transform its powers into arbitrary powers. Second, constitutionalism clearly recognizes the sovereignty of people when it is required to be changed. Thus the theory of constitutionalism necessarily implies the notion of Dicey's Rule of Law theory. "One of the most salient features of constitutionalism is that it describes and prescribes both the source and the limits of government power. William H. Hamilton has captured this dual aspect by noting that constitutionalism is the name given to the trust which men repose in the power of words engrossed on parchment to keep a government in order." (Walton, 1931) According to Lord Acton, 'Every power tends to corrupt and absolute power tends to corrupt absolutely' (Takwani, 2006). Constitutionalism keeps a government under control so that it cannot be an arbitrary government at whose hand the rights of the people will be at stake. So finally we can say that 'Constitutionalism' is a concept in political theory that explains that a government does not derive its power from itself, but gains its power as the result of there being a set of written laws that give certain powers to governing body. Constitutionalism therefore naturally prescribes a system of government in which the government's powers are limited. Government officials, whether elected or not cannot act against their own constitutions. Constitutional law is the highest body of law in the land, which must be abide by all citizens including the government.

2.3 Relation between Constitution and Constitutionalism

Constitution is the supreme law of a country which authorizes, empowers and limits a government by laying down structure of government and by distribution of the powers with checks and balances among three organs of the government, e.g., legislature, executive and judiciary.

On the other hand, constitutionalism means limited government under the constitution and the establishment of rule of law, protection of human rights, conforming democratic procedures in elections, popular participation of people in public policy making and achievement of general and shared goals of the community. As popularly stated by US President Abraham Lincoln, 'Democracy means government of the people, by the people and for the people', therefore, constitutionalism in a democracy both limits and empowers government of, by, and for the people. By the constitution, people give power to the government to act on behalf of the people effectively for the welfare of the people. When the government misuses this power or fails to exercise this power properly, in both the cases the rights of individuals to life, liberty, and property fall at risk.

An effective democratic constitutional government is sufficiently empowered by people to secure their rights against foreign aggressors or internal enemies. Similarly, this power is also sufficiently limited by people so that possibility of government officials being oppressive can be decreased to the least. "A continuing challenge of democratic constitutionalism is determining how to simultaneously empower and limit the government in order to secure the rights of all persons." (Patrick, 1997)

Only having a written constitution and proclaiming rights does not imply the guarantee of the rights. Many countries have included merely the system of democratic government in their constitutions but in reality they implemented very few or nothing. "For example, Soviet-style constitutions of the recent past grandly proclaimed all kinds of rights though did not guarantee them." (Patrick, 1997) Therefore it is clear that constitutionalism does not necessarily mean having a written constitution and proclaiming rights. Even where there is no written constitution, constitutionalism will mean a limited government under the supreme law. For example, in

United Kingdom, there is no written constitution and parliamentary supremacy prevails there. Whatever present parliament will enact and pass, will be automatically part of their unwritten constitution and so constitutionalism in the context of United Kingdom will have dynamic meaning under each omnipotent United Kingdom parliament'.

2.3 Basic Principles of Constitutionalism

There are some basic principles of constitutionalism which are as follows:

1. Popular sovereignty: When ultimate power and final authority rest with people by inserting the words "we the people" or "all the citizens" in the constitution, it means popular sovereignty is guaranteed by the constitution.

2. Limited government: Government's power is limited by the rule of law which includes the supreme law-Constitution and the subsidiary laws which are passed in pursuance of that Constitution.

3. Separation of Power: A government has three Organs-Legislature, Executive and Judiciary. Government's power should not be centralized in one organ and must be distributed among the three organs according to constitution.

4. Checks and balances: As we know that 'the theory of Separation of Powers' is impossible to implement, so each of the three organs must have certain checks and balances over the other two organs to cure the defects of the pure theory.

5. Decentralization of power: To ensure proper functioning, power must be divided between the government and the local government institutions. Some powers are concurrent and thus held by both levels of government.

6. Republicanism: As the total population cannot act jointly, republican government system is a solution to this problem. People will exercise their power by

delegating it to representatives chosen by them through the democratic election process.

7. Individual Rights: The guarantee of personal freedoms, personal protections, and equality under the law in the Constitution is another basic principle of constitutionalism.

CHAPTER-3

3.1 Constitutionalism in Bangladesh: Trend of Deviation from Commitment

One hundred years ago, Eugène Lerminier, a French lawyer and legal historian, rightly remarked that the science of law demands more than ever an eagerness to examine its own history and nothing can be achieved in the present without a profound knowledge of the past (Lerminier, 1829). While today this statement has undoubted validity for legal science as a whole, it seems important to shed light on the historical development of constitutionalism from the perspective of Bangladesh in particular. Such an importance is apparent when the father of the Constitution of Bangladesh, Dr. Kamal Hossain, portrays the term 'constitution' as "the autobiography of a nation which reflects its historical experience" (Hossain, 2013: 140).[1]

Hence, the following analysis is to explore the faces of constitutionalism in Bangladesh and to conceptualize how Bangladesh has been deviated from the constitutional norms and commitments adopted in the original Constitution on this very significant day – 4th of November, 1972.

Bangabandhu Sheikh Mujibur Rahman addressing the Constituent Assembly. Photo Credit: fhiredekha.com Believing it to be opened to many connotations, constitutional law experts define the term 'constitutionalism' as "the idea of complete political accountability of those charged with public governance in meeting constitutional mandates such as the protection of fundamental rights, widening of public sphere in the governance system, and the realization of ideals of equality, justice, and human dignity" (Hoque, 2013: 303).[2]

[1] 'constitution' as "the autobiography of a nation which reflects its historical experience" (Hossain, 2013: 140).

[2] "the idea of complete political accountability of those charged with public governance in meeting constitutional mandates such as the protection of fundamental rights, widening of public sphere in the

Constitutionalism justifies its place as a *necessary* feature of the modern political configuration in which the values, expressed by and through democracy, are undoubtedly of central importance. Being a value-laden part of democracy, it tends to answer each form of democracy's incompleteness in the politico-constitutional structure of a nation.

Such a congenial sense of constitutionalism suggests for a glorious evolution of the Constitution's founding values in any democratic state. However, Bangladesh has unfortunately experienced a significant distortion of constitutionalism at several junctures in the last few decades.

Inspire of the fact that constitutionalism stays at the core of constitutional life of the citizenry, what our forefathers promised to us on the dawn of independence can hardly be seen as fulfilled today. The debates among the members of the Constituent Assembly (CA) remind us that Bangladesh believes in realization of socialism through democratic processes. The question remains – has that been accomplished.

The incorporation of this principle was intensely debated in the Assembly (Constituent Assembly Debates 1972, Part II, pp. 147, 149, 155-57, & 161). The debate underlined that, principle of socialism cannot be imposed upon Bangladesh in the way once Pakistan tried to impose a particular religion upon the *Bangalee* nation in its 1956 Constitution. Socialism was believed to be attainable through democracy when ownership of instruments and means of production and distribution are in the hands of the people.

To establish a feasible socialist country, our Constitution framers called out for the harvesting of self-sacrifice in the field of human behavior, the changes of attitude coupled with respect for others' opinions, and the belief in collectivism and co-operation in both economic and non-economic sectors. Practically, they established how we cannot deny the existence of democracy

governance system, and the realization of ideals of equality, justice, and human dignity" (Hoque, 2013: 303).

to develop socialism in the context of Bangladesh. Unfortunately, however, we have deviated from this aspiration in many aspects.

First aspect, I believe, extends to the practice of culture of impunity with regard to corruption in public and private sectors. The CA members had harshly criticized this culture by illustrating that the *Banglaee* nation raised its voice against Pakistani unjust rule when the the rulers used to allow the corrupt people go unpunished. This impunity in effect led to this nation being disadvantaged economically, politically and militarily. After 40 years of independence, most tragically, we find the exercise of such an identical culture by every political party at the cost of national interest today. Recent examples of Padma Bridge project scam, Sonali Bank diddle, Hallmark and Destiny swindles, or embezzlement of orphanage trust are only few evidences of such malpractices of each government till date. The role of Anti-Corruption Commission to combat corruption, and of the court in this regard shows nothing but the reflection of government's rowdy exercise of executive power and privilege.

Secondly, while adopting the Constitution, it was expected that the representatives of the people in the parliament would be committed "to end exploitation through the implementation of programs for fundamental economic and social change" (Hossain, op. cit., p. 141). [3]The dream which were woven into the constitutional provisions in 1972 through Articles 7 and 11, were those of a democratic political order in which power would truly belong to the people, to be exercised through a sovereign parliament composed of representatives elected on the basis of universal adult franchise. However, looking back to the latest national parliament election of January 2014, one can easily raise a moral question about the legitimacy of formation of the government while almost half of the members of parliament were elected without going through any contestation whatsoever. Hence, solo majority is not the genuine essence of democracy. Choosing one from many could be democracy given that fair and impartial election process is out there, but someone being compelled to choose one out of only one can never promote true democratic spirit. Here lies democracy's incompleteness in a Republic, which is in nature a sheer

[3] "to end exploitation through the implementation of programs for fundamental economic and social change" (Hossain, op. cit., p. 141).

autocracy greatly undermining constitutional and popular supremacy under Article 7 of the Constitution.

Original preamble of the Constitution of the People's Republic of Bangladesh, 1972. [4]Photo Credit: somewhereinblog.net Thirdly, Bangladesh Constitution cautiously avoided making any state religion in 1972. The belief that *Bangalee* nationalism was based on the principle of secularism, facilitated the constitution makers to have secularism as one of the fundamental principles of state policy. Starting from the 1952 language movement to the liberation war of 1971, the history of our nation shows the reflection of secularism as an outcome of socio-cultural movement. At the same time, the nation never discarded the importance of freedom of religion and thought in a pluralist society as Bangladesh. In the original Constitution, the abuse of religion for political purposes was constitutionally prohibited under Article 12, and secularism was worded to maintain "a separation of between the state and the religion and to create an environment in which the religious communities could coexist in harmony, free from discrimination and religious intolerance" (Hossain, op. cit., p. 142)[5]However without bringing much analysis on 5th and 8th Amendments to the Constitution, I concentrate on the 15th Amendment done by a democratically elected parliament in 2011 and contend that it has endangered the harmonious coexistence of different communities in the society. By virtue of this Amendment, there is now existence of state religion Islam, principle of secularism, and *Bismillahir Rahmanir Rahim* in the Constitution. This anomaly created by a democratic parliament has superseded the extent of amending power of the parliament what two martial law regimes have done with the principle of secularism and the state religion by 5th and 8th Amendments together.

Being translated both in Bangla and English, interestingly, *Bismillahir Rahmanir Rahim* has been expressed through two controversial meanings at the top of preamble. Essentially, it is easy to understand that a parliament might import two Almighty Creators the Constitution for satisfying

[4] the Constitution of the People's Republic of Bangladesh, 1972.
[5] "a separation of between the state and the religion and to create an environment in which the religious communities could coexist in harmony, free from discrimination and religious intolerance" (Hossain, op. cit., p. 142)

more than one religious community in the country, but truth is that legislatures have made the omnipotence of God a mockery, let alone respecting the freedom of religion as a human right

To end, I claim that the development of constitutionalism in Bangladesh has a tendency of deviating from the constitutional ethos and norms that were adopted in 1972. To understand this culture of deviation, we essentially need to reflect upon our constitutional history and realize the dedication and motivation behind the framing of the Constitution.

CHAPTER-4

4.1. Relation between Constitutionalism and Democracy

Constitutionalism is a dynamic and complex concept that is continuously developing. Constitutionalism is about structuring a political framework for a country in an organized legal context. Constitutional government is closely inter-linked with establishment of democracy and rule of law. Constitutionalism without establishment of democracy is difficult to conceive. "The legitimacy of government is derived from the will of the people as people are the sovereign power of a democratic country and the expression of democracy can be legitimately expressed and thus the popular will can be established only in a democratic system. The legitimacy of the government is periodically examined by free and fair elections based on universal adult franchise which are the essential features of democracy". (Rizvi, 2005)

Democracy means protection of individual as well as group rights. Theory of 'Constitutionalism' also requires enjoyment of individual and group rights subject to reasonable restrictions. To ensure constitutionalism, justifiable fundamental civil liberties must be ensured and complete freedom for citizens to oppose justifiably .

4.2 The judiciary and constitutionalism: The formative years

The post-Independence judiciary in Bangladesh had an extremely short democratic period within which it had to consolidate its constitutional jurisprudence. The initial Supreme Court was not even granted judicial review that came with the formal adoption of the Constitution. Understandably, therefore, the Court began to abandon, albeit slowly, strict literalism in favor of a legal spirit-based method of interpretation so as to ensure justice by overcoming procedural difficulties and technicalities. Importantly, the Court broke away from retrogressive judicial decisions of erstwhile Pakistan but, in some instances, duly drew upon old decisions that were Constitution-compatible, although, as we shall see below, pro-establishment decisions of the Pakistani Supreme Court did cast some measure of negative influence upon the Bangladeshi judges.

Throughout the democratic regime in the 1970s, the judges remained relatively vigilant against the executive's encroachment of the people's fundamental rights. In personal liberty cases, for

example, the Court developed a self-awareness of its constitutional duty to safeguard rights of 'any person', to uphold 'human dignity' and the ideals of a liberal society including the 'due process of law'. In the now famous case of A. T. Mridha v. The State (1973)[6]concerning the legality of detention of the petitioner under a law that precluded court challenges of actions taken thereunder, the Court made the earliest bold pronouncement that its constitutional supervisory power could not be ousted by a sub-constitutional legislation.

The benchmark decision during the formative years was Kazi Mukhlesur Rahman v. Bangladesh (1974). [7]In this case an advocate challenged the constitutionality of the Bangladesh–India Treaty of 16 May 1974 involving exchange of territories. The High Court Division turned down his petition on the ground of his having no 'standing'. On appeal, the Appellate Division took a broader view that 'the question of locus standi does not involve the court's jurisdiction'[8], thereby distinguishing 'standing' from 'justifiability'. The Court heard the petitioner as he was vindicating an outstanding constitutional issue affecting the rights of the general public. The decision represents one of the few leading cases that have introduced rights-based arguments in Bangladeshi judicial discourse, leading the Court to recognize the abstract or public interest judicial review as well as the reviewability of international treaties implicating constitutional rights. During the extra-constitutional regimes (1975–90), the Judiciary largely faced a crisis of existence. This long peri responsibility of doing justice. During this period, there was indeed a judicial oscillation between occasional preservations of authority and submission to the 'non-law', that is, martial law. In an infamous decision in Halima Khatun v. Bangladesh (1978), [9]Justice Munim glorified the martial law proclamation that conditioned, but not wholly suspended, the Constitution. The Court held that the Constitution 'lost its character as [the] supreme law of the country'. In refusing to give remedy to the claimant who challenged appropriation of her property as an abandoned property, Justice Munim found a 'total ouster' of the Court's jurisdiction by the martial law, reasoning that as a judge it was his 'duty' 'to administer a ''harsh'' or even an unjust law'. Although the Court later tried and sought to mete out minimum justice by way of interpreting the martial law regulations and other laws a little liberally, its performances until the democratic restoration in 1991 remained largely

[6] A. T. Mridha v. The State (1973)
[7] Kazi Mukhlesur Rahman v. Bangladesh (1974).
[8] 'the question of locus standi does not involve the court's jurisdiction'
[9] Halima Khatun v. Bangladesh (1978),

regressive and deficient in justice-consciousness. During the period before 1991, the singularly exceptional area of judicial protective activity was that of personal liberty. Following the Special Powers Act 1974 that provided for preventive detentions without trial, hundreds of thousands of people became victims of this arbitrary law.

Moreover, the first martial law regime (1975–9) combined with Emergency coexisted with the Constitution, thus creating considerable confusion about judicial review. When approached by detainees, the Court took more or less a proactive interpretational approach to the harsh laws. There have been, however, records of both evasion and creativity, with the Court travelling from mechanistic application of the law to a relatively more liberal course of constitutional or legal interpretation. judicial passivity and, in some cases, unacceptable judicial abdication of In a long series of preventive detention cases the Court held for the detainees, it refused to adopt the Indian instance of 'subjective satisfaction test' but rather insisted that the government's decision to detain any person must pass judicial examination of objectivity. By way of another example, in a significantly bold assertion of judicial authority, the Court in Sahar Ali v. A. R. Chowdhury (1980),[10] which concerned Section 30 of the Special Powers Act 1974 that barred 'any court' from revising any order or judgment of special tribunals established under this Act, famously held that its constitutional supervisory power could not be ousted. This welcome instance of judicial interpretive activism ultimately triggered legislative removal of the illegality. Despite these few instances of upholding the principle of legality, the Bangladeshi judiciary, on the whole, abdicated its constitutional responsibility of protecting the rule of law during the martial law regimes and largely became a partner of usurpers of the Constitution.

4.3 The judiciary on unconstitutional constitutional amendments: the evolution of the 'basic structure doctrine'

There has been a heated debated as to whether the judiciary should be the final arbiter of any given constitution. It is often said that popular sovereignty finds its expression in the elected organ of the state, the legislature, and that judicial invalidation of any change to the constitution brought by

[10] Sahar Ali v. A. R. Chowdhury (1980)

the legislature would be illegitimate and an affront to popular sovereignty. By contrast, opposite arguments are often made in favor of judicial review of constitutional amendments for the sake of preserving the constitution itself. These debates entered the Bangladeshi legal discourse in the late 1980s when in an epoch-making decision in Anwar Hossain Chowdhury v. Bangladesh (1989)[11], the apex court invalidated the 8th Amendment to the Constitution of Bangladesh, holding that Parliament's amendatory power is subject to un-alterability of 'basic structures' of the Constitution. In entrenching the now famous 'basic structure doctrine', the Appellate Division in this case held that Parliament's amending power under the Constitution is 'limited' in that this is a 'derivative' constituent power46 and hence cannot be exercised to alter or destroy its 'basic structures'. The Court was seemingly motivated to uphold the greater public interest and the nation's founding mottos of constitutionalism and democracy. The then military authority by various martial law regulations diffused the High Court Division into seven permanent benches, and later constitutionalized this change by amending Article 100 of the Constitution, the constitutionality of which was challenged by some lawyers. The petitioners successfully argued that the High Court Division's plenary judicial power over the whole Republic was part of the basic structure of the Constitution which was unalterable even by a constitutional amendment. In a three-to-one majority judgment, the Court adopted the holistic mode of interpretation and concluded that Parliament with unlimited amending power is an anathema to constitutional supremacy, a basic pillar of the Constitution.

Despite its several shortcomings and ambivalence in the reasoning of the majority judges, the 8th Amendment decision continues to remain the boldest ever instance of judicial activism in pursuit of constitutionalism in the Bangladeshi polity. The judges, by and large, were alert to the need for protecting 'the fundamental aim' of society, that is, the rule-of-law–based governance, from destruction. As it appears, they sought to locate and preserve what leading Indian scholars have called 'stateless or 'self-identity 'of the State. In searching and solidifying the basic constitutional premise and 'self-identity' of their nation, the judges predicated their reasoning upon comparative public law besides taking moral–legal guidance from their own Constitution. It seems that the Court's conclusion was greatly informed and influenced by the famous Indian decision in

[11] Anwar Hossain Chowdhury v. Bangladesh (1989)

Kesavananda Bharati v. State of Kerala (1973) [12]that first authoritatively established in the common law world the doctrine of inviolability of the 'basic structure' of the Constitution. It seems that, but for this strong persuasive decision from a powerful neighbouring jurisdiction it would be extremely difficult, if not impossible, for the Bangladeshi Court to produce such a structurally radical decision. Like the Kesavananda 316 comparative constitutionalism in south asia Court, the majority judges in Anwar Hossain Chowdhury could not reach a consensus as to the features which should be considered basic structural pillars of the Constitution. Interestingly, there grew a consensus that there should be some basic features beyond the reach of Parliament's amending power. Even the opposing counsel and the dissenting judge did not rule out the existence of certain structural pillars. There are criticisms, both academic and political, against the basic structure doctrine, which are largely grounded in the passion for public sovereignty and public participation in democracy. These accusations are mostly akin to general criticisms against judicial activism, and they tend to ignore that the basic structure doctrine did not intend to put any clog on Parliament's constituent or legislative power, far less on the people's power. It simply erected a bulwark against the destruction of one or more of the basic features of the Constitution, preservation of which was very much intended by its framers. In his judgment, S. Ahmed, J. poignantly observed that people's sovereignty is susceptible to assailment and denial under many devices by the holders of power. Aware of the political realities prevalent in society, the judge rightly thought that such a bar on Parliament's amending power is 'an effective guarantee against frequent amendments of the Constitution in sectarian and party interest'.

[12] Kesavananda Bharati v. State of Kerala (1973)

CHAPTER -5

5.1 constitutionalism

To what extent constitutionalism and democracy have been restored in Bangladesh since the ostensible restoration of democracy is still a burning question. In order to identify the extent of restoration of constitutionalism, some tests are developed throughout the world. Stanley de Smith, the eminent liberal constitutionalist has laid down a number of tests as to whether a country can be said to practice constitutionalism. The tests are as follows:

A. There must be free and fair political competition which will be held at periodic intervals.

B. The government must be accountable and amenable to popular opinion and a constitutionally created institution distinct from itself .

C. Finally, there must be effective guarantees of fundamental civil and political liberties enforced by an independent judiciary. These include the freedom of expression and of the press and the right to form organizations. And where these are lacking, Stanley Smith argues, there is no constitutionalism. (Rizvi, 2005)

Now these tests will be applied to determine whether constitutionalism exists in Bangladesh or not.

A. The test of 'free, fair and periodic' political competition

Since 1991 Bangladesh has held five general elections (5th, 6th, 7th, 8th and 9th). Comparatively 5th , 7th and 9th general elections were considered by most standards 'free and fair' by independent election monitors. 6th election was held without participation of strong opposition party 'Awami League', so there was not a fair competition in the true sense. The Asian Network for Free Elections reported in its 2001 mission report regarding 8th Bangladesh Parliamentary Election that "the 8thparliamentary election was rated more disturbing than earlier elections with

reports of intensified violence." (Asian Network for Free Elections, 2001) Before the adoption of caretaker government by 13th amendment, the incumbent governments used to appoint the 'Election Commissioners' to conduct elections and it was claimed that these appointments were not impartial and quite politically influenced. To respond to this criticism, the country amended the constitution by 13th amendment and introduced the system of neutral caretaker government. According to the caretaker system, the incumbent government including the prime minister are bound to vacate office three months prior to the election in order to ensure a free, fair and impartial election. The amendment also provides that the most recently retired chief justice of the Supreme Court would be the head of the caretaker government and he will appoint the Election Commissioner. Thus this amendment attempted to enhance the legitimacy of the electoral process and reduced official interference from the incumbent government. Not only theoretically, but also practically the elections held under neutral caretaker government got huge praise from national and international election monitors. But there are the negative pictures also. It was claimed that the governments have manipulated the appointments of Chief Justices to place favorable retired justice in time of election who will appoint election commissioners on political basis. But now under 15th amendment, caretaker government system was abolished and the old debate of impartiality of election commission under incumbent government was revived. The traditional supporters of democracy are not recognizing caretaker government as the institution of democracy while the liberal interpreters of democracy are interpreting caretaker government as the impartial conductor of free and fair elections which is one criterion to test constitutionalism according to Stanley De Smith, the liberal constitutionalist. However in spite of reports of national and international election monitors declaring that elections were free and fair, we cannot reach to the conclusion that Bangladesh possesses institutionalized mechanisms for free competition. The fact that the elections were conducted 'freely and fairly' on the day of the polls does not actually imply that the electoral process itself was 'free and fair'. There are various factors to determine to what extent the electoral process was free and fair. After every defeat, defeated party complained about vote rigging. The free and fair election imply only that vote was not rigged on the day of polls. But other probabilities may be there. Voter list was claimed to be manipulated to favor the winner party. It was claimed that government officials influenced the local leaders controlling vote banks. Moreover, "unauthorized use of extra money on electoral outcomes had harmful impact on the subsequent behavior of the governments. This

has led not only to straightforward corruption in the form of 'buying votes,' but has also enhanced the influence of smugglers, drug traffickers and black-marketers who use their money either to sponsor their candidates or to sometimes seek party tickets to get themselves elected. Once they are elected, their first concern is to recoup their expenses by various unauthorized methods rather than fulfilling their election manifesto." (Rizvi, 2005) So it can be said that now-a-days people do not trust the governments as they are tired to trust; and how the government is elected whether by incumbent government or by caretaker government, people are frustrated to see the manipulation of constitutionalism in the hands of the government whatever that party is. As a consequence, the gap between the rulers and ruled has widened. One interesting pattern of voters in Bangladesh is revealed that in every election they vote for opposition party to come into power deserting the incumbent government which expresses the deep frustration of the voters and at the same time, the remaining zeal to see the establishment of constitutionalism and democracy by the new government.

B. Government Accountability & Popular Participation

Popular participation of the people in the formulation of policy is an essential feature of constitutionalism and democracy. In this respect the record of Bangladesh is not satisfactory. In Bangladesh, the governments adopt public policies without participation of the concerned interest groups. The voters are either considered too ignorant to have a say in their own affairs or are deliberately kept away from the process in order to make them ignorant of the weaknesses of the policies favoring government's interest only. There are no structured discussions between the government and the groups most likely to be affected by the legislation. Policies are enacted by parliament after debate and voting. The debate and voting are also meaningless because of Article 70 of the Bangladesh Constitution which was adopted to stop floor-crossing but much used to enact legislations favorable to the enacting political party. Again in case of treaties, there was a provision under article.145A, which requires presenting the treaties before parliament to ensure government's accountability but we did not see government ever conform to such provision of the Constitution.

The governments have rather developed a wide range of tactics for diverting public demands. Constitutional interpreters influenced by own party policies are interpreting constitution in such a

way that we can tell it as a misuse of the supreme notion of constitution. Whenever any issue arises, governments often appoint various committees and commissions to inquire about and report on those specific disputed issues to divert the wrath of public, but these reports are not published to the public and their recommendations are rarely implemented. Governments influence the appointment of government officials in various important government offices including government offices under Public Service Commission and Judicial Service Commission. The news of appointing ineligible government officials because of political favor is being published in the newspapers often. “Ministers, ambassadors, heads of public enterprise corporations and even vice chancellors of the universities, owe their appointments to the president or the prime minister without much regard to their qualifications or appropriateness for the position.” (Rizvi, 2005)

Again it has to be kept in mind that the winning party in the election not only forms the government but also assumes all the rights and powers of governing the country. This raises the question of representing the interests and views of those who did not vote for the winning party as the parties in the opposition are excluded from participation in the government and legislation in any meaningful way. We saw that the ruling party has never got more than 40 percent of the votes, therefore a vast majority of the population feels excluded from the governance of the country. They have little or no stake in the government. The legitimacy of the government becomes questionable in their mind and the theory of ‘Representative Government ‘fails to be implemented. The constitution itself is silent on the question of representing them .The burning question is how to provide constitutional safeguards which allow the majority to rule but at the same time find a mechanism for those in the opposition to have their say in a meaningful manner so that government can be representative government in the true sense and democracy becomes more institutionalized.

The research of the World Justice Project among 66 countries on Rule of Law which was contained in the Rule of Law Index, 2011 reflects multiple challenges of Bangladesh in this regard. Government Accountability of Bangladesh remains low as her ranking is 48th globally and 3rd among low-income countries.

C. Effective Guarantees of Civil and Political Liberties

Competition and participation are essential elements of democracy; and while both of these elements are present in Bangladesh formally, we have seen that in practice they are not existent properly. Without the guarantee of civil and political liberties, competition and participation cannot be made a reality. To ensure the effectiveness of free and fair competition and popular participation, the freedom of expression, the freedom of press and the right to form organizations are very much important. Not only these rights, but also "the right to seek public office, the ability to freely canvas and mobilize support for one's platform and program and the assurance that hose institutions responsible for making government policies are responsible to the people are necessary." (Rizvi, 2005) Therefore the civil and political liberties are enshrined in the Bangladesh constitution and the citizens can seek redress in case of infringement of their fundamental rights through the courts under article. 44 of the constitution. Many of the restrictions curbing individual liberty under previous authoritarian rule have been removed from the statutes. Detention of political prisoners without trials virtually impossible as courts frequently throw out government detention orders. We saw "in BLAST v. Bangladesh, 55 DLR 363[13], it has been held that remand for the purpose of interrogation is not necessary except for extorting information from an accused by physical torture or other means, but such extortion of information is contrary to the mandate of article.35(4), interrogation of the accused, if necessary, may be done in the jail custody; as is the present practice, prayer for police remand and grant of it is unconstitutional being violate of the fundamental rights ensured by the constitution."(Islam, 2002)The record of civil and political liberties in Bangladesh has improved over the years through litigation, it is not easy to say that there are no areas of concern. In all the countries of South Asia there are many instances of violations by the governments of individual and group rights in name of curbing terrorism and controlling emergency situations. In most cases, the victims of state violence cannot seek legal redress. Not only these, enforced disappearances are occurring in Bangladesh which is violation of various fundamental rights and State is unsuccessful in resolving this problem as it is apprehended that the government and various political personnel are responsible for the situation either for political reasons or for huge monetary issues linked with it Again, the treatment of Bangladesh meted out to the minority groups like the Hindus and the tribal population residing particularly in Chittagong Hill Tracts

[13] BLAST v. Bangladesh, 55 DLR 363

area is quite unsatisfactory. Although there is no official policy of discrimination, but in reality one cannot ignore that the human rights of these communities are often violated with impunity. National Human Rights Commission (NHRC)was established in 2010 to promote and protect human rights throughout the world especially in Bangladesh. But the bargaining power of NHRC to protect marginal sections from the oppression of the government is still unsatisfactory. The recent Limon case and the request of National Human Rights Commission (NHRC) Chairman Prof. Dr Mizanur Rahman to withdraw a case filed by Limon's mother against Rapid Action Battalion (RAB) men raised questions regarding the role of NHRC. Hossain (2013) reported that the Transparency International Bangladesh (TIB) has urged the commission not to take any step that goes against human rights and TIB executive director Dr Iftekharuzzaman said: "The Commission is playing a mediator's role and suggested Limon to withdraw the case against RAB as a precondition for withdrawal of RAB'S cases against Limon, which is against human rights and also against citizens' rights to justice." Therefore, we can say that though civil and political liberties are guaranteed in the Bangladesh constitution, but these are often violated through government mechanism which indicates the negation of the guarantee and impediment to institutionalization of constitutionalism in Bangladesh.

Major Problems and Impediments of Constitutionalism in Bangladesh We will explain some other areas along with problems and impediments to understand the implementation of constitutionalism in Bangladesh:

Interference in Freedom of movement: Though freedom of movement is enshrined in Bangladesh Constitution, often in name of law and order, it is taken away or suspended by the ruling authority. In HM Ershad v. Bangladesh, 7 BLC(AD) 67, [14]freedom of leaving the country and returning from a foreign country has been reiterated. In another case, Dewanbagi Darbar Sharif v. Bangladesh, 54 DLR[15]413 it was held that impounding of passport for the purpose of inquiry against the holder of the passport is not a lawful ground for impounding of passport. (Islam,2002) Interference in Freedom of Press and Media: Though freedom of expressions is guaranteed by Bangladesh Constitution, in fact this freedom is not enjoyed properly. Fear of

[14] HM Ershad v. Bangladesh, 7 BLC (AD) 67
[15] Dewanbagi Darbar Sharif v. Bangladesh, 54 DLR

government's wrath and discrimination is affecting the free expression in press, media and everywhere. Several actions were taken against editors of various newspapers in name of political stability and law and order.

Governments took the opportunities of the ambiguities of the terms 'Law and order', 'Public interest', 'Security of the country' etc., to achieve their own political goals or to hide truths from public. Discretionary powers and its abuse: As now State transformed itself as a welfare State and state functions are increased, so discretionary powers are given to the executive authorities to meet urgency, necessity and speediness of the actions and to overcome the lengthy and complicated processes of legislature and judiciary. But often these discretionary powers are being misused and it became a practice now. In two decisions of the Appellate division, Ekushey Television Ltd. V. Dr.Chowdhury Mahmood Hasan, 54 DLR (AD) 130 and Hyundai Corporation v. Sumikin Bussan,54 DLR (AD) 88,[16] lack of transparency in the activities of the executive authority or other public functionaries was held to be a ground for interference in writ jurisdiction. The court reasoned that no public functionary acting in purported exercise of authority under any provision of law or Constitution has an unfettered discretion and therefore cannot act arbitrarily. Arbitrariness is the anti-thesis of rule of law and equality clause of article.27 of the Constitution. Weak Implementation of Separation of powers: The Bangladesh Constitution provided for separation of powers between the three organs of the State-executive, legislature and judiciary. No one organ could transgress the limits set by the constitution. Though delegated legislation is permitted, but necessary guidelines on behalf of the legislature must be provided. Abuse of power or excessive delegation and lack of checks and balances on the delegated legislations are prominent in Bangladesh which indicates that separation of powers is not implemented in practice properly.

5.2 Failure in Decentralization of Powers and Local self-government:

For the success of constitutionalization, decentralization of powers is essential. The concentration of power makes the government autocratic. With the division of power between

[16] Ekushey Television Ltd.V. Dr.Chowdhury Mahmood Hasan, 54 DLR (AD) 130 and Hyundai Corporation v.Sumikin Bussan,54 DLR (AD) 88,

the center and the provinces, the burden of the Center is reduced and the provinces get autonomy, which ultimately brings efficiency in the administration.With the introduction of local self-government, people take interest in the administrations and they give full support to the government. “The French Writer De Tocqueville has rightly said that, ‘Local institutions constitute the strength of free nations. A nation may establish a system of free governments but without municipal institutions cannot have the spirit of liberty.” (Hossain, 2005) In article 59 and 60, Bangladesh Constitution stipulated that the State shall encourage local government institutions composed of the representatives of the area concerned and that the republic shall be a democracy in which effective participation by the people through their elected representatives in administration at all levels shall be ensured. If we see the scenario of the local elections, we will understand the reality. Vote rigging or forcibly restricting supporters of opposing political parties are a regular picture of these elections. So effective participation by the people are not ensured in Bangladesh scenario and the purpose of decentralization of powers become frustrated.

5.3 Absence of Proper Independence of Judiciary:

Though in article.22 of the Constitution the independence of judiciary was incorporated from the beginning, but it was not realized. In 2007, through official gazette notification it came into force, but still this independence is not fully ensured. Without the full implementation of this, democracy or constitutionalism will remain fruitless because along with this, judicial review is linked which is the essential feature of Bangladesh Constitution. Only independence of judiciary cannot ensure justice of the people. In the research conducted by U.S based International Organization World Justice Project (WJP) in the year of 2011 among 66 countries, it was reported that the civil justice system of Bangladesh faces many problems particularly with regard to the lengthy duration of cases and corruptive practices in lower level courts, where it ranks 62nd overall and third to last among low-income countries.

5.4 Weak Rule of Law:

The preamble of the Constitution of Bangladesh states ‘rule of law’ as one of the objectives to be attained. A.V. Dicey’s concept of rule of Law included three things-

i) Absence of arbitrary power, that is, no man is above law and the persons in authority do not enjoy wide, arbitrary or discretionary powers,

ii) ii) Equality before law, that is, every man, whatever his rank or position is subject to ordinary laws and the jurisdiction of ordinary courts and

iii) iii) Individual liberties.

Though Dicey's theory has been criticized from various angles, but still his three themes remain undisputed themes of rule of Law.

Professor Wade has given three meanings of Dicey's rule of law which are as follows:

iv) i) It expresses a preference for law and order within a community rather than anarchy, warfare and constant strife,

ii) It expresses a legal doctrine of fundamental importance, namely that government must be conducted according to law and that, in disputed cases what the law requires is declared by judicial decisions and

iii) It refers to a body of political opinion about what the declared rules of law should provide in matters both of substance and of procedure.

(Islam, 2002)

Again "according to Hilaire Barnette, 'The rule of law in its many guises represents a challenge to State authority and power, demanding that powers both be granted legitimately and that their exercise is according to law. 'According to law' means both according to the legal rules and something over and above purely formal legality and imputes the concept of legitimacy and constitutionality. In its turn, legitimacy implies rightness or morality of law." (Islam, 2002)

Hilaire Barnette's conclusion represents the relation between 'Rule of law' and 'Constitutionalism' as we know the basic theme of constitutionalism is the limiting the government under constitution which is not allowed to do or enact what it wishes without reasonable or legal connotations.

"It was reiterated in Anwar Hossain Chowdhury v. Bangladesh, 1989 BLD (Spl.) 1, Para 443, that the 'Rule of Law'[17] is a basic feature of the Constitution of Bangladesh. Rule of law contemplated in Bangladesh Constitution concerns the certainty and publicity of law and its uniform enforceability and has no reference to the quality of the law." (Islam, 2002) Constitutionalism in the context of Bangladesh necessarily implies the descriptive use rather than prescriptive though the framers of Bangladesh Constitution included Article.27, 31 and the preamble and Part III to take care of the qualitative aspects of law. Independent judiciary is not only a pre-condition of constitutionalism, but also, of rule of law as earlier I mentioned that there is a strong linkage between rule of law and constitutionalism. In the absence of an independent and impartial judiciary, there is no machinery for enforcement of constitutional provisions faithfully and constitutionalism will turn into mere moral precepts which will have no effective result.

Not only that, there must be access to justice for the common people. Access to justice is meant that the cost of having recourse to the courts must be such that there is real access to the courts. Having regard to the economic situation of the common people of Bangladesh, we see that the cost of litigation in Bangladesh is high and most people cannot afford to seek remedies in courts. As there is no fixed rule about lawyering remuneration, lawyers are sucking bloods of common people on various pretexts and common people are losing their trust on legal mechanism. To ensure access to justice, it is absolutely necessary to adopt a meaningful legal aid scheme and to save common people from the greedy lawyers and their agents by a strong observation of Bangladesh Bar Council.

To understand the level of implementation of rule of law in Bangladesh, the research of the World Justice Project (WJP) will throw light to a great extent. The World Justice Project (WJP) conducted research on rule of law situation of 66 countries in the year of 2011. In the Rule of Law Index of 2011, WJP conducted research in the three largest cities of Bangladesh, namely, Dhaka, Chittagong and Khulna.

[17] "It was reiterated in Anwar Hossain Chowdhury v. Bangladesh, 1989 BLD (Spl.) 1, Para 443, that the 'Rule of Law'

Chapter-6

6.1 Suggested Policy Measures for Overcoming the Problems of Constitutionalism in Bangladesh:

1. Sound Party System should be developed. Difference in views in democratic system should not only be tolerated but it should be encouraged. In order to establish democracy and constitutionalism, the existence of strong opposition is the requisite condition to prevent transformation of the ruling party into an autocrat.

2. Constitution should be revised. All amendments against the notion of constitutionalism should be repealed such as 5th and 7th amendment.

3. Necessary conventions should be adopted to develop parliamentary culture and these should be strictly adhered to. Violation of these should be enacted as punishable offences and these should be implemented neutrally.

4. The budget for army should be fixed in such way that these do not undermine other developing sectors of the country, for example, education or poverty alleviation schemes.

5. Police or other security forces must not be given indemnity for their misuse or abuse of power. They should not be allowed for extra-judicial killings. They should not be misused in political conflicts among political parties in name of security.

6. Government should respect the spirit of constitution and proper implementation of Constitutional directions.

7. Ombudsman incorporated in article.77 of Bangladesh Constitution should be established.

8. Independence of Judiciary must be ensured to uphold citizen's rights against the actions of the government.

9. Government elections must be free from vote rigging and use of might by political parties; and local government institutions must be strengthened.

10. Constitutional interpreters should interpret constitutional issues neutrally rather than party interest basis.

11. Government's accountability must be ensured through parliament and judiciary and also by non-governmental checks.

12. To stop widespread corruption existing in the country, political parties have to come out from their traditional anti-democracy practices. Whoever is accused of corruption, must be met by legal procedures and indemnity or political influence to divert the result of investigation must be stopped. To end corruption, people should not elect the proven guilty political leader in the next election and it should be included in disqualifying factors in the local and general elections so that political leaders can maintain transparency and inherit democratic cultures in their political walks. However these barriers have to be over-come by bona fide intention of all political parties, civil society and mass people along with a well-planned structure of constitutionalization. Overall, we can say that the path of establishing constitutionalism is not a bed of roses, it is not a easy task which can be implemented over-night. But specific measures and strict implementation of measures devoid of red tape and bureaucratic influence can contribute successfully in the establishment of constitutionalism. It is not a mere theory, if we can institutionalize this theory in the context of Bangladesh, it will produce overall developments of the country in politics, economy, democracy, rule of law, better standard of living and in

others aspects which obviously will raise the image and standard of Bangladesh as a country to the world. Though Bangladesh is showing poor record in establishing constitutionalism, but still we are hopeful for a better performance of Bangladesh in this context.

6.2 Conclusion:

Though Bangladesh could not institutionalize constitutionalism yet, but it has restored democratic institutions 'the parliamentary supremacy'. The general elections have been largely free and fair. The army has not attempted to capture power despite its pervasive political influence and there is a thriving and free press. The independence of judiciary is not fully impaired. But despite these significant achievements, there are also some frustrating pictures. The constitutional mechanism of caretaker governments to conduct the election has been repealed by 15th constitutional amendment, which brought the earlier debate of ensuring fairness in conducting election and political stability of the country will be at stake because of demand for restoration of caretaker government by the opposition and refusal to accept by the government. The 15th amendment brought confusion regarding State's nature as it simultaneously adopted secularism and Islam as State religion which opened the door of more political anarchy and hardening the establishment of constitutionalism. Our politics are crippled by corrupted political parties and bureaucrats, people are unaware of their civil and political rights; even aware, they are unable to establish their rights because of lacking of political good faith of political parties. Constitution became a toy in the hands of ruling party and as a result the implementation of constitutionalism transformed into a myth. One thing must be noted that 'Constitutionalism' is a politico-legal theory which cannot be established without real supports and attempts of the political parties, government agencies and institutions, security forces and proper interpretations by the lawyers and judges. So for the sake of betterment of Bangladesh as a country, patriotism and the spirit of abiding by constitutional notions should be arisen and carried by all. Without establishing constitutionalism, democracy and rule of law will remain as unfulfilled high aspirations and that is really very sad for the people of Bangladesh who are waiting since last 42 years to establish democracy and rule of law in this region.

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