

Constitutional Reform in Bangladesh

August 2024

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Overview



Overview

Bangladesh stands at a pivotal moment in its quest for genuine democracy. The recent student-led protests, culminating in the removal of Prime Minister Sheikh Hasina¹, have initiated a transformative period, often referred to as the “second liberation.”²

With Nobel Peace Laureate Muhammad Yunus now serving as the interim leader³, there is renewed hope for a nation long plagued by political repression and human rights violations. However, the success of this transitional phase hinges on the immediate implementation of essential reforms in the security sector, judiciary, and, most importantly, the Constitution.⁴

Delaying these reforms until a democratically elected government assumes power risks perpetuating the cycles of corruption and authoritarianism that have afflicted Bangladesh for decades.

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Historical Context

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The advent of British rule in the 18th century disrupted centuries of governance developed by South Asian empires. The Regulating Act of 1773⁵, passed by the Parliament of the United Kingdom, was the first basic law in the Bengal Presidency.

However, the British Empire did not grant universal suffrage or establish democratic institutions in its colonies. Over time, the British made concessions for home rule, enacting laws such as the Government of India Act 1858⁶, the Indian Councils Act 1861⁷, and the Government of India Act 1935⁸, which eventually laid the groundwork for provincial parliaments. Despite these developments, British India remained under colonial rule until independence movements gained momentum.

In 1940, the Lahore Resolution, supported by the first Prime Minister of Bengal, called for the grouping of “independent states” in the Northwestern and Eastern Zones of British India. This resolution, akin to the Magna Carta in

Pakistan, emphasised the need for constitutional safeguards for minorities⁹.

However, the partition of Bengal in 1947¹⁰ and the subsequent creation of Pakistan led to complex political dynamics, including the establishment of separate electorates and provincial parliaments.

Union with Pakistan

Following the partition, the Government of India Act 1935, with certain amendments, served as the working Constitution of the Dominion of Pakistan. The Bengali Language Movement and the demands for substituting separate electorates with universal suffrage were pivotal issues in East Bengal. In 1954, the Governor-General arbitrarily dissolved the first Constituent Assembly.¹¹

This action prompted a legal challenge in the case of *Maulvi Tamizuddin Khan v Federation of Pakistan*¹², in which the Federal Court upheld the Governor-General’s decision, although Justice A.



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Historical Context continued...

R. Cornelius dissented. However, the dissolution of the first constituent assembly in 1954 by the Governor General marked one of the first major blows to democracy in Pakistan.

The Constitution of Pakistan of 1956¹³ declared East and West Pakistan as separate provinces, with Urdu and Bengali as federal languages. However, the military coup led by General Ayub Khan in 1958 and the introduction of the 1962 Constitution shifted Pakistan towards a presidential system, significantly curtailing parliamentary democracy.

The Six Points of Sheikh Mujibur Rahman¹⁴, which demanded parliamentary democracy, became a central platform for the Awami League, leading to its overwhelming victory in the 1970 general election. The refusal of the Pakistani military junta to transfer power triggered the Bangladesh War of Independence in 1971.

A New Beginning

The Provisional Government of Bangladesh issued the Proclamation of Independence on 10 April 1971¹⁵, serving as the interim first Constitution of Bangladesh. This document declared “equality, human dignity and social justice” as the fundamental principles of the republic.

After the war, a Constituent Assembly was formed, and the Constitution Drafting Committee, chaired by Dr. Kamal Hossain, prepared the new Constitution.¹⁶ The Constitution, enacted on 4 November 1972, established a Westminster-style political system and enshrined fundamental human rights, including freedom of speech, religion, and movement.

However, the initial years of the new nation were marred by political challenges. The Awami League government, after winning the 1973 general election, enacted several constitutional amendments that gradually eroded democratic principles.

The most drastic change came in January 1975, when a one-party state was introduced, and the judiciary’s independence was curtailed. The assassination of President Sheikh Mujibur Rahman on 15 August 1975 led to the suspension of constitutional rule and the imposition of martial law.



Restoration and Reform

The period between 1975 and 1991 was marked by military rule and the gradual erosion of constitutional governance. However, the pro-democracy uprising in 1990, which led to the ousting of President Ershad, ushered in a new era of parliamentary democracy. The Twelfth Amendment, passed by the fifth parliament, re-established parliamentary government and amended key articles of the Constitution.¹⁷ However, the amendment also restricted the voting freedom of MPs, leading to concerns about the concentration of power in the Prime Minister’s office.

In 2010, the Supreme Court of Bangladesh ruled that the Fifth Amendment of 1979, which had removed clauses related to secularism, was unconstitutional.

3



The Constitution Of Bangladesh

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The Constitution Of Bangladesh

The Constitution of Bangladesh establishes the nation as a unitary republic with Islam as the state religion, while ensuring equal rights for all religions¹⁹. Bangla is designated the state language, and Dhaka serves as the capital²⁰. The Constitution holds supremacy, nullifying any laws that conflict with its provisions.²¹

Fundamental state principles include nationalism, socialism, democracy, and secularism²². The state is committed to providing free and compulsory education, protecting the environment, promoting gender equality, preserving cultural heritage, and supporting international peace.²³

The Constitution guarantees fundamental rights such as equality before the law, protection against discrimination, and personal freedoms including speech, assembly, movement, religion, and property ownership²⁴. The Supreme Court is empowered to enforce these rights, ensuring judicial oversight.²⁵

The executive branch is headed by a ceremonial President, who acts on the advice of the Prime Minister²⁶. The Prime Minister, as the head of government, holds executive authority and leads the Cabinet.²⁷

Additionally, the Constitution allows for democratically elected local governments and designates the President as the Commander-in-Chief of the defence services.²⁸

Legislative power is vested in the unicameral Parliament, known as the Jatiya Sangsad, which consists of 300 elected members and 50 reserved seats for women²⁹. The legislative process includes the President's assent to bills and management of financial procedures.³⁰

The judiciary is composed of the Supreme Court, including the Appellate and High Court Divisions, ensuring independence³¹. Lower courts operate under the Supreme Court's supervision, and Parliament can establish administrative tribunals.³²

Elections are managed by an independent Election Commission, responsible for conducting elections and maintaining the electoral roll³³. The Comptroller and Auditor General audits public accounts and reports to Parliament.³⁴

Public service employment is regulated, covering appointments, tenure, and dismissals.³⁵ The Constitution outlines the amendment process and includes various miscellaneous provisions.³⁶

It upholds freedom of religion, promotes secularism, and prohibits religious discrimination³⁷. Judicial review is facilitated through Article 102 and related provisions, allowing courts to examine laws and state actions, supported by a robust system of checks and balances.³⁸

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**The Fifteenth
Amendment**

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The Fifteenth Amendment

The **Fifteenth** Amendment, enacted in 2011 during Sheikh Hasina's second term as Prime Minister of Bangladesh, has had a profound and largely detrimental impact on the country's democratic fabric and the fundamental rights of its citizens. This controversial amendment rendered over 50 articles of the Constitution unamendable, effectively blocking any future legislative changes to a significant portion of the nation's fundamental laws.³⁹

This decision stands in stark contrast to a 1998 ruling by Bangladesh's Appellate Division during Hasina's first term. The court, in *Shariar Rashid Khan versus Bangladesh*,⁴⁰ explicitly stated that no legislature has the authority to bind its successors by making laws that are unamendable or irrevocable. The verdict asserted that such actions exceed the legislative powers conferred upon a parliament, as one parliament cannot limit the legislative authority of subsequent parliaments.

The **Fifteenth** Amendment also abolished the non-partisan caretaker government system, which had previously served as a critical mechanism for ensuring free and fair elections.⁴¹ The very existence of the current interim government – let alone exercising power to amend the constitution – is unconstitutional in and of itself. The unamendable provisions introduced by this amendment include fundamental principles of state policy and citizens' rights, which are now frozen in time and resistant to necessary updates.

For instance, while education remains a non-fundamental right in Bangladesh, any future government that might wish to elevate it to a fundamental status, similar to India's constitutional evolution in 2002⁴², is now blocked from doing so. This restriction also applies to potential reforms in areas such as freedom of

speech, expression, and the press, effectively stymying progress in these critical areas.

Moreover, the amendment introduced a new provision in Part I of the constitution, mandating the preservation and display of the portrait of Bangabandhu Sheikh Mujibur Rahman in key government offices, educational institutions, and diplomatic missions abroad.⁴³ This provision, like many others, was made unamendable, further cementing its place in the constitutional framework.

A key challenge for the caretaker government is determining the appropriate timing for the elections. While the constitution requires that elections be held within three months, rushing into them may fail to address the deeper issues that sparked the protests in the first place.

Legal experts have advised postponing the elections to allow more time for necessary political reforms.

One of the most crucial tasks is to restore the independence of key institutions, such as the election commission.

Under Hasina's leadership, parliament was largely reduced to a rubber-stamp body, while the civil service and judiciary were heavily politicised, and the media and civil society were tightly controlled. Although some institutions may quickly benefit from a more open environment, others will carry the scars of this period for years to come.

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The Impact Of The 15th Amendment



The Impact Of The 15th Amendment

The Fifteenth Amendment to the Bangladesh Constitution has had several negative effects on the country's governance and democratic principles.

The Fifteenth Amendment, enacted in 2011, has been criticised for effectively entrenching the ruling party's power by altering key constitutional provisions. Specifically, it removed the provision for a non-partisan caretaker government, which was previously intended to oversee general elections and prevent political bias in the electoral process. By eliminating this safeguard, the amendment has concentrated more power in the hands of the ruling party, which can lead to less fair and transparent elections. This consolidation of power undermines democratic principles and may perpetuate the dominance of a single party.

The Constitution establishes a parliamentary system of government, with a strong emphasis on democratic processes. However, the political environment in Bangladesh has often been marred by allegations of electoral fraud, political violence, and corruption. The absence of a neutral caretaker government system, which was abolished by the Fifteenth Amendment, has led to controversies and reduced confidence in the fairness of elections.

The only constitutionally sanctioned interim government system in the country's history was the Caretaker Government introduced in 1996 through the Thirteenth Amendment. However, this system was abolished by the Awami League government in 2011 through the Fifteenth Amendment. The recent resignation and departure of Awami League President and former Prime Minister Sheikh Hasina⁴⁴ amidst widespread protests has created a legal conundrum in Bangladesh, particularly concerning the transfer of power.

In response to this unprecedented situation, the Appellate Division of the Supreme Court of Bangladesh has acknowledged the necessity of an interim government. The court, referencing Article 106 of the Constitution, ruled that in the absence of a sitting parliament, an interim government could be formed, comprising a Chief Advisor and a few other advisors. This interpretation closely mirrors the provisions of the Thirteenth Amendment before its repeal. Chief Justice Obaidul Hassan⁴⁵, who has since resigned and was a known supporter of the Awami League, delivered this opinion⁴⁶.

Given the extraordinary popular support and the critical need to prevent a military junta takeover, similar to the events of 1975, Dr. Yunus was sworn in as Chief Advisor of the interim government on the night of 08 August 2024⁴⁷. Despite the constitutional challenges, Yunus' government has garnered broad international support, with many global leaders and Ministers of Foreign Affairs extending their congratulations, recognising the legitimacy of his administration⁴⁸.

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Reforming Executive Power: Recommendations

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Reforming Executive Power: Recommendations

Bangladesh's drift towards authoritarianism has largely resulted from excessive power concentration in the executive branch, particularly the office of the Prime Minister. Urgent constitutional reform is needed to establish a genuinely independent and non-partisan presidency.

The current practice, where the Prime Minister effectively controls the appointment of the President, must be abolished. Instead, the President should be elected through a collective voting process and granted the authority to appoint the heads of key state institutions based on recommendations from independent, non-partisan experts. This would serve as a crucial check on executive power and help prevent future abuses.

Furthermore, the Constitution should enhance legislative oversight by abolishing the requirement for Members of Parliament to vote along party lines, thus allowing for more genuine representation of the electorate's will.

The Constitution guarantees fundamental rights such as freedom of speech, religion, and assembly. However, there have been ongoing concerns about the actual enforcement of these rights. Issues like media censorship, restrictions on freedom of expression, and reports of human rights abuses raise questions about the extent to which these constitutional guarantees are honoured in practice.

Judicial Independence and Institutional Integrity

The Judiciary is constitutionally empowered to act as the guardian of the Constitution, interpreting laws and ensuring that the actions

of the Executive and Legislature are in line with constitutional provisions. The independence of the Judiciary is crucial for maintaining the rule of law and protecting citizens' rights.

However, in Bangladesh, concerns about judicial independence have persisted, particularly regarding the appointment and promotion of judges. The Executive's influence over judicial appointments has raised fears of politicization within the Judiciary, leading to questions about its ability to act impartially and independently.

To rectify this, the controversial two-year extension rule for Supreme Court judges, which allows for the reappointment of retired judges, must be abolished. This rule currently incentivises judges to align with the incumbent government in hopes of securing reappointment, compromising judicial impartiality.

Moreover, it is critical to insulate all key state institutions, including the Election Commission, Anti-Corruption Commission, Public Service Commission, and Human Rights Commission, from political interference.

As Bangladesh approaches its next elections, the establishment of an independent and neutral Election Commission is non-negotiable for ensuring a credible transition of power.

Further, an independent commission, with oversight from UN bodies like the Office of Rule of Law and Security Institutions, should oversee these reforms to ensure they are conducted impartially and effectively.

The challenges to the separation of powers in Bangladesh are rooted in the broader political culture, where the concentration of power in

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Reforming Executive Power: Recommendations continued...

the hands of a few has often overshadowed the principle of balanced governance.

The intertwining of party politics with state institutions has blurred the lines between the branches of government, making it difficult to ensure that each branch functions independently and effectively. This situation is further complicated by a lack of strong institutional mechanisms to enforce accountability, leading to an erosion of the checks and balances that are vital for democratic governance.

Top appointments within these institutions should be made based on recommendations from an independent committee that includes representatives from political parties, the judiciary, and civil society. Parliamentary approval, with a requisite level of opposition support, should be mandated to prevent any single party from monopolising the appointment process.

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What Lies Ahead



What Lies Ahead

As Bangladesh navigates this transitional period, the timely implementation of constitutional reforms is essential to prevent a regression into authoritarianism and to pave the way for a truly democratic society. The future stability and prosperity of the nation depend on establishing a robust legal and institutional framework that upholds the Constitution's original vision of democracy, human rights, and the rule of law.

The transition to a genuine democracy will largely depend on the strong sense of solidarity, hope, and civic responsibility that has taken root among the country's youth.

However, the challenges facing this generation are significant. The interim government, along with any future leadership, must address the growing inequalities in society and the lack of employment opportunities for young people.

With nearly 40% of the population under 18, it is crucial to transform this demographic into an asset rather than a liability. Continued investment in the nation's youth is vital if the government is to move away from its past autocratic tendencies. There is no doubt that, given the opportunity, young people will contribute significantly to the future of their country.



FOOTNOTES

- 1 <https://www.ft.com/content/fbc835ed-2fe5-4f66-aa57-84dc5fbe98aa?bhlid=5d1e07f0636cba92975eae77fa1bc43dd6c91c4d>
- 2 <https://protectyunus.wpcomstaging.com/>
- 3 <https://www.theguardian.com/world/article/2024/aug/08/muhammad-yunus-arrives-bangladesh-take-office-interim-leader>
- 4 <http://bdlaws.minlaw.gov.bd/act-367.html>
- 5 <https://www.britannica.com/topic/Regulating-Act>
- 6 <https://www.britannica.com/place/India/Government-of-India-Act-of-1858>
- 7 [Indian Councils Act | 1861, India | Britannica](#)
- 8 Ahamed, Emajuddin (2012). "Constitutional Development"
- 9 Mark Tushnet; Madhav Khosla (17 September 2015). *Unstable Constitutionalism*. Cambridge University Press. p. 142
- 10 [https://www.newworldencyclopedia.org/entry/Partition_of_Bengal_\(1947\)](https://www.newworldencyclopedia.org/entry/Partition_of_Bengal_(1947))
- 11 <https://nationalassembly.tripod.com/descrip.htm>
- 12 Maulvi Tamizuddin Khan v. Federation of Pakistan, PLD 1955 Sindh 96
- 13 <https://www.pakistani.org/pakistan/constitution/>
- 14 https://en.banglapedia.org/index.php?title=Six-point_Programme
- 15 <https://www.thedailystar.net/zias-declaration-19001>
- 16 Constitutional Development". *Banglapedia*
- 17 https://en.banglapedia.org/index.php?title=Constitutional_Amendments
- 18 People's Republic of Bangladesh (1972). "Part II – Fundamental Principles of State Policy". 8. Secularism and freedom of religion. Bangladesh: Government of Bangladesh.
- 19 <https://bdlaws.minlaw.gov.bd/act-details-367.html>
- 20 <https://bdlaws.minlaw.gov.bd/act-367/section-24550.html>
- 21 <https://bdlaws.minlaw.gov.bd/act-367/section-24561.html>
- 22 <https://bdlaws.minlaw.gov.bd/act-367/section-24551.html>
- 23 <https://bdlaws.minlaw.gov.bd/act-367/section-24565.html>
- 24 <https://bdlaws.minlaw.gov.bd/act-367/section-24563.html>
- 25 <https://bdlaws.minlaw.gov.bd/act-367/section-24561.html>
- 26 <https://bdlaws.minlaw.gov.bd/act-367/section-24553.html>
- 27 <https://bdlaws.minlaw.gov.bd/act-367/section-24554.html>
- 28 <https://bdlaws.minlaw.gov.bd/act-367/section-24555.html>
- 29 <https://bdlaws.minlaw.gov.bd/act-367/section-24557.html>
- 30 <https://bdlaws.minlaw.gov.bd/act-367/section-24558.html>
- 31 <https://bdlaws.minlaw.gov.bd/act-367/section-24562.html>
- 32 <https://bdlaws.minlaw.gov.bd/act-367/section-24564.html>
- 33 <https://bdlaws.minlaw.gov.bd/act-367/section-24569.html>
- 34 <https://bdlaws.minlaw.gov.bd/act-367/section-24568.html>
- 35 <https://bdlaws.minlaw.gov.bd/act-367/section-24566.html>
- 36 <https://bdlaws.minlaw.gov.bd/act-367/section-24574.html>
- 37 <https://bdlaws.minlaw.gov.bd/act-367/section-24565.html>
- 38 <https://bdlaws.minlaw.gov.bd/act-367/section-24570.html>
- 39 <https://www.tbsnews.net/analysis/hubris-how-hasina-made-one-third-constitution-unamendable-920546>
- 40 Shahriar Rashid Khan v Bangladesh (1998) 18 BLD (AD) 55
- 41 <https://www.bbc.co.uk/news/world-south-asia-13973576>
- 42 <https://www.tbsnews.net/thoughts/time-recognise-right-education-fundamental-human-right-610050>
- 43 <http://bdlaws.minlaw.gov.bd/act-367/section-24552.html>
- 44 "Sheikh Hasina: Euphoria in Bangladesh after PM flees country". *BBC News*
- 45 Ex-CJ Khairul faces complaint over alleged fraud in passing judgement". *The Financial Express* (Bangladesh)
- 46 "Bangladesh's chief justice resigns after fresh protests at Supreme Court". *France 24*
- 47 <https://www.aljazeera.com/news/2024/8/8/muhammad-yunus-takes-oath-as-head-of-bangladeshs-interim-government>
- 48 "Bangladesh: Statement by the High Representative on the new interim government | EEAS". www.eeas.europa.eu