Sonargaon University

Thesis on:
Constitutionalism in Bangladesh: An Analytical Study

Submitted by

Khaleda Edib
ID No: LLM-2401030008
Semester: Spring-2025
Section: LLM0125-Tolima
Course Title: Research Monograph
Course Code: LAW-5209

Submitted to

Dr. A.S.M Tariq Iqbal
Professor
Department of Law Sonargaon University (SU)

Date of Submission: 07-07-2025

Dedicated
To
My Honorable Supervisor

Dr. A.S.M Tariq Iqbal
Professor
Department of Law
Sonargaon University (SU)

1	Cover Page	i
2	Acknowledgement	ii
3	Letter of transmittal	iii
4	Certification by the Advisor	iv
5	Declaration	v
6	Abbreviation	vi
7	Abstract	vii
8	Table of Contents	viii

Acknowledgement

First and foremost, I would like to express my deepest gratitude to the Almighty for granting me the strength, patience, and perseverance to complete this thesis titled "Constitutionalism in Bangladesh: An Analytical Study."

I am profoundly grateful to my supervisor, [**Dr. A.S.M Tariq Iqbal**, Professor, Dept. of Law, Sonargaon University], whose insightful guidance, valuable suggestions, and constant encouragement have been instrumental throughout the research process. Their expertise and thoughtful critiques enriched this work significantly.

My sincere thanks go to all the faculty members of the Department of [Department of Law], [Sonargaon University], for their academic support and encouragement during my studies.

I am also thankful to the librarians and staff of [Sonargaon University Library], as well as other institutions, for granting me access to essential resources and references.

A heartfelt appreciation is extended to my friends and classmates, especially, for their moral support and constructive discussions that helped me shape my ideas more clearly.

Last but not least, I owe special thanks to my family for their unwavering love, patience, and sacrifices. Their support has been the foundation of my academic journey.

Without the contributions and support of all these individuals, this thesis would not have been possible. At first, I would like to pay my gratitude to my lord, almighty Allah for giving the patience and strength for doing this research work.

Letter of Transmittal

To

Dr. A.S.M Tariq Iqbal
Professor
Department of Law
Sonargaon University(SU), Dhaka.

Subject: Submission of Thesis Entitled "Constitutionalism in Bangladesh: An Analytical Study"

Respected Sir,

With due respect, I am pleased to submit my thesis entitled "Constitutionalism in Bangladesh: An Analytical Study", which has been prepared as a partial requirement for the completion of my L.L.M. at Sonargaon University.

This study attempts to provide an analytical understanding of the evolution, challenges, and current state of constitutionalism in Bangladesh. I have made every effort to ensure that the research is original, well-structured, and contributes meaningfully to the academic discourse on constitutional law in Bangladesh.

I sincerely hope that you will find this work satisfactory and worthy of acceptance. I am grateful for your supervision, support, and guidance throughout the research process.

Thank you for your time and consideration.
Sincerely Yours,

Khaleda Edib
IDNo:LLM:-2401030008
Program:LLM (1 Year)
Department of Law
Sonargaon University (SU), Dhaka.

Certification by the Supervisor

This is to certified that the Research Monograph on "Constitutionalism in Bangladesh: An Analytical Study" is prepared by Khaleda Edib, ID No: LLM-2401030008 for partial fulfillment of the requirement of the Program: LLM(1Year) from Sonargaon University, Dhaka. It also certified that the research work has been carried out under my supervision and intensive guidance.

It is to be certified that this research work is original and suitable in its style and contents for submission and fulfillment of her LLM (1 Year).

Dr. A.S.M Tariq Iqbal
Professor
Department of Law
Sonargaon University (SU), Dhaka.

Declaration

I, hereby. declare that this research has been completed with my own efforts and endeavors with the utmost sincerity and honesty on my part. I do affirm that this research has not been submitted as a part for any course at this or any other institution previously. The work is entirely mine own.

Alongside, I agree to deposit this research in the University's open access institutional repository or allow the library to do so on my behalf, subject to the national copyright laws and University regulations and conditions.

I further declare that all the rules prescribed for writing the research have strictly been complied with. I will be subjected to penal action to be taken by the university in case these declarations are proved to be false.

Sincerely Yours,

Khaleda Edib
ID No: LLM-2401030008
Program: LLM (1 Year)
Department of Law
Sonargaon University (SU), Dhaka.

Abbreviations

AD	—	Appellate Division
ADC	—	Appellate Division Cases
ADR	—	Association for Democratic Rights (AIndian NGO)
BLC	—	Bangladesh Law Chronicle
BLD	—	Bangladesh Legal Decisions
BLT	—	Bangladesh Law Times
CTG	—	Caretaker Government
DLR	—	Dhaka Law Reports
EPO	—	Emergency Powers Ordinance
EPR	—	Emergency Powers Rules
FPSP	—	Fundamental Principles of State Policy
FR	—	Fundamental Rights
HCD	—	High Court Division
MP	—	Member of Parliament
PM	—	Prime Minister
SC	—	Supreme Court

Abstract

Constitutionalism in Bangladesh has evolved through a complex history marked by colonial legacies, military interventions, and democratic transitions. Scholars broadly agree that while Bangladesh has a formal constitution that enshrines the principles of democracy, rule of law, and fundamental rights, its practical implementation has been inconsistent.

Ahmed (2012) argues that constitutionalism in Bangladesh has often been undermined by the dominance of executive power and the politicization of state institutions. He highlights that repeated constitutional amendments, particularly those affecting the judiciary and election systems, have weakened the foundational principles of constitutional governance.

Moniruzzaman (2009) focuses on the cyclical pattern of military rule and its effect on the constitutional order. He contends that military regimes have often suspended or manipulated the constitution to serve their interests, leaving a legacy of constitutional instability.

Huq and Alim (2015) emphasize the role of the judiciary in upholding constitutionalism, noting both progress and setbacks. They point to landmark judgments, such as the 5th and 13th Amendment Cases, which reaffirmed the supremacy of the constitution but also exposed the vulnerability of judicial independence under political pressure.

Additionally, scholars like Riaz (2013) explore the tension between constitutional ideals and political realities. He argues that while democratic elections are held regularly, authoritarian practices and limited political tolerance hinder the development of a robust constitutional culture.

Recent literature also highlights the role of civil society and media in demanding accountability and promoting constitutional awareness. However, concerns remain about shrinking civic space and the use of legal mechanisms to suppress dissent.

In summary, the literature reveals that constitutionalism in Bangladesh is a contested and evolving concept, with legal, political, and institutional dimensions that reflect the country's turbulent political history.

TABLE OF CONTENTS

SL	Name of Contents	Page No
	Chapter- One	
	Introductory Ideas	
1.1	Introduction	9
1.2	Literature Review	9
1.3	Objectives	9
1.4	Rationale of the Study	10
1.5	Scope and Limitations of the Research	11
1.6	Methodology	12
	Chapter-Two	
	Conceptual Framework of Constitutionalism	
2.1.	Definition and Core Principles of Constitutionalism	12
2.2.	Historical and Legal Evolution in Bangladesh	14
2.3.	Constitutionalism vs. Constitutional Rule	15
2.4.	Key Dimensions of Constitutionalism in Bangladesh	16
	Chapter- Three	
	Historical Context and Constitutional Development in Bangladesh	
3.1.	Pre-Colonial and Colonial Legacy	18
3.2.	Pakistan Period (1947–1971)	18
3.3.	Post-Independence and the 1972 Constitution	19
3.4.	Military Interventions and Constitutional Disruptions (1975–1990)	19
3.5.	Democratic Transition and the 1991 Twelfth Amendment	19
3.6.	The Caretaker Government System (1996–2011)	20
3.7.	Recent Developments and Controversies (2011–Present)	
	Chapter-Four	
	The Constitution 0f 1972: Foundation of Constitutionalism	
4.1.	Historical Context and Drafting	21
4.2.	The Four Fundamental Principles	21
4.3.	Parliamentary Democracy and Separation of Powers	22
4.4.	Rule of Law and Judicial Independence	22
4.5.	Fundamental Rights and Human Dignity	22
4.6.	Supremacy of the Constitution	22
4.7.	Challenges and Early Amendments	23

Chapter-Five
Constitutional Amendments and Their Impact

5.1. 4th Amendment (1975) 25
5.2. 5th Amendment (1979) 25
53. 7th Amendment (1986) 26
5.4.8th Amendment (1988) 26
5.5. 12th Amendment (1991) 26
5.6 13th Amendment (1996) 26
5.7. 14th Amendment (2004) 26
5.8. 15th Amendment (2011) 27
5.9. 16th Amendment (2014) 27

Chapter-Six
Role of Judiciary in Upholding Constitutionalism

6.1. Guardian and Interpreter of the Constitution 25
6.2. Protection and Enforcement of Fundamental Rights 25
6.3. Upholding the Basic Structure of the Constitution 25
6.4. Preserving Judicial Independence 26
6.5. Curbing Arbitrary Power and Safeguarding Democracy 26
6.6. Judicial Role in Electoral and Democratic Processes 26

Chapter-Seven
Political Culture and Constitutional Governance

7.1. Political culture in Bangladesh 28
7.2. Nature of Political Culture in Bangladesh 28
7.3. Impact on Constitutional Governance 29
7.4. Judicial Response to Constitutional Deviations 29

Chapter- Eight
Military Interventions and Breakdown of Constitutional Orders in Bangladesh

8.1. The Assassination of Sheikh Mujibur Rahman and the 1975 Coup 33
8.2. The 1977 Coup and Subsequent Military Rule under Ziaur Rahman 33
8.3. The 1982 Coup by Hussain Muhammad Ershad 35
8.4 Breakdown of Constitutional Orders 35
8.5Impact on Bangladesh’s Political and Constitutional Development 35
8.6 Restoration Efforts: 36

Chapter Nine
Challenges to Constitutionalism in Bangladesh

9.1. Political Instability and Partisan Politics 36
9.2. Abuse of Constitutional Amendments 36
9.3. Weak Judiciary and Judicial Politicization 36
9.4. Human Rights Violations and Weak Rule of Law 36
9.5. Executive Dominance and Erosion of Parliamentary Oversight 37
9.6. Militarization and Civil-Military Relations 37
9.7. Corruption and Institutional Weakness 37
9.8. Marginalization of Minority and Vulnerable Groups 37

Chapter – Ten
Comparative Perspectives

10.1. India 38
10.2. Pakistan 39
10.3. Sri Lanka 39
10.4. Key Lessons and Best Practices for Bangladesh 40

Chapter – Eleven
Finding and Analysis

11.1 The Formal Framework of Constitutionalism Exists, but Its Practice Is Inconsistent 41
11.2 Judicial Independence: A Mixed Record 41
11.3 Constitutional Amendments Reflect Political Expediency 41
11.4 Weak Separation of Powers 42
11.5 Lack of Political Will and Democratic Culture 42
11.6 Role of Civil Society and Media 42
11.7 Public Perception and Trust Deficit 42
11.8 Summary of Key Findings 42

Chapter – Twelve
Basic Recommendations for Strengthening Constitutionalism

12.1. Safeguarding the Constitution through Judicial Doctrine 43
12.2. Strengthening Judicial Independence 43
12.3. Ensuring Free and Fair Elections 43
12.4. Promoting Separation of Powers and Checks and Balances 43
12.5. Decentralizing Governance 44
12.6. Strengthening Fundamental Rights and Civil Liberties 44
12.7. Protecting Minority Rights and Promoting Pluralism 44
12.8. Enhancing Civic Education and Constitutional Awareness 44
12.9. Reinforcing the Rule of Law and Anti-Corruption Framework 44
12.10. Protecting Constitutionalism during Emergencies 44

Chapter – Thirteen
Conclusions & Recommendations

13.1.Restore and Respect the Separation of Powers 45
13.2. Ensure Judicial Independence and Reform the Appointment Process 45
13.3. Depoliticize and Strengthen Key Constitutional Bodies 45
13.4. Protect Fundamental Rights and Civil Liberties 46
13.5.Promote Rule of Law and End Impunity 46
13.6. Foster a Constitutional Culture through Civic Education 46

Bibliography

Chapter – One
Introductory Ideas

1.1 Introduction

Constitutionalism refers to the principle that the authority of government derives from and is limited by a fundamental law — the constitution. It ensures that power is exercised within a framework of established rules and norms, safeguarding fundamental rights and promoting democratic governance. In the context of Bangladesh, constitutionalism has played a critical yet often contested role since the country's independence in 1971.

The Constitution of Bangladesh, adopted on November 4, 1972, laid the foundation for a parliamentary democracy grounded in the principles of nationalism, socialism, democracy, and secularism. It envisioned a state governed by the rule of law, with the separation of powers, judicial independence, and the protection of fundamental rights. However, the journey of constitutionalism in Bangladesh has been marred by political instability, military interventions, constitutional amendments, and challenges to the independence of the judiciary and electoral institutions.

Over the decades, successive governments have altered the constitutional landscape through frequent amendments, often prioritizing political expediency over constitutional ideals. The military regimes of the 1970s and 1980s, the reintroduction of parliamentary democracy in 1991, and subsequent political confrontations have each left significant marks on the development of constitutionalism in the country.

Despite these challenges, constitutionalism remains a vital and evolving concept in Bangladesh. It continues to shape debates on governance, the balance of powers, human rights, and democratic consolidation. Understanding the history, dynamics, and current state of constitutionalism in Bangladesh is essential for assessing the prospects for a more stable and rule-based political system.

1.2 Literature Review

Constitutionalism in Bangladesh has evolved through a complex history marked by colonial legacies, military interventions, and democratic transitions. Scholars broadly agree that while Bangladesh has a formal constitution that enshrines the principles of democracy, rule of law, and fundamental rights, its practical implementation has been inconsistent.

Ahmed (2012) argues that constitutionalism in Bangladesh has often been undermined by the dominance of executive power and the politicization of state institutions. He highlights that repeated constitutional amendments, particularly those affecting the judiciary and election systems, have weakened the foundational principles of constitutional governance.

Moniruzzaman (2009) focuses on the cyclical pattern of military rule and its effect on the constitutional order. He contends that military regimes have often suspended or manipulated the constitution to serve their interests, leaving a legacy of constitutional instability.

Huq and Alim (2015) emphasize the role of the judiciary in upholding constitutionalism, noting both progress and setbacks. They point to landmark judgments, such as the 5th and 13th Amendment Cases, which reaffirmed the supremacy of the constitution but also exposed the vulnerability of judicial independence under political pressure.

Additionally, scholars like Riaz (2013) explore the tension between constitutional ideals and political realities. He argues that while democratic elections are held regularly, authoritarian practices and limited political tolerance hinder the development of a robust constitutional culture.

Recent literature also highlights the role of civil society and media in demanding accountability and promoting constitutional awareness. However, concerns remain about shrinking civic space and the use of legal mechanisms to suppress dissent.

In summary, the literature reveals that constitutionalism in Bangladesh is a contested and evolving concept, with legal, political, and institutional dimensions that reflect the country’s turbulent political history.

1.3 Objectives of the Study:

Objectives:

1. To study the historical background and drafting process of the 1972 Constitution of Bangladesh.
2. To explore the core principles of constitutionalism and assess their presence and implementation in the Bangladeshi constitutional framework.
3. To examine significant constitutional amendments and their impact on democratic institutions.
4. To analyze landmark Supreme Court decisions relevant to constitutional interpretation and the defense of constitutional values.
5. To assess the role of political culture, civil society, and media in promoting or hindering constitutionalism.
6. To conduct a comparative study (optional) with other South Asian countries to contextualize Bangladesh's constitutional journey.
7. To suggest legal and institutional reforms to promote a more robust constitutional order.

1.4 Rationale of the Study

The Constitution of Bangladesh, adopted in 1972, represents the supreme law of the land and embodies the foundational principles of democracy, rule of law, fundamental rights, and separation of powers. However, the journey of constitutionalism in Bangladesh has been marked by periods of political instability, military rule, frequent constitutional amendments, and challenges to judicial independence and institutional integrity. These developments have significantly influenced the nature and practice of constitutional governance in the country.

Despite the constitutional promise of democracy and good governance, Bangladesh continues to face recurring challenges related to the erosion of checks and balances, politicization of constitutional institutions, and limitations in the enforcement of fundamental rights. The Constitution has been amended more than a dozen times, often in ways that have strengthened the power of the ruling party at the expense of democratic accountability. Moreover, issues such as judicial politicization, electoral controversies, and weak parliamentary oversight raise serious concerns about the state of constitutionalism.

While a number of scholars have explored specific aspects of Bangladesh's constitutional framework, there is a pressing need for a comprehensive and critical examination of how constitutionalism has evolved and how it is practiced in the contemporary context. In particular, it is important to understand the gap between constitutional ideals and institutional realities, and to assess the impact of political culture, governance practices, and judicial decisions on the development of constitutionalism.

This study is therefore justified on both theoretical and practical grounds. Theoretically, it contributes to the broader discourse on constitutionalism in post-colonial states, where constitutions often coexist with authoritarian tendencies. Practically, the research aims to inform debates on legal reform, democratic consolidation, and the strengthening of constitutional governance in Bangladesh.

By critically analyzing the historical evolution, institutional dynamics, and current challenges to constitutionalism, this study seeks to generate insights that are relevant not only for scholars and policymakers, but also for citizens seeking a more accountable and rights-based system of governance.

1.5 Scope and Limitations of the Research

The scope of my research is to verify the effectiveness of applying basic structural theory of Constitutionalism in Bangladesh. This study does not uncover specific causes behind individual land community behavioral patterns while the main focus area of this research is mainly legal responses. For this reason, many national and Indian case references have been discussed here for better understanding. In my research, I also encountered some limitations. Due to the wide scope of my research, in practice I have very little time to meet and interview constitutional experts. So, I just uses documents here, such as: in books, the Internet and various magazines/articles.

•Since the focus of this study is mainly on judicial opportunity and response in Bangladesh, based on landmark cases, I cannot cite any data from the internet because of references of Bangladesh is no there.

•In my research, the views and expressions are my own, so any deviations in this research paper will be my responsibility.

1.6 Methodology of the Study

The methodology of this research paper is primarily analytic, non- empirical and largely based on secondary literature, although to some extent I have also used primary data. Secondary sources of information are books, e-books, DLR, BLD, BLT, AIR, PLD, online case reports, journals, websites and newspapers. In doing so, of course, the Constitution was further emphasized by frequently referencing and citing 5^{th} , 7^{th} , 8^{th} and 13^{th} Amendment cases, especially Anwar Hossain Chowdhury versus Bangladesh, commonly referred to as the 8^{th} Amendment case whereby the concept to fundamental structure has been recognized in Bangladesh.

Chapter – Two

Conceptual Framework of Constitutionalism

2.1. Definition and Core Principles of Constitutionalism

Definition:

Constitutionalism is a political and legal doctrine that emphasizes the necessity of a government limited by law and operating within a framework of a constitution. It seeks to ensure that political power is exercised in accordance with established legal norms and institutional structures, rather than through arbitrary or authoritarian means.

At its core, constitutionalism embodies the idea that the authority of government derives from and is limited by a body of fundamental law — the constitution — which guarantees rights, allocates powers, and sets the rules for political governance.

Core Principles of Constitutionalism:

1. Supremacy of the Constitution:

The constitution is the highest legal authority in a state. All laws and actions of government must conform to it. Any law or act that contravenes the constitution is invalid.

2. Rule of Law:

Every individual and institution, including the government, is subject to and accountable under the law. Laws must be applied equally and fairly.

3. Separation of Powers:

Governmental power is divided among separate branches — typically the legislature, executive, and judiciary — to prevent the concentration of power and ensure a system of checks and balances.

4. Checks and Balances:

Each branch of government has powers that can limit or check the powers of the other branches. This ensures that no single branch becomes too powerful.

5. Fundamental Rights and Freedoms:

Constitutionalism guarantees the protection of individual rights and liberties, such as freedom of speech, religion, and due process, often through a bill of rights or similar provisions.

6. Judicial Independence and Review:

An independent judiciary is essential for interpreting the constitution and for reviewing the constitutionality of laws and executive actions.

7. Democratic Governance and Accountability:

Constitutionalism supports a democratic system where government officials are elected and accountable to the people, and decision-making is transparent and participatory.

8. Limited Government:

The powers of government are confined to what is granted by the constitution. Any action beyond those powers is considered unconstitutional.

9. Respect for Constitutional Norms and Culture:

Beyond the written text, constitutionalism involves adherence to democratic values, traditions, and a culture of constitutional respect and interpretation

[1]www.wickipedia.com

[2]The onstitution of Bangladesh, by Dr. Kamal Hossain

2.2. Historical and Legal Evolution in Bangladesh

1. Colonial Legacy and the Pre-Independence Period

a. British Colonial Rule (1757–1947):

- Under British rule, constitutional development was minimal and mainly designed to serve imperial interests.
- The Government of India Acts, particularly those of 1919 and 1935, introduced limited representative governance but did not establish true constitutionalism.
- The 1935 Act introduced federalism and a form of separation of powers, which would later influence constitutional structures in South Asia.

b. Pakistan Period (1947–1971):

- After the partition of India, East Bengal became East Pakistan.
- The 1956 and 1962 Constitutions of Pakistan centralized power and often undermined democratic principles.
- Political and economic discrimination against East Pakistan (present-day Bangladesh) led to rising demands for autonomy and respect for democratic rights — key elements of constitutionalism.
- The Six-Point Movement (1966) and the 1970 general elections were critical in asserting the Bengali demand for a constitutional framework based on autonomy, democracy, and federalism.

2. Birth of Bangladesh and the 1972 Constitution

a. Proclamation of Independence (1971):

- During the Liberation War, the Provisional Government of Bangladesh was formed on April 10, 1971, through the Proclamation of Independence.
- This proclamation asserted the sovereignty of the people and laid the foundation for a constitutional order based on democracy and the rule of law.

b. The Constitution of 1972:

- Adopted on November 4, 1972, and effective from December 16, 1972, this document established Bangladesh as a sovereign, socialist, secular, and democratic republic.

Core features included:

- ✓ Parliamentary democracy
- ✓ Separation of powers
- ✓ Fundamental rights
- ✓ Supremacy of the constitution
- ✓ Judicial independence

3. Challenges to Constitutionalism (1975–1990)

a. 1975 Constitutional Amendments and One-Party Rule:

- The Fourth Amendment (1975) marked a sharp departure from constitutionalism by:
- Abolishing parliamentary democracy
- Establishing a one-party presidential system (BAKSAL)
- Curtailing judicial independence and press freedom

b. Military Coups and Authoritarian Rule:

- Following the assassination of Sheikh Mujibur Rahman in August 1975, Bangladesh experienced a series of military coups and martial law regimes under Ziaur Rahman and later H.M. Ershad.
- Though some constitutional amendments were made (e.g., introducing Islam as the state religion), these regimes ruled largely by decree, undermining the rule of law and judicial independence.

[3]MD. Abdul Halim - "Constitutional Law and Politics: Bangladesh Perspective"

[4]www.gooogle.com

4. Restoration of Democracy and Constitutionalism (1991–Present)

a. Reinstatement of Parliamentary Democracy (1991):

- The Twelfth Amendment (1991) restored the parliamentary system, marking a return to democratic constitutionalism.
- It re-established the principles of legislative supremacy and a responsible executive.

b. Caretaker Government System (1996–2011):

- Introduced through the Thirteenth Amendment, the non-party caretaker government was meant to ensure free and fair elections — reflecting a constitutional innovation aimed at reinforcing democratic integrity.
- Declared unconstitutional by the Supreme Court in 2011, but allowed to continue for the sake of stability until abolished.

c. Judicial Activism and Independence:

- Landmark decisions like Secretary, Ministry of Finance v. Masdar Hossain (1999) strengthened judicial independence.
- Judicial review and the writ jurisdiction of the High Court Division have played crucial roles in promoting constitutional governance.

d. Challenges in Recent Years:

- Constitutionalism continues to face challenges from:
- Centralized executive power
- Weak checks and balances
- Restrictions on fundamental freedoms
- Politicization of institutions

The Fifteenth Amendment (2011), which abolished the caretaker government system and re-emphasized some fundamental principles, remains controversial.

2.3. Constitutionalism vs. Constitutional Rule

- Constitutional Rule: Existence of a constitution is not enough.
- Constitutionalism: Requires that the constitution governs political behavior, limits power, and is respected both in law and in practice.

[5]A History of the Constitution of Bangladesh, by Ridwanul Hoque

In Bangladesh:

- The Constitution exists and is detailed, but constitutionalism has often been weakened by:
- Political manipulation of constitutional amendments
- Weak institutional checks and balances
- Erosion of judicial independence
- Politicization of constitutional offices

2.4. Key Dimensions of Constitutionalism in Bangladesh

Dimension	Status in Bangladesh
Rule of Law	Often undermined by executive dominance and politicization of law enforcement
Separation of powers	Constitutionally mandated, but practically titled toward executive supremacy.
Judicial Independence	Mixed record- strengthened after abolition of thr Caretaker Govt., yet still vulnerable.
Fundamental Rights	Constitutionally guaranteed, but subject to restrictions and uneven enforcement.
Democratic Governance	Regular elections occur but concerns persist over fairness, transparency, and pluralism.

[6]www.google.com

[7]www.enclycopedia.com

Chapter – Three
Historical Context and Constitutional Development in Bangladesh

3.1. Pre-Colonial and Colonial Legacy

Before the advent of British colonial rule, the Indian subcontinent operated under various monarchical and religiously influenced legal systems. However, modern constitutional ideas were absent.

- British Rule (1757–1947) introduced the rule of law, common law traditions, and bureaucratic governance.
- Government of India Acts (1909, 1919, 1935) introduced limited legislative reforms and concepts of federalism and constitutional governance.

However, constitutionalism was largely alien to the people, as sovereignty remained with the British Crown.

3.2. Pakistan Period (1947–1971)

After the Partition of British India in 1947, East Bengal became East Pakistan, part of the newly created Pakistan.

- Key Features:

Disparity and discrimination between East and West Pakistan led to growing demands for autonomy.

- Constitutional Experiments:

Pakistan had no constitution until 1956, and that was later abrogated by military rule.

- 1956 Constitution was federal and parliamentary but was suspended in 1958 by Ayub Khan.
- The 1962 Constitution introduced a presidential system with centralized authority.
- Language Movement (1952) and the Six-Point Movement (1966) reflected the East's desire for constitutional recognition and autonomy.

Outcome:

Political oppression and denial of democratic representation (e.g., not allowing Sheikh Mujibur Rahman to form government after 1970 elections) led to the Liberation War in 1971.

---

8 Constitutional Development in Bangladesh: Stresses and Strains, by Dilara Chowdhury

3.3. Post-Independence and the 1972 Constitution

Following independence, Bangladesh adopted a new constitution on 4 November 1972, which came into force on 16 December 1972.

Key Features:

- Enshrined four fundamental principles: nationalism, socialism, democracy, and secularism.
- Established a parliamentary system with strong democratic institutions.
- Guaranteed fundamental rights and an independent judiciary.
- This Constitution was widely regarded as progressive and inspirational.

3.4. Military Interventions and Constitutional Disruptions (1975–1990)

The ideals of 1972 were short-lived. After the assassination of Sheikh Mujibur Rahman in 1975, the country underwent multiple constitutional disruptions:

Key Events:

- Fourth Amendment (1975): Introduced a one-party presidential system (BAKSAL), abolishing parliamentary democracy.
- Military Coups: Ziaur Rahman and later H.M. Ershad took power through coups.
- Fifth and Seventh Amendments: Provided legal cover for martial law periods.
- Gradual erosion of constitutionalism and weakening of institutions.

3.5. Democratic Transition and the 1991 Twelfth Amendment

The fall of Ershad in 1990 after a mass uprising led to:

- Free and fair elections in 1991.
- Twelfth Amendment (1991): Reinstated the parliamentary system, reasserting the sovereignty of the people.
- This period marked a significant restoration of constitutionalism and democratic governance.

3.6. The Caretaker Government System (1996–2011)

- Introduced through the Thirteenth Amendment (1996) to ensure neutral oversight of elections.
- Played a critical role in holding peaceful transitions of power.
- Abolished in 2011 through the Fifteenth Amendment, citing constitutional inconsistency, although it raised questions about electoral fairness.

3.7. Recent Developments and Controversies (2011–Present)

- ✓ Fifteenth Amendment (2011):
- Reaffirmed the supremacy of the Constitution.
- Restored secularism as a state principle.
- Abolished the Caretaker Government system.
- Judicial Activism: Increasing role of judiciary in defending the Constitution, e.g., invalidating the Fifth and Seventh Amendments.

[9] MD. Abdul Halim- "The 13th Amendment judgment: A Commentary"

[10] https://www.bdlex.com

[11] "The Imposition of Martial Law in Bangladesh,1975:A Legal Study",vol.1:1(1989) The Dhaka University Studies, Part-F, p.59. (Sheikh Hafizur Rahman Karzon, Lecturer, Department of Law Dhaka University.)

Chapter – Four

The Constitution 0f 1972: Foundation of Constitutionalism

The Constitution of 1972: Foundation of Constitutionalism in Bangladesh

The Constitution of the People's Republic of Bangladesh, adopted on 4 November 1972 and coming into effect on 16 December 1972, marked the formal beginning of constitutional governance in independent Bangladesh. This document served not only as a legal framework for the new nation but also as a manifestation of the aspirations of the people who fought a liberation war for democracy, equality, and justice. As the foundation of constitutionalism in Bangladesh, the 1972 Constitution introduced a parliamentary form of democracy, established the rule of law, and laid down fundamental rights and freedoms.

4.1. Historical Context and Drafting

Following independence in 1971, the Constituent Assembly of Bangladesh, formed from the members of the National Assembly elected in 1970 under the Pakistani regime, was tasked with drafting the Constitution. The Constitution Drafting Committee, chaired by Dr. Kamal Hossain, produced a document that reflected both universal democratic values and the specific historical experiences of Bangladesh.

Key influences:

- The Liberation War of 1971 and its ideals.
- Lessons from the failure of constitutionalism in Pakistan.
- Global constitutional models, particularly the Indian Constitution and Westminster-style parliamentary democracy.

4.2. The Four Fundamental Principles

The Preamble and Article 8(1) of the Constitution enshrined the Four State Principles, which were meant to guide all state actions and laws:

- Nationalism
- Socialism
- Democracy
- Secularism

[12] The Constitution of the People's Republic of Bangladesh-(Article142)

These were not merely political slogans but were elevated to foundational constitutional norms, shaping the identity and values of the Republic.

4.3. Parliamentary Democracy and Separation of Powers

The 1972 Constitution adopted a parliamentary form of government, where:

- The President was a ceremonial head of state.
- The Prime Minister(PM), as the head of government, was drawn from the majority party in Parliament.
- The unicameral legislature (Jatiya Sangsad) held legislative supremacy, but was expected to operate within constitutional boundaries.

This structure sought to ensure:

- Collective responsibility of the executive to Parliament.
- A clear separation of powers, particularly between the judiciary and the executive.
- Checks and balances, although these have weakened over time due to political developments.

4.4. Rule of Law and Judicial Independence

The Constitution declared Bangladesh to be a Republic based on the rule of law. Articles such as:

- Article 27 (equality before law),
- Article 31 (protection of law),
- Article 102 (judicial review powers of the High Court Division)

The judiciary was intended to be independent and impartial, with the Supreme Court given extensive powers to:

- Interpret the Constitution,
- Protect fundamental rights,
- Invalidate unconstitutional actions through judicial review.

[13]http://bdlaws.minlaw.gov.bd
[14] Haque Ridwanul- "Judicial Activism in Bangladesh : A golden mean Approach

4.5. Fundamental Rights and Human Dignity

The Constitution of 1972 provided a robust list of Fundamental Rights (Part III), including:

- Right to equality (Article 27)
- Freedom of speech, assembly, and association (Articles 37–39)
- Protection from arbitrary arrest and detention (Articles 33–35)

These rights were justifiable, meaning they could be enforced through the courts — a key indicator of aconstitutional, rights-based state. Additionally, Directive Principles of State Policy (Part II) were included to promote social justice and economic equity, although they were non-justifiable.

4.6. Supremacy of the Constitution

Article 7(1) of the Constitution establishes that:
"All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under and by the authority of this Constitution."

This clause asserts the supremacy of the Constitution — a core element of constitutionalism. It rejects arbitrary rule and establishes that all state actions must be legally and constitutionally grounded.

4.7. Challenges and Early Amendments

- While the 1972 Constitution was a landmark achievement, its spirit of constitutionalism faced early challenges:
- The Fourth Amendment (1975) abolished parliamentary democracy and introduced a presidential system and one-party rule.
- Judicial independence was compromised during authoritarian periods.
- Subsequent amendments (e.g., 5th, 7th, and 13th) either validated military rule or introduced controversial political mechanisms.

The Constitution of 1972 laid the legal and philosophical foundation for constitutionalism in Bangladesh. Its commitment to democracy, rule of law, and fundamental rights was ambitious and idealistic. However, the journey of constitutionalism in Bangladesh has been turbulent, marked by deviations, reversals, and attempts at restoration.

Yet, the enduring legacy of the 1972 Constitution lies in its vision of a democratic and rights-based state, and its role as a benchmark for judicial interpretation and political discourse even today.

[15] Oxford Advanced Learner‘s Dictionary

[16] MD Abdul Halim- “The 8thAmendment judgment: A Commentary.”

[17] Un-raveling the basic structure lof the Constitution by Saqeb Mahbub·June6,2011

Chapter – Five

Constitutional Amendments and Their Impact

Analysis of major amendments:

5.1. 4th Amendment (1975)

✓ Purpose:

- Transformed the parliamentary system into a presidential system.
- Abolished multi-party democracy and introduced one-party rule (BAKSAL).
- Restricted the independence of the judiciary and press.

✓ Impact:

- Marked a clear departure from constitutionalism and democratic governance.
- Concentrated power in the executive, eroding checks and balances.
- Set the stage for authoritarian rule and political instability.

5.2. **5th Amendment (1979)**

✓ Purpose:

- Legalized all martial law proclamations and actions between 1975–1979.

✓ Impact:

- Gave constitutional legitimacy to military regimes.
- Violated democratic principles and rule of law.
- Later declared unconstitutional by the Supreme Court in 2010, though consequences of that ruling remain contested.

5.3. 7th Amendment (1986)

✓ Purpose:

- Legalized actions under General Ershad's martial law rule (1982–1986).

✓ Impact:

- Further entrenched military influence in the Constitution.
- Reinforced the practice of legitimizing unconstitutional regimes through retrospective laws.
- Also declared unconstitutional in later judicial rulings.

[18]Constitutional Amendments in Bangladesh: A Focus on Fifth and Fifteen Amendments

5.4. 8th Amendment (1988)

- ✓ Purpose:
- Declared Islam as the state religion.
- Created permanent benches of the High Court in divisional headquarters.
- ✓ Impact:
- Contradicted the secular principle in the original Constitution.
- Intensified debates over the identity of the state.
- Critics argue it undermined the pluralist and inclusive spirit of 1972.

5.5. 12th Amendment (1991)

- ✓ Purpose:
- Reintroduced the parliamentary system after a national consensus.
- Prime Minister became the head of government; President became ceremonial.
- ✓ 5Impact:
- Restored balance of power in favor of parliamentary democracy.
- Widely considered a return to constitutional legitimacy.
- Increased role of Parliament, though later undermined by partisan practices.

5.6 13th Amendment (1996)

- ✓ Purpose:
- Introduced the Caretaker Government (CTG) system for conducting general elections.
- ✓ Impact:
- Initially ensured fair and credible elections.
- Played a crucial role in peaceful transitions of power (1996–2008).
- Later criticized for overreach during the 2007–2008 military-backed interim government.

5.7. 14th Amendment (2004)

- ✓ Purpose:
- Increased retirement age of judges.
- Allowed photographs of the President and Prime Minister in government offices.
- ✓ Impact:
- Raised concerns over personal glorification and judicial politicization.
- Reflected increasing personalization of political power.

5.8. 15th Amendment (2011)

- ✓ Purpose:
- Abolished the Caretaker Government system.
- Reinstated secularism as a state principle.
- Declared certain constitutional provisions, such as the sovereignty of the people and independence of the judiciary, as "basic structures."
- ✓ Impact:
- Highly controversial — led to political unrest and opposition boycotts of elections.
- Enhanced the idea of constitutional supremacy through "basic structure doctrine," but also arguably weakened electoral credibility.
- Restored some of the original 1972 values but in a selective and politically contested manner.

5.9. 16th Amendment (2014)

- ✓ Purpose:
- Gave Parliament the power to impeach Supreme Court judges.
- ✓ Impact:
- Raised serious concerns about the independence of the judiciary.
- Declared unconstitutional by the Supreme Court in 2017 for violating the separation of powers.

[19]Amendments of the Constitution of Bangladesh: Legislative versus Judicial

20Works by Dr. Gazi Sirazul Islam

[21]"Constitution of the People's Republic of Bangladesh"- Article 142

[22]https://www.bdlex.com

Chapter – Six

Role of Judiciary in Upholding Constitutionalism

6.1. Guardian and Interpreter of the Constitution

The judiciary functions as the guardian of the Constitution under Article 7(2), which declares that the Constitution is the supreme law of the Republic.

- ✓ Judicial Review Power

The power of judicial review is implicit in Articles 102 and 111, allowing the courts to invalidate laws or executive actions inconsistent with the Constitution.

- ✓ Case Reference:

Secretary, Ministry of Finance v. Masdar Hossain (1999) 52 DLR (AD) 82. This case established the separation of the judiciary from the executive and upheld judicial independence under Article 22.

6.2. Protection and Enforcement of Fundamental Rights

Under Article 44(1) and Article 102(1), the High Court Division has the authority to enforce fundamental rights guaranteed under Part III of the Constitution.

- ✓ Writ Jurisdiction

The High Court entertains writ petitions in the nature of habeas corpus, mandamus, prohibition, certiorari, and quo warranto to protect citizens' rights.

- ✓ Case Reference:

Aruna Sen v. Government of Bangladesh (1975) 27 DLR (HCD) 122. The Court issued a writ of habeas corpus against illegal detention, reinforcing the rule of law and individual liberty.

6.3. Upholding the Basic Structure of the Constitution

The judiciary has reinforced that certain core principles — such as rule of law, separation of powers, judicial independence, and democracy — form part of the basic structure and cannot be amended.

- ✓ Key Constitutional Amendment:

Fifth Amendment (1979): Legalized all actions taken during martial law from 1975–1979.

- ✓ Case Reference:

Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh (2010) 62 DLR (HCD) 70. The Court struck down the Fifth Amendment, declaring martial law actions unconstitutional and reaffirming the supremacy of the Constitution and civilian rule.

6.4. Preserving Judicial Independence

Judicial independence is vital for constitutionalism. Article 22 obliges the state to ensure separation of the judiciary from the executive.

- ✓ Case Reference:

Masdar Hossain Case (1999) again emphasized that the judiciary must be functionally, structurally, and financially independent.

- ✓ Key Result: Establishment of the Judicial Service Commission and separate pay commission for judges.

6.5. Curbing Arbitrary Power and Safeguarding Democracy

The judiciary checks arbitrary exercises of power by the executive or legislature through judicial activism and interpretation.

- ✓ Case Reference:

Anwar Hossain Chowdhury v. Bangladesh (1989) 41 DLR (AD) 165 – (Eighth Amendment Case). The Appellate Division declared the Eighth Amendment unconstitutional for violating the unitary character of the Constitution and independence of the judiciary, upholding the basic structure doctrine.

6.6. Judicial Role in Electoral and Democratic Processes

The judiciary ensures fair elections and legitimate governance by interpreting laws on elections, disqualifications, and parliamentary conduct.

Example:

In Election Commission matters, courts have played a supervisory role, e.g., declaring certain electoral roll practices unconstitutional.

[23] Anwar Hossain Chowdhury v. Bangladesh (1989) 41 DLR (AD) 165 – (Eighth Amendment Case).

[24] Secretary, Ministry of Finance v. Masdar Hossain (1999) 52 DLR (AD) 82.

[25] http:// www.google.law.cases

Chapter – Seven

Political Culture and Constitutional Governance

7.1. Political culture in Bangladesh

Political culture refers to the set of attitudes, beliefs, and sentiments that shape political behavior within a society. It includes the population's orientation towards political institutions, authority, and participation. In contrast, constitutional governance implies the functioning of government according to a constitution that ensures rule of law, separation of powers, fundamental rights, and accountability.

In Bangladesh, the interplay between political culture and constitutional governance is both complex and critical. While the country has a written Constitution that enshrines democratic principles, the political culture has often undermined their effective implementation.

7.2. Nature of Political Culture in Bangladesh

The political culture of Bangladesh has evolved through several phases:

a. Legacy of Authoritarianism and Military Rule

- Bangladesh's political history includes extended periods of military and autocratic rule (1975–1990), which weakened democratic institutions.
- The military-backed regimes politicized civil institutions and established a legacy of centralized authority and intolerance of dissent.

b. Partisan Polarization

- Politics in Bangladesh is dominated by intense rivalry between major political parties (notably the Awami League and the BNP).
- Political discourse often centers around mutual delegitimization, undermining consensus-building and long-term constitutional reforms.

c. Street Politics and Confrontation

- Frequent hartals (strikes), blockades, and violent protests characterize the political landscape.
- Such actions, often used to force regime change or demand early elections, bypass institutional mechanisms of accountability.

d. Low Civic Engagement and Political Patronage

- While voter turnout is relatively high, civic participation beyond elections is limited.
- A culture of patron-client relationships and corruption distorts merit-based governance and undermines institutional integrity.

7.3. Impact on Constitutional Governance

a. Undermining Rule of Law

- Political interference in the judiciary, law enforcement, and bureaucracy compromises the impartial application of laws.
- Selective enforcement of anti-corruption laws fosters public mistrust.

b. Abuse of Constitutional Amendments

- Successive governments have used constitutional amendments to consolidate power rather than protect democratic norms.

Key Example:

- Fifteenth Amendment (2011): Abolished the caretaker government system, which was originally introduced to ensure free and fair elections. This move, while legally enacted, sparked political unrest and was viewed as undermining electoral credibility.

c. Erosion of Separation of Powers

- Political dominance over Parliament, a compliant executive, and a judiciary occasionally perceived as partisan, weakens institutional checks and balances.

d. Weak Accountability Mechanisms

- Parliamentary oversight, judicial activism, and media scrutiny have often been hindered by political pressures, censorship, and fear of reprisal.

7.4. Judicial Response to Constitutional Deviations

Despite these challenges, the judiciary has occasionally asserted itself to restore constitutional order.

- ✓ Landmark Cases: Anwar Hossain Chowdhury v. Bangladesh (1989) – 8th Amendment Case:

The Appellate Division invalidated the decentralization of the High Court benches, affirming the basic structure doctrine and judicial independence.

- ✓ Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh (2010):

The Supreme Court declared the 5th Amendment (which validated martial law actions) unconstitutional, upholding constitutional supremacy.

[26]The Constitution of Bangladesh: People,Politics and Judicial Intervention

[27]Constitution,Constitutional Law and Politic: Bangladesh Perspective, by Md. Abdul Halim

[28]"The Journey of the Constitution of Bangladesh"- The Business Standard Report

7.5. Pathways to Strengthening Constitutional Governance through Political Culture

To bridge the gap between constitutional ideals and political practice, a transformation in political culture is necessary:

a. Promoting Civic Education

- A well-informed citizenry is essential for meaningful political participation and the defense of constitutional rights.

b. Institutional Reforms

- Strengthening the Election Commission, Anti-Corruption Commission, and Public Service Commission can restore trust in governance.

c. Fostering Democratic Norms Within Parties

- Internal democracy in political parties is crucial to discourage authoritarian tendencies and promote accountability.

d. Encouraging Judicial Independence

- Ensuring merit-based judicial appointments and insulating judges from political influence will enhance the credibility of constitutional adjudication.

[29]Jahangirnagar University Journal of Government and Politics

[30]The Daily Star Forum

Chapter – Eight
Military Interventions and Breakdown of Constitutional Orders in Bangladesh

Since its independence in 1971, Bangladesh has experienced multiple military interventions that severely disrupted the constitutional and democratic order. These interventions often led to the suspension or alteration of the constitution and ushered in periods of military rule or military-backed governments.

Key Military Interventions in Bangladesh

8.1. The Assassination of Sheikh Mujibur Rahman and the 1975 Coup

- Date: August 15, 1975
- Event: The founding father and first President of Bangladesh, Sheikh Mujibur Rahman, was assassinated along with most of his family members by a group of army officers.

Constitutional Impact:

- The coup marked the breakdown of the original 1972 Constitution, which was based on democracy and secularism.
- Military officers placed Khondaker Mostaq Ahmad as President, leading to a shift from the original constitutional ideals.
- Martial law was imposed informally, though the constitution was never formally suspended immediately.
- Aftermath: This coup led to a period of political instability and opened the door for military dominance in politics.

8.2. The 1977 Coup and Subsequent Military Rule under Ziaur Rahman

- Date: November 7, 1975 (combined with earlier coups) and later consolidation in 1977
- Event: After a series of coups and counter-coups, Major General Ziaur Rahman emerged as the de facto leader and formally assumed the presidency.

Constitutional Impact:

- Ziaur Rahman introduced amendments to the constitution (the 5th Amendment) legitimizing martial law rule and the changes made during military rule. He introduced a multi-party system and revived political activities but under military-backed authoritarianism. The role of the military was institutionalized in politics during his rule.

8.3. The 1982 Coup by Hussain Muhammad Ershad

- Date: March 24, 1982
- Event: Lieutenant General Hussain Muhammad Ershad staged a bloodless coup, overthrowing the civilian government of President Abdus Sattar.

Constitutional Impact:

- Ershad suspended the constitution and declared martial law.
- Parliament was dissolved, and all political parties were banned initially.
- The constitution was later amended (8th Amendment) to legitimize his rule and extend presidential powers.
- Ershad ruled Bangladesh as a military dictator until 1990.

8.4 Breakdown of Constitutional Orders

- Each military intervention led to a breakdown of constitutional order, including:
- Suspension or abrogation of constitutional provisions.
- Imposition of martial law and military decrees overruling civilian laws.
- Curtailment of fundamental rights, political freedoms, and judiciary independence.
- Rewriting or amending the constitution to legitimize military rule.

8.5Impact on Bangladesh's Political and Constitutional Development

- Weakening of Democratic Norms: Military takeovers undermined the practice and institutions of parliamentary democracy.
- Political Instability: The repeated interruptions disrupted political continuity and democratic consolidation.
- Military Influence in Politics: Military became a dominant political actor, setting a precedent for political interference.
- Constitutional Amendments: Amendments made under military regimes often entrenched authoritarian rule and altered the original spirit of the 1972 Constitution.

[31]Crisis in Governance: Military Rule in Banladesh during 2007-8 by Mukhlesur rahman Chowdhury

[32]Bangladesh Politics: Problems and Issues

8.6 Restoration Efforts:

- Popular uprisings and mass movements (especially in 1990) eventually forced the military rulers to restore civilian governments and democratic processes.
- Since 1991, Bangladesh has maintained a civilian government with periodic challenges but no direct military rule.

Military interventions in Bangladesh have historically led to the breakdown of constitutional order by suspending democratic institutions, imposing martial law, and altering constitutional frameworks to legitimize military dominance. While these interventions disrupted democracy and rule of law, popular movements have repeatedly pushed for restoration of civilian rule and constitutional governance.

[33]Oxford Research Encyclopedia of Politics

[34]NDCJ(National Defence College Journal)

[35]Muhammad Mustafa Kamal- "Bangladesh Constitution: Trends and Issues"

[36]https://definitions.uslegal.com

Chapter – Nine

Challenges to Constitutionalism in Bangladesh

9.1. Political Instability and Partisan Politics

- Frequent regime changes and confrontational politics between major parties (e.g., Awami League and BNP) have led to constitutional manipulations for political gain.
- Election boycotts, street violence, and mistrust in electoral processes undermine democratic institutions and the rule of law.
- Constitutional amendments often reflect partisan interests rather than broader democratic values.

9.2. Abuse of Constitutional Amendments

- The Constitution of Bangladesh has been amended numerous times (20+), often without sufficient public consultation or debate.

Key examples:

- The Fourth Amendment (1975) centralized power by introducing a presidential system and banning opposition.
- The Fifteenth Amendment (2011) abolished the non-party caretaker government system, raising concerns about fair elections.

These changes have often weakened checks and balances and concentrated power in the executive.

9.3. Weak Judiciary and Judicial Politicization

- Although the Constitution guarantees judicial independence, in practice, the judiciary is often perceived as influenced by the executive.
- Appointments and promotions in the higher judiciary are often criticized for lacking transparency and being politically motivated.
- The delay in justice delivery and judicial backlog also affect public trust in constitutional remedies.

9.4. Human Rights Violations and Weak Rule of Law

- Enforced disappearances, custodial deaths, and restrictions on freedom of speech and press have been reported by domestic and international watchdogs.
- Institutions like the Bangladesh Human Rights Commission often lack the power or will to act independently.

- Constitutional protections are often undermined by security laws such as the Digital Security Act, which curtails fundamental freedoms.

9.5. Executive Dominance and Erosion of Parliamentary Oversight

- The executive, particularly the Prime Minister's Office, holds disproportionate power, marginalizing the legislature.
- Parliamentary debates are limited, and opposition voices are often suppressed, reducing the legislature's role in scrutinizing laws and policies.
- Bureaucratic centralization and politicization weaken accountability mechanisms.

9.6. Militarization and Civil-Military Relations

- While the military is under civilian control constitutionally, its growing influence in civilian affairs (e.g., infrastructure, law enforcement) raises concerns about democratic norms.
- Past military coups and interim governments (e.g., 2007-08 caretaker government backed by the military) disrupted constitutional order.

9.7. Corruption and Institutional Weakness

- Corruption in politics, judiciary, and administration erodes the rule of law and undermines constitutionalism.
- Institutions like the Anti-Corruption Commission (ACC) are seen as ineffective or politically biased.
- Lack of transparency and accountability in governance weakens the constitutional mandate of institutions.

9.8. Marginalization of Minority and Vulnerable Groups

- Ethnic, religious, and indigenous minorities often face discrimination and exclusion despite constitutional guarantees of equality.
- The Rohingya crisis and the treatment of other minorities reveal gaps in constitutional protection and enforcement.

[37]The Constitution of the People's Republic of Bangladesh-(Article142)

[38]The Judgment has concerns but no solution; DailyProthomAlo24-09-12.

[39]An Analysis of the Supreme Court Judgment on the Fifth Amendment..(Wali-(Wali-ur Rahman: Director of the Bangladesh Institute of Law and International Affairs

Chapter – Ten

Comparative Perspectives

10.1. India

a) Key Features:

- Strong commitment to constitutionalism through a comprehensive, detailed Constitution since 1950.
- Independent judiciary, especially the Supreme Court, plays a proactive role in safeguarding the Constitution.
- Basic Structure Doctrine prevents Parliament from amending the Constitution in ways that undermine its core principles.
- Vibrant civil society and free press reinforce democratic accountability.

b) Challenges:

- Allegations of executive overreach judicial delays.
- Rising concerns over freedom of speech and secularism.

c) Similarities with Bangladesh:

- Common legal heritage and constitutional structure
- Both adopted parliamentary systems and detailed Bills of Rights

d) Contrasts:

- Indian judiciary is relatively more independent and assertive
- Indian constitutional amendments usually follow broader consultation and judicial limits (e.g., Basic Structure Doctrine)
- Political pluralism is more institutionalized in India

e) Lesson for Bangladesh: Judicial doctrine (e.g., basic structure) can safeguard core values from political overreach.

[40]Seervai H.M., "ConstitutionalLawofIndia,4thed.UniversalBookTraders,Delhi, 1996, vol.3;p. 3109"

[41]Sankari Prasad Singh Deov. Union of India,AIR 1951 SC 458

[42]IndiraNehruGandhiV.RajNarain,AIR1975SC2299

10.2. Pakistan

a) Key Features:

- Constitution of 1973 provides for parliamentary democracy and fundamental rights.
- Frequent military interventions and constitutional suspensions have disrupted democratic continuity.
- Judiciary has a mixed record—sometimes complicit with authoritarianism (e.g., validation of martial law), though showing recent assertiveness.

b) Challenges:

- Civil-military imbalance, weak parliamentary institutions.
- Religious influence in constitutional matters has limited secular constitutionalism.

c) Similarities with Bangladesh:

- Shared history until 1971; both faced martial law regimes
- Politicized judiciary and fragile democratic institutions

d) Contrasts:

- Bangladesh has gradually reasserted civilian rule, while Pakistan remains vulnerable to military dominance
- Bangladesh abolished its caretaker system; Pakistan continues with judicial oversight in elections

e) Lesson for Bangladesh: Civil-military balance and judicial independence remain essential for democratic consolidation.

10.3. Sri Lanka

a) Key Features:

- Initially had a Westminster-style constitution; later shifted to a presidential system.
- The 1978 Constitution centralized executive power; recent amendments have alternately expanded and curtailed presidential authority.
- 21st Amendment (2022) attempted to rebalance power and reduce authoritarian tendencies.

b) Similarities with Bangladesh:

- Centralization of power and weakened parliamentary oversight
- Periods of democratic backsliding

c) Contrasts:

- Sri Lanka's constitution has entrenched presidentialism
- Ethnic conflict has significantly influenced Sri Lankan constitutional politics

d) Lesson for Bangladesh: Inclusive constitutionalism is essential to maintain national unity and democratic legitimacy.

10.4. Key Lessons and Best Practices for Bangladesh

Area	Best Practice	Recommended Action
Judicial Independence	India's Supreme Court activism and Basic Structure Doctrine	Introduce judicial reforms for transparency in appointments
Civil-military Relations	Civilian control in India, problematic in Pakistan	Ensure military remains under constitutional civilian oversight
Executive power	Sri Lanka's experience shows dangers of presidential centralization	Maintain balance between executive, legislative, and judiciary
Minority Rights	India and Sri Lanka offer cautionary tales	Enhance constitutional protections and enforcement for minorities
Constitutional Amendments	Frequent misuse in Pakistan and Sri Lanka; India provides better restraint	Ensuring guard against the judicial legitimization of un-constitutional regimes.
Civic Space and Media Freedom	India has vibrant media; shrinking space in Pakistan	Ensure utmost media freedom at the same time ensuring credibility and accountability
Electoral Integrity	India's Election Commission in robust	Strengthen the Election Commission's independence, budget, and enforcement authority

43Hamid Khan- " Constitutional and Political History of Pakistan "

44M.L. Maeasinghe- " The Evolution of Constitutionalism in Sri Lanka"

45www.duhaime.org>legal Dictionary

46https://definitions.uslegal.com

47http://bdlaws.minlaw.gov.bd

Chapter – Eleven

Finding and Analysis

11.1 The Formal Framework of Constitutionalism Exists, but Its Practice Is Inconsistent

Bangladesh's Constitution, adopted in 1972, is a comprehensive document that incorporates the principles of constitutionalism, including:

- Rule of Law
- Separation of Powers
- Fundamental Rights
- Checks and Balances

However, while the framework remains intact, its application has often been undermined by political interference, weak institutional culture, and a dominant executive branch.

11.2 Judicial Independence: A Mixed Record

The judiciary in Bangladesh has shown signs of both strength and vulnerability:

- Strengths:

Important judgments like the Fifth Amendment Case (2005) and Seventh Amendment Case (2010) reaffirmed constitutional supremacy. The judiciary has occasionally played an activist role in defending rights.

- Weaknesses:
  - Appointment processes remain politicized.
  - Executive interference and inconsistent enforcement of judgments remain major concerns.

11.3 Constitutional Amendments Reflect Political Expediency

- Several constitutional amendments have been passed not to strengthen democracy but to serve the political interests of ruling parties:
- The Fifth and Eighth Amendments distorted secular principles.
- The Thirteenth Amendment (introducing the caretaker government) was abolished through the Fifteenth Amendment, leading to contested elections.
- Frequent amendments without broader consensus have weakened constitutional stability.

[48]" A History of the Constitution of Bangladesh: The Founding, Development and Way Ahead"- Routeledge

11.4 Weak Separation of Powers

In practice, the separation of powers has been heavily skewed:

- The executive dominates both the legislature and, at times, the judiciary.
- The parliament rarely exercises oversight effectively due to majority party dominance.
- The bureaucracy often acts as an extension of the executive, reducing checks and balances.

11.5 Lack of Political Will and Democratic Culture

The analysis shows that constitutionalism has been hindered by:

- A winner-takes-all political mentality.
- Lack of intra-party democracy and absence of long-term institutional vision.
- Frequent boycotts of parliament, election-related violence, and suppression of dissent.

11.6 Role of Civil Society and Media

- While civil society and the media have played a significant role in promoting constitutional awareness and accountability, their influence is shrinking due to legal restrictions, harassment, and censorship (e.g., Digital Security Act).
- Independent voices are increasingly under threat, further weakening the democratic checks.

11.7 Public Perception and Trust Deficit

- Public trust in constitutional institutions—particularly the judiciary, parliament, and the election commission—is alarmingly low. Citizens perceive:
- Selective enforcement of laws.
- Inequality before the law, especially when political affiliations are involved.
- Elections lacking credibility, damaging the legitimacy of elected governments.

11.8 Summary of Key Findings

Area	Observation
Legal Framework	Strong on paper, weak in practice
Judiciary	Legally independent, practically compromised
Legislature	Lacks meaningful oversight note
Executive	Overpowered and centralized
Amendments	Politically motivated
Public Trust	Low and declining
Media and Civil Society	Vibrant but increasingly restricted
Political Culture	Confrontational and authoritarian tendencies

49”Dhaka University Law Journal”

Chapter – Twelve

Basic Recommendations for Strengthening Constitutionalism

12.1. Safeguarding the Constitution through Judicial Doctrine

- Adopt a Basic Structure Doctrine: Empower the judiciary to identify and preserve the inviolable core of the Constitution—such as democracy, rule of law, separation of powers, and secularism—similar to India.
- Ensure Constitutionality of Amendments: Require judicial review of constitutional amendments that affect fundamental state principles.

12.2. Strengthening Judicial Independence

- Reform Judicial Appointments: Establish an independent Judicial Service Commission to oversee transparent and merit-based appointments, promotions, and transfers.
- Revive and Empower the Supreme Judicial Council: Reinforce mechanisms for judicial accountability without undermining independence.
- Protect Judges from Executive Pressure: Ensure security of tenure, financial autonomy, and institutional insulation of the judiciary.

12.3. Ensuring Free and Fair Elections

- Reinstate a Non-Partisan Caretaker or Interim Election Mechanism: Or, at minimum, reform electoral procedures to ensure neutrality and public confidence.
- Strengthen the Election Commission: Grant constitutional status, independent budgetary control, and enforceable regulatory powers.

12.4. Promoting Separation of Powers and Checks and Balances

- Curtail Executive Overreach: Limit the concentration of power in the Prime Minister's Office by empowering Parliament and constitutional bodies.
- Revise Parliamentary Oversight: Strengthen parliamentary committees and opposition participation in law-making and accountability functions.

[50]Constitutional Identity in Bangladesh by Ridwanul Hoque

[51]Constitutionalism and Governance in Bangladesh by Palgrave Macmillan

12.5. Decentralizing Governance

- Constitutionalize Local Government: Ensure financial, administrative, and political autonomy of local institutions (e.g., Upazila Parishads).
- Implement Fiscal Federalism: Allocate revenues constitutionally to local bodies to prevent over centralization.

12.6. Strengthening Fundamental Rights and Civil Liberties

- Amend or Repeal Repressive Laws: Reform the Digital Security Act, Special Powers Act, and similar laws to align with international human rights norms.
- Guarantee Media Freedom: Protect journalists from censorship, harassment, or criminal prosecution.
- Expand Access to Justice: Institutionalize Public Interest Litigation and increase legal aid services.

12.7. Protecting Minority Rights and Promoting Pluralism

- Ensure Constitutional Guarantees for Minorities: Recognize cultural, linguistic, and religious diversity within the constitutional framework.
- Strengthen Anti-Discrimination Laws: Adopt specific legal protections for religious and ethnic minorities (e.g., Hindus, Buddhists, Christians, Indigenous peoples).

12.8. Enhancing Civic Education and Constitutional Awareness

- Integrate Constitutional Literacy in Education: Include civic education in school curricula to promote democratic values.
- Public Campaigns: Launch public awareness initiatives to inform citizens about their rights, duties, and constitutional principles.

12.9. Reinforcing the Rule of Law and Anti-Corruption Framework

- Strengthen Anti-Corruption Bodies: Ensure independence, transparency, and accountability of the Anti-Corruption Commission (ACC).
- Depoliticize Law Enforcement: Establish oversight mechanisms to prevent arbitrary arrests and misuse of state agencies.

12.10. Protecting Constitutionalism during Emergencies

- Restrict Emergency Powers: Amend constitutional provisions to prevent abuse of emergency declarations and ensure proportionality and judicial oversight.
- Maintain Fundamental Rights: Limit suspension of rights during emergencies to only those strictly necessary under international human rights standards

[52]Strengthening the National Human Rights Commission of Bangladesh- Bangladesh Journal Onlin

Chapter – Thirteen

Conclusions & Recommendations

This analytical study of constitutionalism in Bangladesh reveals a narrative of both promise and paradox. While the Constitution of 1972 embodies the ideals of democracy, fundamental rights, and separation of powers, the practical implementation of constitutionalism has often diverged from these principles. Political instability, authoritarian tendencies, and frequent constitutional amendments—sometimes driven by partisan interests—have tested the resilience of constitutional governance.

Constitutionalism in Bangladesh has undergone a complex and dynamic evolution since the country's independence in 1971. While the Constitution of 1972 laid a strong foundation for democratic governance, rule of law, and fundamental rights, the journey of constitutionalism has been marked by significant challenges—including military interventions, constitutional amendments that altered the balance of power, and the politicization of constitutional institutions.

Despite these obstacles, constitutionalism in Bangladesh continues to survive through the resilience of civil society, judicial activism, and periodic democratic transitions. However, its consolidation requires unwavering commitment to constitutional norms, institutional independence, and democratic accountability. Strengthening constitutionalism in Bangladesh is not merely a legal project but a political and societal imperative that demands respect for pluralism, inclusive governance, and the rule of law. Only through such efforts can the Constitution function as a living document that genuinely reflects and protects the aspirations of the people.

However, the study also highlights moments of progress: the restoration of democratic processes, growing public awareness of constitutional rights, and key judicial interventions that have sought to uphold the Constitution's supremacy. These developments signal the potential for a more mature and stable constitutional culture.

To realize the full promise of the Constitution of 1972 and uphold the principles of constitutionalism — such as the rule of law, separation of powers, and fundamental rights — Bangladesh must undertake comprehensive reforms at the legal, institutional, and societal levels. Below are key suggestions for strengthening constitutionalism in the country:

13.1. Restore and Respect the Separation of Powers

- Reinforce the autonomy of Parliament by empowering lawmakers to hold the executive accountable, including reforming Article 70, which currently prohibits floor-crossing and stifles dissent within Parliament.
- Ensure genuine legislative oversight through functional parliamentary committees, regular debates, and transparency in governance.
- Clearly delineate the powers and functions of the executive, legislature, and judiciary to prevent the overreach of any single branch.

13.2. Ensure Judicial Independence and Reform the Appointment Process

- Establish an independent and transparent judicial appointment commission to reduce executive influence over the judiciary.
- Fully implement the directives of the Masdar Hossain case to ensure administrative and financial independence of the judiciary.
- Protect judges from political retaliation and ensure their security and dignity to encourage impartial rulings.

13.3. Depoliticize and Strengthen Key Constitutional Bodies

- Ensure that institutions such as the Election Commission, Public Service Commission, and Anti-Corruption Commission are staffed with individuals of high integrity through a transparent, merit-based process.
- Enact legal safeguards to insulate these bodies from political interference.
- Provide adequate resources, training, and independence to enhance their efficiency and public credibility.

13.4.Protect Fundamental Rights and Civil Liberties

- Repeal or amend laws that curtail civil liberties, such as the Digital Security Act 2018, to bring them in line with constitutional guarantees of freedom of speech, expression, and assembly.
- Strengthen the role of the National Human Rights Commission to monitor and act against rights violations effectively.
- Encourage a free and independent media as a watchdog for government accountability.

a) Reform the Electoral Process

- Re-establish mechanisms, possibly a reformed non-partisan interim administration, to ensure free, fair, and participatory elections.

- Strengthen the independence and capacity of the Election Commission to enforce electoral laws impartially.
- Promote voter education and transparency in electoral financing to build trust in democratic processes.

b) Introduce a Balanced Amendment Process

- Reform the process of constitutional amendment to require broader political consensus and, where appropriate, public consultation or referenda.
- Prevent the use of constitutional amendments as tools for partisan advantage or regime entrenchment.

13.5. Promote Rule of Law and End Impunity

- Strengthen mechanisms for legal accountability of state officials, especially in cases of human rights abuses and corruption.
- Ensure that law enforcement agencies operate within constitutional and legal boundaries, with appropriate judicial and civilian oversight.
- Expand access to justice for marginalized and disadvantaged communities through legal aid and grassroots legal awareness programs.

13.6. Foster a Constitutional Culture through Civic Education

- Introduce constitutional literacy programs in schools, universities, and public institutions to raise awareness of constitutional rights and duties.
- Encourage civil society engagement in governance and legal reform initiatives.
- Promote a political culture of tolerance, dialogue, and respect for democratic institutions and processes

[53]Thudicialization of Politics In Bangladesh(Chapter 9)

[54]Sage Journals

[55]Cambridge University Press and Assessment

[56]Hamid Khan- " Constitutional and Political History of Pakistan "

[57]M.L. Maeasinghe- " The Evolution of Constitutionalism in Sri Lanka"

[58]Muhammad Mustafa Kamal- "Bangladesh Constitution: Trends and Issues"

[59]Haque Ridwanul- "Judicial Activism in Bangladesh : A golden mean Approach

[60] http:// www.google.law.cases

Bibliography

Books:

1. Kamal Hossain- " The Constitution of Bangladesh "
2. MD. Abdul Halim - "Constitutional Law and Politics: Bangladesh Perspective"
3. MD. Abdul Halim- "The 13th Amendment judgment: A Commentary".
4. MD Abdul Halim- "The 8thAmendment judgment: A Commentary."
5. Mahmudul Islam- " Constitutional Law of Bangladesh,"
6. MD Abdul Halim- " Constitutional Law and Politics: Bangladesh Perspective"
7. Dilara Chowdhury- " Constitutional Development in Bangladesh: Stresses and Strains "
8. M. Jashim Ali Chowdhury- " An Introduction to The Constitutional Law of Bangladesh"
9. Seervai H.M., "ConstitutionalLawofIndia,4thed.UniversalBookTraders,Delhi, 1996, vol.3;p. 3109"
10. Hamid Khan- " Constitutional and Political History of Pakistan "
11. M.L. Maeasinghe- " The Evolution of Constitutionalism in Sri Lanka"
12. Muhammad Mustafa Kamal- "Bangladesh Constitution: Trends and Issues"
13. Haque Ridwanul- "Judicial Activism in Bangladesh : A golden mean Approach

Cases:

1. Anwar Hossain Chowdhury V. Bangladesh1 989 BLD (spl)1
2. Secretary, Ministry of Finance v. Masdar Hossain (1999)
3. Aruna Sen v. Government of Bangladesh (1975) 27 DLR (HCD) 122
4. Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh (2010) 62 DLR (HCD) 70
5. Masdar Hossain Case (1999)

6. BangladeshVs.BangladeshItalianMarbleWorksLtd.Andothers,2011 ,40CLC (AD)
7. Siddique Ahmed V. Bangladesh 2010 39 CLC (HCD)
8. Sankari Prasad Singh Deov. Union of India,AIR 1951 SC 458
9. IndiraNehruGandhiV.RajNarain,AIR1975SC2299

Additional Materials:

1. Oxford Advanced Learner's Dictionary
2. The Constitution of the People's Republic of Bangladesh-(Article142)
3. The Judgment has concerns but no solution; DailyProthomAlo24-09-12.
4. An Analysis of the Supreme Court Judgment on the Fifth Amendment..(Wali-ur Rahman: Director of the Bangladesh Institute of Law and International Affairs
5. Constitutional Amendment in India:An Analytical Reconsideration of the Doctrine of

   _Basic Structure' SanjitKr.Chakraborty29
6. "The Imposition of Martial Law in Bangladesh,1975:A Legal Study",vol.1:1(1989) The Dhaka University Studies, Part-F, p.59. (Sheikh Hafizur Rahman Karzon, Lecturer, Department of Law Dhaka University.)
7. Un-raveling the basic structure ‖of the Constitution by Saqeb Mahbub·June6,2011

Websites:

- www.wikipedia.com.info
- http:// www.google.law.cases
- https://www.law.cornwll.edu
- https://www.bdlex.com
- https://guides.loc.bd