

The Role of Jatiya Sangsad in the Democratization Process of Bangladesh (1991-2013)

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**The Role of Jatiya Sangsad in the Democratization Process of
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Ph.D. Thesis

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Declaration

I hereby declare that the thesis entitled, **The Role of Jatiya Sangsad in the Democratization Process of Bangladesh (1991-2013)** is prepared by me. It is the outcome of an empirical research carried out on the role of Jatiya Sangsad in the democratization process of Bangladesh. I have submitted this thesis to the University of Dhaka through the Department of Political Science, for the award of the Degree of Doctor of Philosophy. The thesis or part of its contents had not been submitted to any other institution for any academic degree.

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Certificate of Supervisors

We have the pleasure to certify that the thesis entitled, **The Role of Jatiya Sangsad in the Democratization Process of Bangladesh (1991-2013)** has been prepared by Mohammad Mahabubur Rahaman, Lecturer, Department of Political Science, Shaikh Burhanuddin Postgraduate College, Dhaka, Bangladesh through an empirical research. It is an original work in the field of democratization. To the best of our knowledge, no other person has covered the area of this research. We have supervised this research from the beginning to the end and also have gone through the draft and the final version of the thesis thoroughly and found it up to the mark for the submission to the Department of Political Science, University of Dhaka, for the fulfillment of the Degree of Doctor of Philosophy. Before submission, the thesis was put through special software for checking plagiarism, thus revised.

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Finally, I take full responsibility for any factual inaccuracies, errors and omissions of judgment or interpretation made in the thesis.

Mohammad Mahabubur Rahaman

Abstract

The thesis is a summary of a research work that has investigated, scrutinized and inquired into the role of Jatiya Sangsad in the democratization process of Bangladesh of the period spanning from 1991 to 2013. The focus of this thesis is on the law-making process of the Jatiya Sangsad and how participation of people's representatives contributes to the democratization process of Bangladesh. Reviewing the process of law-making from 1991 to 2013, I have observed that the JS has exercised only marginal participation of MPs in making laws. In addition, the thesis further attempted to establish the three specific hypotheses. First, although the parliament (or JS) is supposed to play a central role for law-making through participation of the people's representatives, it has hardly done so. Second, will of the political leaders (party chief and the chief executive) have significantly dominated the law-making in the parliament or Jatiya Sangsad. Third, instead of cooperative and competitive relationship between the ruling and the opposition parties, confrontational relationship has resulted in most of the cases due to the 'one-party' dominant participation in the parliament or Jatiya Sangsad. However, JS's role in most of the cases was only limited to give final approval to the laws. Based on the primary and secondary data sources, it may be claimed that the theoretical part supporting the thesis along with the information collected for this research added a new contribution to the knowledge. The primary source consists of a number of in-depth interviews. The secondary source includes parliamentary proceedings, documents of constitutional amendments and research publications, such as books, unpublished Ph. D. theses, articles and internet. I have made content analyses of the data collected from the primary and secondary sources.

Glossary

Bangabandhu	Friend of Bangladesh (East Bengal)
Bangabhaban	President's Official Residence of Bangladesh
Bichitra	National Weekly
Chatra League	Student wing of AL
Chatra Dal	Student wing of BNP
Chatra	Student
Dal	Party
Ganotantra Mancha	Democracy Dias
Gherao	Blocking from all sides
Gonotantik Oikya Jote	Democratic United Alliance
Hartal	General Strike involving complete shutdown of the economy and general communications (called by opposition)
Janatar Mancha (JM)	People's Dias
Jatiyatabadi Front	Nationalist Front
Jatiya	National
Joddha	Fighter
Jubo	Young
Julumer Mancha	Dias for oppression
Krishak	Farmer
Mohajote	Grand Alliance
Nagar	City
<i>Orde Baru</i>	New Order, the presidency of Suharto of Indonesia
Prajatantra	Republic
Purbo	East
Raj Path	Prominent road/street
Sangsad	Bangladesh Parliament (House of the Nation)
Shahid	Martyr
Shanti Bahini	Peace Force
Shramik	Laborer
Sonar	Golden
Taka	Bangladesh currency

Abbreviations

ACC	Anti-Corruption Commission
ALPP	Awami League Parliamentary Party
AL	Awami League (Bangladesh)
BAKSAL	Bangladesh Krishak Sramik Awami League
BEC	Bangladesh Election Commission
BIDS	Bangladesh Institute of Development Studies
BIISS	Bangladesh Institute of International and Strategic Studies
BNP	Bangladesh Nationalist Party
BNPPP	BNP Parliamentary Party
BPSC	Bangladesh Public Service Commission
CA	Chief Advisor
CAG	Comptroller and Auditor General
CAM	Call-Attention Motions
CEC	Chief Election Commissioner
CHT	Chittagong Hill Tracts
CJ	Chief Justice
CP	Committee of Privileges
CPD	Centre for Policy Dialogue
CPMBR	Committee on Private Members' Bill and Resolutions
CPRB	Constitution of the People's Republic of Bangladesh
CSO	Civil Society Organizations
CTG	Caretaker Government
DLJS	Deputy Leader of the Jatiya Sangsad
DPC	Department-related Parliamentary Committee
DPD	<i>Dewan Perwakilan Daerah</i> (Regional Representative Council of Indonesia)

DPR	<i>Dewan Perwakilan Rakyat</i> (People’s Representative Council – Indonesia’s Parliament)
EBLA	East Bengal Legislative Assembly
EC	Estimates Committee
GSCR	Government Servants Conduct Rules
HHD	Half-an-Hour Discussion
IGS	Institute of Governance Studies
IOJ	Islami Oikkya Jote
IPU	Inter-Parliamentary Union
JD	Joint Declaration
JDTA	Joint Declaration of the Three Alliances
JIBPP	Jamaat-i-Islami Bangladesh Parliamentary Party
JP	Jatiya Party
JPPP	Jatiya Party Parliamentary Party
JS	Jatiya Sangsad (Parliament of Bangladesh)
JSD	Jatiya Samajtantrik Dal
KSJL	Krishok Shramik Janata League
LJS	Leader of the Sangsad
LIC	Legislative Information Centre
MoF	Ministry of Finance
MP	Member of Parliament
MPR	<i>Majelis Permusyawarah Rakyat</i> (People’s Consultative Assembly of Indonesia)
MOPJS	Main Opposition Party of the Jatiya Sangsad
NPCTG	Non-Party Caretaker Government
NDI	National Democratic Institute (of International Affairs of the USA)
NGO	Non-government Organization
OLJS	Opposition Leader of the Jatiya Sangsad
OPJS	Opposition Parties of the Jatiya Sangsad
PAC	Public Accounts Committee
PD	Parliamentary Democracy

PM	Prime Minister
PMB	Private Members' Bill
PMQT	Prime Minister's Question Time
PRs	People's Representatives
PUC	Public Undertaking Committee
RoP	Rules of Procedure
RPO	Representation of the People's Order
SD	Discussion for Short Duration
SMUPI	Statement on Matters of Urgent Public Importance
TIB	Transparency International Bangladesh
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
USA	United States of America
WB	World Bank
WP	Workers' Party

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Map – 1
Bangladesh Political Map



Source: www.un.org/Depts/Cartographic/map/profile/bangladesh.pdf.

Map - 2 Electoral Constituency Map



Source: www.ecs.gov.bd/images/constituency_map.pdf

Map – 3
Picture of the Jatiya Sangsad of Bangladesh



Source: asiapacificparlib.org/wp-content/.../2/.../Bangladesh-Parliament-Salient-Feature.pdf

Bangladesh's parliamentary system is a plurality system with 300 single member constituencies. The average size of each electoral district is about 180 square miles; it has a population of about 5, 20,000 of which half are eligible to vote (Ahmed, 2013:15)

Chapter One

Setting the Context

Introduction

Parliament in democracy – as a central political institution – plays a pivotal role in the democratization process of a country. It is one of the main catalysts for democratization, which is recognized as the supreme institution for expression of the people’s will through their representatives. Parliament contributes to the declaration of the fundamental principles of the State policy and to ensuring the fundamental rights of the people. A parliament is the most important institution that reflects the unity of a diversified society. It is composed of representatives derived from the mosaic of social groups of the country. The parliament has many functions in promoting democratization, including representation of the public, enacting legislation, empowerment of people, oversight implementation of plans, etc. If parliament does not perform these functions, democratization fails to take root. In Bangladesh, the Jatiya Sangsad, the parliament of the country, has witnessed peaks and troughs in promoting democratization since independence in 1971 through sanguinary struggle of nine months’ war to get freedom from the rule of (West) Pakistan. The history of parliamentary democracy in Bangladesh goes back to the British colonial rule in the 1930s, when the first election in British India was held following the Government of India Act 1935 implemented in 1937. Under this Act, Bengal along with other provinces of India had for the first time practiced parliamentary democracy.

After the partition of India, Pakistan started implementing parliamentary democracy first in 1954 by holding the provincial election. For the first time in Pakistan’s history, parliamentary democracy was introduced through the Constitution of 1956. But this was very short-lived. In 1958, Pakistan had gone under a prolonged military rule till the holding of national election in 1970. Meanwhile, the movement for autonomy of the Bengalis (the then East Pakistanese) began under the banner of Awami League (AL) from the ‘Language Movement’ of 1952. The leader of Awami League, Bangabandhu Sheikh Mujibur Rahman placed a 6-point programme in 1966, which formalized Bengalis’ demand for autonomy. But Pakistani ruling elites’ consistent denial of the 6 points ultimately led to the 1970 general elections. In that election, the Awami League got

absolute majority in the provincial and national assemblies. The emergence of Bangladesh was precipitated by the results of the 1970 elections. Ignoring election results of 1970, the Pakistani Regime launched a crackdown on the Bengalis that led to declaration of war against the rulers resulting in the independence of Bangladesh. After independence, the then AL adopted parliamentary form of government in 1972's Constitution, the first constitution in Bangladesh. The parliamentary form of government continued to operate till January 1975. Through the 4th Amendment to the Constitution, parliamentary government was abrogated converging on the rise of one party, named BAKSAL (Bangladesh Krishak Sramik Awami League). Later on, factionalism within the ruling elites, army and civil service, political violence perpetuated by the underground leftist parties, economic crisis, rampant corruption and polarization in the world politics between the capitalist and the socialist blocks of the world catalyzed the regime change. All these tended to influence the later political developments of the country.

At the dawn of forming BAKSAL, Bangabandhu Sheikh Mujibur Rahman was assassinated in a preplanned plot hatched by a group of disgruntled officers of the Bangladesh Army. With the killing of Bangabandhu, Bangladesh fell under a prolonged military or semi-military rule spanning from 1975 to 1990. After Bangabandhu's killing, Major General Ziaur Rahman came to power as Chief Martial Law Administrator, after some sporadic events between August 15, 1975 and November 7, 1975. In 1979, he was elected President under the presidential form of government supported by a parliament. After President Ziaur Rahman's murder by General Manjur in 1981, Justice Abdus Satter became elected president, from whom Lt. General H. M. Ershad took over power in 1982. In 1986, President H. M. Ershad was elected President. He stayed in power during 1982-1990 with two parliament elections. After the fall of the Ershad regime in 1990 through the mass movement, BNP led by Khaleda Zia won the election of 1991 under the Acting President Justice Shahabuddin Ahmed, and the opposition parties including AL and JI (Jamat-e-Islami) demanded parliamentary democracy and it was established by the 12th amendment to the Constitution. Thus, parliamentary democracy has been reintroduced in 1991. But breakdown in elite consensus, presence of some conducive legal provisions in the constitution and, most importantly, lack of cooperation between the ruling and the opposition parties have been the key factors that held back the moving forward of democratization. From 1982 to 1990, the parliament, therefore, has not been able to play substantial role in the democratization process of Bangladesh. In this context, in the

present research, I have examined the role of Bangladesh Jatiya Sangsad between 1991 and 2013, particularly in the law-making process more explicitly with reference to 11th, 12th, 13th, 14th and 15th Amendments to the Constitution.

A summary of tenures of JSs:

Table 1.1
Tenures of Jatiya Sangsad (JS)

Jatiya Sangsad	Date of First Sitting	Date of Dissolution	Actual Term
1 st Jatiya Sangsad	April 7, 1973	November 06, 1975	2 Years 6 Months
2 nd Jatiya Sangsad	April 2, 1979	March 24, 1982	2 Years 11 Months
3 rd Jatiya Sangsad	July 10, 1986	December 06, 1987	1 Year 5 Months
4 th Jatiya Sangsad	April 15, 1988	December 06, 1990	2 Years 7 Months
5 th Jatiya Sangsad	March 05, 1991	November 24, 1995	4 Years 8 Months
6 th Jatiya Sangsad	March 19, 1996	March 30, 1996	12 Days
7 th Jatiya Sangsad	July 14, 1996	July 13, 2001	5 Years
8 th Jatiya Sangsad	October 28, 2001	October 27, 2006	5 Years
9 th Jatiya Sangsad	January 25, 2009	January 24, 2014	5 Years

Source: Researcher (2015).

After a short interlude of parliamentary democracy in 1972-1975, Bangladesh had been under semi-military or military rule till 1990. During this period, Bangladesh Parliament or JS remained under presidential rule, from 1979 to 1982; 1986 to 1998; and 1998 to 1990; usually termed as a ‘rubber stamp’, representing the will of executive, instead of acting as a true representative of the people. Since the restart of democratization in 1991, the role of parliament has undergone qualitative transformation. Parliament is said to have become more democratic than before. But its role cannot be understood without putting it in proper socio-economic and political perspectives of the country.

Bangladesh is a lower middle-income country, characterized as moderate Muslim country with 164.7 million people in South Asia and, at present, the country’s position is 8th in the world for population size and 4th as a Muslim majority country (The Daily Star, July 11, 2017). Bangladesh is a country of 147,570 square kilometers and the country is one of the most densely populated countries in the world. Currently, her citizen’s per capita income is \$ 1,466 in 2015-2016 Fiscal Year and foreign currency reserve is US\$ 30 billion (May, 2016) and its GDP growth rate was annually over 6% during the past 8 years or so. It was over 7% in 2015-16 (Ahmad, January 03, 2017: 03). Despite a steady GDP growth rate, a

considerable portion of the population in the country is still going through poverty and inequality. Currently, poverty, extreme poverty, poverty gap have come down to 24.8%, as target was set at 29% under MDG by the end of 2015 (Ahmad, *Ibid*: 4). Despite good performance in reducing consumption, income and wealth inequalities through health and education, land prices remains high, which calls for further strengthening of inclusion initiatives (Rahman, January 24, 2017: 5).

Since the independence in 1971, the country has advanced in human, social and economic sectors gradually. But in case of democratic consolidation, Bangladesh has been facing obstacles from the beginning of its journey due to lack of political consensus among the political elites of the country. Confrontation rather than cooperation and competitiveness are prevalent among the political leaders over the scramble for state power. Political institutions, for example, political parties visibly lack the exercise of intra-party democracy. Dynastic succession in political leadership has become entrenched in political parties. Khan (2003) remarks that parties profess to adhere to democratic principles, but reality is different.

Thomson (cited in Riaz, 2013: 232) explains the causes of failure to consolidate democracy. According to him, consolidating and deepening of democracy require developing institutions, and changing behaviors. When dictators and military rulers are overthrown, an institutional vacuum appears. If the vacuum is not filled with new or reformed institutions, the democracies soon become “shells of what they could be” and fail. In the context of Bangladesh, the democratic era through institutional reforms failed to embed democratic norms and values within institutions. The institutions essential for functioning democracy, such as independent judiciary, independent election commission, etc., were never fully established.

In the Jatiya Sangsad of Bangladesh, the opposition hardly functioned effectively. It boycotted parliamentary sessions alleging government’s suppression of their demands. Jatiya Sangsad became a ‘rubber stamp’, as the opposition members were mostly absent in the session. They were denied full participation when they attended the session, but nearly half of the time opposition members boycotted the Jatiya Sangsad alleging government’s repression (Jahan, 2016: 21). In many countries, an independent Election Commission (EC) is regarded as a safeguard for conducting free and fair election. But in Bangladesh its

credibility has been questioned in holding free and fair election. In the backdrop of ECs credibility of holding free and fair election inclusions, of the Caretaker Government through the 13th Amendment in the Constitution was regarded by almost all political parties as a panacea for holding a free and fair election (Riaz, 2013: 13). However, the cancellation of CTG through 15th Amendment to the constitution sowed the seeds for political unrest in the country.

In case of constitutional amendments, it is sometimes observed that if one party demands an amendment, for its own interest, other parties oppose the move. Political expediency had been the driving force behind some constitutional amendments, which thwarted the democratic progress of the country. The political environment in Bangladesh is now infested with political violence. Mistrust among the political leaders, election manipulation, executive dominance, poor political participation, dominant business class controlling the JS, party interest, nepotism, dynastic leadership, and partisan appointment, etc. stood in place as the factors of the degenerated political system of Bangladesh.

Parliament in Bangladesh: Quest for Democracy Deepening

This section deals with the review of literature on the topic under research in this thesis. No comprehensive research is found on the role of JS in the democratization of Bangladesh. But the experience of other countries could be important lessons for Bangladesh. In Asia, one of the researches (Ziegenhain: 2008) draws attention to this case, namely, an Indonesian case comes closer to Bangladesh regarding the role of parliament in democratization. Two points may be noted while discussing Indonesian case. Like Bangladesh, Indonesia is a Muslim-majority country. Although Bangladesh made some progress in democratization since the re-introduction of the parliamentary democracy in 1991, Indonesia started democratization in 1998. Though late, Indonesia seems to have surpassed the time constraint in democratization with some qualitative improvements.

Parliament and Democratization: A Review of Literature

Focusing on the Indonesian experience, Ziegenhain (2008) analyzed the role of parliament in democratization. He alerts the readers that although parliament plays a decisive role in the political system, it does not necessarily guarantee democracy. It can pass abusive laws, defend the establishment, and willfully ignore the needs of the weak and marginalized. On the other hand, despite weakness and ambiguous performance, parliament adds to the

routinization of democracy. Through the parliament, deliberations and the methods of decision-making become far more transparent. The openness to discussion, including criticism of any politician and particularly the policies of the government, become a common feature in the Indonesian political system. For nearly all the political parties represented in the DPR (Dewan Perwakilan Rakyat - Indonesian Parliament), parliament became the only game in town (Przeworski, 1991: 26), a clear sign of the dawn of consolidation. Parliament became the central site of political decision-making. Major parts of the political elite submitted their political authority to voters' decisions. A precondition for strengthening the emerging democracy is popular support for this system of government (Ziegenhain, 2008).

The two institutions are the People's Consultative Assembly (MPR) and the House of Representatives (DPR), where not only activities were initiated, but also seeds for the political changes had sown between 1998 and 2004. The "rubber stamp" legislature, as it was described in the scholarly literature until 1998, transformed into what a leading Indonesian politician, Amien Rais, called a "Superbody" (Ibid, 2008: 2). The authoritarian order of President Suharto had been replaced by a more democratic political system.

Ziegenhain uses a theoretical framework based on the functions of a parliament. The parliament has three functions: (i) **representation** (articulation, teaching, expression, communication, legitimacy); (ii) **oversight** (election, budgeting) and (iii) **legislation** (initiative, policy-making). Ziegenhain structures the timeframe between 1997 and 2004 into three different periods. The three periods are as follows: (i) the liberalization period, 1997 to 1998, (ii) the democratization period, first, 1998 to 1999, and (iii) the democratization period, second, 1999-2004. The starting point of the liberalization period, started on May 21, 1998, when President Suharto resigned from office, making the end of the authoritarian *Orde Baru*, and consequently, the liberalization period started (Ibid, 2008). Here, Ziegenhain compares Suharto to other rulers of Indonesia.

Then, Ziegenhain discussed the functions performed by Indonesian parliament and the resulting impact on the democratization process taking timeframe of May 1998 to October 1999, which was the time of presidency of Bacharuddin Jusuf Habibie. In this period, initial efforts were made to establish a democratic order in Indonesia and free parliamentary election took place in June 1999. After that, he started office in October

1999 when the newly elected parliament began its work and Abdur Rahman Wahid, popularly known Gus Dur, was elected as the new President of Indonesia. The term of this parliament together with the presidency of Megawati Soekoronoputri lasted until October 2004, which marks the end of the time span covered by this research, since they signify another stage of the transition process (Ibid, 2008: 8-10).

The Indonesian parliament saw tremendous changes in the democratization process. It has been both a subject as well as an object of the transition process. It was a subject as it was actively involved in regime change and the establishment of a more democratic order, and an object because the composition, start and functions of these institutions were part of the deals in debates on constitutional and legal changes. The authoritarian *Orde Baru* marked a crucial turning point not only for the country, but also for the parliament. The initial troubles with president Wahid and constitutional amendment process resulted in a confrontation between parliament and executive which ended in massive extension of power for the parliament. With the government of President Megawati Soekarnoputri, parliament had to define its new role in the political system. Parliament tried to find a new form of cooperation with the government and a better balance between legislative and executive. To attain this balance, the constitutions needed further amendments to rearrange the relationship between the two state institutions, so that each of them could better fulfill its functions.

The reform era, which had begun on May 21, 1998, was initially no more than the new order minus the Suharto finally. In order to pave the way for democracy and establish the new democratic order, there was an urgent need for the amendment to the constitutions and writing of the new important laws. In this new process towards democratization, Indonesian parliament was a central reform initiator. The motion of a fresh 'start' is clearly a myth of special importance that was the package of five political laws introduced in 1985. Among this legislation were the law on political parties, the law on election and the law on the composition and status of DPR and MPR. With days of Habibie's assumption of the presidency, a committee was formed to prepare their new acts: on the general election, on the political parties, and on the composition of the representation bodies like DPR and MPR. The decisions of the MPR made important legal changes on the way to democracy and were as follows: MPR decision no. VII/MPR/1998, on the withdrawal of the MPR decision no. IV/MPR/1998 on the referendum; MPR decision no.

I/MPR/1998 on the state guidelines; MPR decision no. XVI/MPR/1998 on economic policies in the framework of democratic economy, etc. (Ibid, 2008: 98-99).

Indonesia mostly succeeded in the democratization process by improving institution-building. For this, thirty-three of thirty-seven articles have been changed and four Amendments to the Constitution were made. Party-state-democracy under the leadership of parliament led Indonesia to democratization. In 2004 for the first time in history, the Indonesian people directly elected president. Before 1999, the MPR elected president and vice-president. Regional Representative Council, a senate like body, was set up to give regions a greater voice in national affairs. After October 2004, the MPR compromised the DPR and the DPD. All members were elected via democratic elections. The military and police were required to relinquish their representative seats, formally ending their role in practical day to day politics after 2004. A greater connection between voters and representatives was established. An autonomous election commission has been set up that is far more independent and more credible than the one in 1999. Ethical code was introduced (Ibid, 2008:101-103).

The way of the democratization process in Indonesia was “trans-placement” or pacted negotiation, whereby the regime elite and the opposition negotiated a transition to democracy jointly. In Bangladesh, the similar pact was signed by all the major parties on November 19, 1990. In both Indonesia and Bangladesh ruling and opposition elites gave their tacit consent to a negotiated transition. In Indonesia, both sides made a certain concessions as part of the pact, in their own interest and for the new democracy. It was mainly based on a series of strategies and compromises among the ruling and the moderate opposition elites. As a result, parliament became the arena for negotiations and bargaining.

Parliament and Democratization: The Bangladesh Case

Ahmed (2002) in his seminal work on “The Parliament of Bangladesh” analyzed the development of parliament in Bangladesh, its legislative function, parliamentary surveillance, parliamentary committees, constituency representation, opposition politics and government backbench politics, etc.

The main objective of the book is to examine the nature of working of parliament in Bangladesh in the 1990s. It specifically probes the operations and activities of the ‘new’ parliaments – the fifth parliament (1991-95) and the seventh parliament (1996-2001) –

focusing on a number of issues, such as the types of laws they have enacted, the methods they used to scrutinize the working of government and administration, the types of constituency issues that their members raised in the House and the nature of government's response to them. Attempts are also made to identify the nature of the opposition politics and the government backbencher politics in parliament (Ahmed, 2002: 21-22).

The book compares the scope of activism of the 'new' parliaments with their counterparts in different (majoritarian) parliamentary democracies, both in the Asian region and elsewhere, identifying the extent to which the Bangladesh parliamentary procedures and practices and the nature of parliamentary behavior differ from the model parliamentary patterns. Reference is also made in different chapters to the working of parliaments elected before 1990; this is intended to examine the extent to which the 'new' parliaments differed from them and to explain the factors that accounted for the difference (Ibid, 2002:22). Many factors made the 'new' parliaments distinctive, of which two deserve special mention; firstly, the 'new' parliaments, which were patterned after the Westminster model and were more representative in partisan composition, survived longer than their predecessors; and secondly, as observed earlier, both had undertaken several measures to provide the cornerstone of a new democratic beginning and to make the parliaments a central site of policy-making and power (Ibid).

The author observes that the Bangladesh Parliament owes its origin to the British Parliament. Ahmed's book has examined the development and working of the parliament in Bangladesh. It has specifically focused on the 'new' parliaments – the fifth parliament and the seventh parliament – identifying the extent to which they succeeded in carving out an important and meaningful role for themselves (Ibid, 2002: VII).

According to Ahmed (2002), the parliament, specifically, remained structurally subordinate to the executive headed by the Governor during the British rule. This situation did not change after the democratization of parliament in the 1920s or even after Bangladesh had her first birth in 1947 as East Pakistan, when India was partitioned into two independent states: Pakistan and India. The Governor, however, exercised his discretionary powers, seeking to influence the activities of parliament, more often in the post-partition period than during the British rule. Whatever scope was there for the

parliament to become assertive in the 1950s could not be realized because of various external constraints and internal weaknesses (Ahmed; 2002:240).

Ahmed sees the constitutional restrictions on floor-crossing and independent voting as cause of marginalization of Bangladesh Jatiya Sangsad. JS traditionally has the imbalance between its members and the executive of the state. Previously, the 5th Parliament and its activities did not arouse interest in the public or politicians. The Election of the 5th Parliament has remained as an exception in several respects. Truly speaking these two can be seen as more effective than other JSs elected in the past, resolving many issues that divided the dominant political forces for a long time, and introducing many reforms to strengthen the parliament. For some remarkable changes and developments in the democratic system of the country, reference can be made to the restoration of the parliamentary system of government and the establishment of a separate Parliament Secretariat by the 5th parliament, the introduction of the provision for holding elections under NPCTG by the sixth parliament and the decision of the seventh parliament to make several procedural innovations, such as the introduction of the Prime Minister's Question Time (PMQT), the reform of the committee system and the decision to broadcast/telecast parliamentary proceedings live on radio/television, etc. The 'new' parliaments also demonstrated better than their predecessors. The number of motions actually moved and discussed, the 'new' parliaments surpassed all previous records (Ibid, 2002: 240-41).

It is a real scenario in Bangladesh that MPs are seen to invest their time, energy and even conscience in serving their party, ignoring responsibilities to the constituency and to the nation. It occurs for various reasons. The Article 70 of the Constitution vests all powers in the party to control a member. On the other hand, the chief of a political party, most probably prime minister or an opposition leader, president or chairperson of the party, president of the parliamentary party is usually the same person and controls everything.

Frequent dismissal of legislative bodies, as has happened in Bangladesh in the past, hinders the growth of a stable pattern of rules and procedures, encourages discontinuity in membership and disadvantages to representative institutions in relation to other sources of power (Ahmed, 2002).

An institutionalized parliament is relatively autonomous – independent of other structures or organization, i.e., it is not dominated by any external political party apparatus or by

some other institutions, such as the bureaucracy, the military, pressure groups, etc. (cited in Ahmed, 2002: 142). Bangladesh Jatiya Sangsad seems to emerge as a weak autonomous body for various reasons, such as internal weakness and external impacts. However, Bangladesh parliament developed in some other areas for serving as an independent body. It established the parliamentary secretariat which is now headed by Speaker, and is expected to make the parliament relatively free from the control of the executive of the government in several respects.

Reforms carried out by the 7th parliament are also likely to have important consequences for institutionalization. The parliament in Bangladesh is now comparable with other parliaments of the world. For example, the changes made in the committee system can help parliament to acquire sophistication and gain uniformity. In its structural manifestation, the committee system is now comparable at least up to a certain extent, with similar systems in many other parliamentary democracies. Measures taken are underway to strengthen committees by providing more secretarial and research services that may also help parliament acquire uniformity. Besides, the provision for half an-hour PMQT once a week and regular unscheduled debates are also intended to achieve uniformity. The decision to broadcast live parliamentary proceedings on the electronic media is an important step toward making the parliament more transparent, in particular to allow the public to have an understanding of what their representatives do inside the parliament.

Yet, notwithstanding the introduction of different reforms/changes, the parliament still remains disadvantaged in several important respects. Unlike the changes made by the fifth parliament, which received widespread political and popular support, the various procedural reforms undertaken by the seventh JS did not appear to have a cross-party consensus. Most of the reforms carried out by the seventh parliament were executive-induced. These did not appeal to the opposition, at least to the extent that these should have. The opposition members in the seventh parliament were not much interested in parliamentary proceedings, nor could many reforms be seen as producing much good.

The policy of broadcasting parliamentary proceedings made JS activities more transparent. Another important reform was the provision for regular unscheduled debates, though it did not enthruse the MPs. Seventh parliament recommended the introduction of one private

members' bill providing for the relaxation of party control over the MPs. The JS was, however, dissolved before the bill could be moved in the House. An important feature of the political culture in Bangladesh is that parties and members distrust each other to a considerable extent. Accusations and counter-accusations abound. One also tries to blacken the image of the other. The 'culture of distrust' is entrenched in almost every political institution: the civil service, the army and the legislature.

Inter-party conflict in the fifth JS was common. Quorum problem and leaving sessions is a common feature in the recent parliaments of Bangladesh. One of the most important factors discouraging the institutionalization of parliament is a lack of preparedness of the two main parties to make the JS the center point of politics, especially an agency for conflict resolution. According to Ahmed (2002) the business owner-dominated parliament of Bangladesh could not emerge as the focal point of the national politics and policy. Neither the government nor the opposition actually accorded the importance that was due to it. The habitual tendency of the main parties – AL and BNP, to appear on the street did not decrease, instead increased over time. Both the ruling party and the opposition put some 'novel' arguments in support of their adaptation of extra-parliamentary activities, such as hartals, gheraos, blocking rails and roads, and enforcing work stoppage, etc.

The opposition, however, alleged that its members were not allowed to speak in the house. Their demand for discussion on important issues remained unheeded. So, the opposition's strategies to register its protest against the government and to influence its decision through walkouts, boycotts of the session of JS, unscheduled debates held outside the purview of rules and regulations, and extra-parliamentary tactics. For this, JS, rather than emerging as a central institution, has declined in performance in recent years. One of the important examples of the decline of effectiveness of parliament was the general lack of interest of members to attend in the sitting of the House or to make it work. The MPs in seventh parliament were more irregular during the sittings of the House than their counterparts in the 5th JS.

In Bangladesh JS, the 'conspiracy theory' as espoused by the two benches has some validity. Probably, the most important reason accounting for the lack of interest of members in attending parliamentary sittings, as explained by some senior officials of the Parliament Secretariat, was the preoccupation of most of the MPs with other business. As

observed in an earlier context, the majority of MPs were businessmen or industrialists; and they probably considered non-parliamentary businesses more lucrative than attending the sittings of the House (JS). There were only a few women parliamentarian in the House, who were interested in having a career in politics or parliaments. Lack of interest of members in parliamentary business is, thus, likely to make the parliament ineffective.

Choudhury, Hasanuzzaman (1992) conducted a full-length study on Parliament titled as '*Naba Prekshapate Bangladesher Sangsadiya Bebastha*' [*Bangladesh Parliamentary System in The New Context*]. In terms of the scope of his study, he focused on the functioning of the 5th parliament. By examining the three sessions, Choudhury, Hasanuzzaman sees the continuation of Bangladesh political culture of martial law which resulted in under-performance of the parliament. He stresses democratization of the state. In the absence of democratization of the state, according to Choudhury, Hasanuzzaman, parliament remains lackluster in ensuring accountability of the government. In terms of timeframe, his study bears historical significance.

Hasanuzzaman (1998) offers an analytical account of the opposition's role in Bangladesh politics from independence to the 7th parliament under successive regimes. The author examines opposition's parliamentary activities and its mode of operation inside and outside the legislature. According to him, Bangladesh after independence had a short-lived Westminster-type parliamentary framework followed by authoritarianism and army rule for years. During the period, though constrained by various restrictions, oppositions' activities including participation in major elections, legislative roles and organizing movements influenced politics of Bangladesh.

In the first parliament, there was a meager oppositions' representation with no official recognition. The number of opposition parliamentarians increased considerably in the second and third legislatures with their formal status in the House. They, however, had an effective parliamentary role in the midst of lopsided executive-legislature relationship under quasi democratic and autocratic rules. Hence, they resorted to agitational politics and antigovernment movements outside. The 1991 election brought a strong opposition in the parliament leading to a nascent two-party system under the reintroduced parliamentary setup. But lack of legislative compromise, persistence of mutual intolerance and the like promoted the competing parties to play unconstitutional role, creating political crises and

confusion. Opposition's prolonged agitational movement and its calls for constitutionalism ultimately paved the way for restoring democratic process in the country.

The people of Bangladesh, with cherished objective of setting up a real democratic order, struggled against Pakistan's misrule for many years and fought the Liberation War in 1971. Since independence, opposition forces did not have their free play within the political process and encountered black laws or repressive measures. The unique feature of parliamentary democracy is that like the ruling party, the opposition has a crucial role to play both inside and outside legislature. The opposition makes constructive criticism and exposes the faults or the weaknesses of the ruling party. In parliamentary system, it is also regarded as an alternative government and various legislative devices at its disposal. However, the specialty of opposition is more observed in parliamentary form of government, where, with an official status in the legislature, it takes part in law-making process alongside the treasury.

Hasanuzzaman, furthermore, traces the quest for democracy in Bangladesh and opposition in the parliamentary system under the Mujib's rule during 1972-75. After independence, Bangladesh started with the Westminster-type of parliamentary democracy. But, like other developing nations, the practice of democracy faced various constraining factors and the country was thrown under army rule and depredation of authoritarianism. In the first parliament only two opposition MPs were elected. There was no strong opposition party in the politics of Bangladesh. So, there was no official opposition in the first Jatiya Sangsad. On the other hand, strong ruling party with authoritarian tendencies appeared in the guise of parliamentary system. Yet, this type of government system did not rule the country for long. The AL government of 1972 changed the government system from the parliamentary to presidential system through the 4th Amendment. There were some radical leftist opposition parties in the country and they had no representative in the legislature. They indulged in extra-parliamentary activities outside the House. In sum, the opposition due to lack of strength had no role during the aforesaid period.

During the period of 1975-1990, the oppositions had been all along non-starter, because the two military rulers General Ziaur Rahman (1977-81) and General H. M. Ershad (1982-90) introduced executive dominated parliament. The Chief Executive's will had the

exclusive control on the working of the parliament. The opposition's role was reduced to the footsoldier of the system.

Hasannuzzaman (1998) further observed that oppositions in Bangladesh were not effective. For this, mutual distrust and politics of rivalry between the government and mainstream opposition resulted in their ceaseless fight and a tug of war for state power. The government adopts arbitrary authoritarian practices, keeping outside the crucial national policy formulation process, and thereby making the opposition frustrated in retaliation, resorted to the tactics of agitational movements such as prolonged strikes and holding the common masses as their hostage. For establishing effective working of Western liberal democracy, certain conditions are required to be fulfilled, such as agreement among the contending parties regarding the rules of the political game, peaceful utilization of power and unbiased application of rules and building of confidence. Upholding the cause of democracy, thus, becomes a responsibility to be borne equally by the party in power as well as party (s) in the opposition.

Since independence, Bangladesh's politics is characterized by the presence of a feeling of intolerance mostly arising from confrontational political relationship. Since our politicians often stick to recorded rules and procedure, they fail to rely on unwritten aspects of the game of politics which are essential for the parliamentary system. A fair beginning of parliamentary system in Bangladesh in 1972 and in 1991 could not be maintained as the deep-rooted divisions came to the forefront. As generally observed, most political parties of this country operate under the dictations of influential personalities and are seldom organized for greater national interests. The absence of democratic practice within the political organizations is recognized. As a result, both the ruling and the opposition parties failed to uphold the Jatiya Sangsad as a useful forum for debate on national issues. On the other hand, civil society, which contributes to institutionalizing liberal democracy, has also not properly thrived in Bangladesh to voice the feelings of the concerned people and politically relevant strata that enrich liberal democracy. Another trend leading to the development of the two-party politics in Bangladesh, i.e., AL and BNP playing the major role confines an electorate to an option in choosing any one of the two parties in parliamentary elections.

Finally, the author discussed opposition's role during the Awami League government from 1996 to 1998 and analyzed the second AL period, e.g., the seventh parliaments' half tenure. This parliament introduced some new devices of parliamentary system, such as Prime Minister Answering Questions (PMAQ), and non-ministers being made chairman of the standing committees. But, in fact, though, this Jatiya Sangsad had belonged to the strongest oppositions in the history of Bangladesh parliament, their role was observed vigorously outside, rather than inside the parliament.

Accountability and Parliament

Rahman (2008), notes that parliaments or legislatures are the keystone of democratic governance and they are critical in ensuring government's accountability. However, his study examines parliaments in South Asia by undertaking a comparative institutional analysis of the three largest and most important functions played by democracies in South Asia, i.e., Bangladesh, India and Sri Lanka. The main objective of his research is to analyze the role of parliamentary committees in ensuring government's accountability in contemporary Bangladesh, India and Sri Lanka. Rahman (2008), states that strong legislatures or parliaments are those which can and do make decisions and take actions independently of the executive or government.

Rahman (2008) argues that parliament in Asia and, particularly in South Asia, have not been the subject of much cross-national study. This provides the rationale for and the basis of the study. The focus of the study is placed on the financial accountability, regularity, transparency and the responsiveness aspects. In his research, accountability has been analyzed from two broad perspectives: formal or institutional and informal or societal.

The study presents two major sets of findings. One is concerned with the extent to which parliamentary committees in Bangladesh, India and Sri Lanka have been able to hold the government to account. The other relates to the methodological approaches of studying parliaments. In general, this research finds that parliamentary committees in Bangladesh, India and Sri Lanka do not perform as their counterparts in the Western world in controlling the government and holding it to account. They lag far behind other parliamentary democracies in Western Europe and Commonwealth countries in terms of institutional arrangements and practical implications in securing government accountability. However, the role of committees in securing government's accountability

in these three countries cannot be overlooked. They are weak, but not irrelevant. The mere existence of committees in these countries does matter. Committees are there to oversee the executive and they have been successful to some extent to make some impact on holding the government to account.

India has got the most institutionalized and assertive committee system in South Asia. It is clearly ahead of Bangladesh and Sri Lanka with respect to institutional arrangements and real-world implications in holding the government accountable. In terms of ensuring government's accountability, the role of committees is largely confined to initiation and recommendation.

When comparing Bangladesh with Sri Lanka in terms of committee strength to hold the government accountable, it is hard to judge which one is better and in what respects. The role of committees in securing executive's accountability in Bangladesh and Sri Lanka is largely confined to the initiation and the recommendation stages of their operations with unknown implications at the implementation level. The poor performance of the committee system in holding the government accountable in Sri Lanka emanates from the prevailing political system. In Bangladesh, it is confrontational political culture causing problems for parliamentary committees to get institutionalized and to perform at their best.

The study might have implications for the study of parliaments worldwide. In contrast to the predominantly institutional approach of studying parliaments advocated by many Western scholars, it argues that the point of departure for categorizing parliaments should be made from the interaction of the society, economy, political regime and intra-institutional political forces.

Rahman (2008), notices that bicameralism and coalition governments enhance the separation of the legislature from the executive. While the political variables demonstrate the centrality of politico-institutional elements of a polity to determine the strength of a legislature, the support dimension also entails the concomitant significance of socio-economic forces, such as civil society, institutional history, political culture, media, interest groups, the economic condition and the like for the legitimacy and the continuity of a strong legislature. In fact, the socio-economic and cultural factors can go a long way in explaining the functioning of parliaments and their strength to hold the government to

account in the Third World countries. But looking at the macro and micro-political institutional factors will certainly help the Third World countries in their work.

The author investigates the role of parliament and parliamentary committees in India in holding the government to account in the light of theoretical framework backed by primary and secondary data. India has been a long-standing democracy since 1947 and parliament has remained at the heart of his democratic advancement. Parliament is regarded by the political parties in India not only as a symbol of legitimacy and democratic governance, but also as a forum for deliberation and resolution of critical issues of national importance and holding the government to account. The formal institutional arrangements of the political system in India appear institutionalized and in good shape in checking and balancing the power and authority of the executive. All the major characteristics – strong opposition, independent parliament secretariat, institutionalized committee system and so on, of a functioning legislature, are vibrantly present in India and it plays a vital role in governing the country and holding the government accountable. All the major political institutions including the parliament and parliamentary committees, the presidency, the judiciary, the state assemblies, the local governmental units and other independent institutions, are functioning well.

Political power is dispersed among many political institutions in India. Indian parliament is bicameral. To become law, legislation must pass each House and have the assent of the president. India has an organized and integrated system of local government, having linkage from village to district or division levels. Elections of major local government institutions have taken place at regular intervals. There is enormous scope for the opposition political parties to share the power through representations in different political institutions. Political parties over the course of time have learned how to behave with opponents and are accustomed to share power and coexist with rival power holders. They are used to abide by the rules of the game of politics.

Institutional arrangements are discernible in India which reflect dispersal of power as well as the government's willingness to leave space for the opposition. In India, the prime minister is not the leader of the house. The party's chief of the Congress Sonia Gandhi was made the leader of the house. The speaker is usually elected on consensus from among different political parties. Committee memberships and chairmanships are based on the

proportional representation of parties in the House. Ministers who belong to the executive branch are excluded from committees, and thus the neutrality and relative independence of committees as institutions of legislative branch has been maintained. Moreover, there are a good number of institutions, such as National Human Rights Commission (NHRC), Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC) which became institutionalized over time and have been serving the people. Thus, the external context of the parliament and parliamentary committees has largely determined the ways the parliament and the committees have performed in India.

Formally, committee recommendations are not binding on the incumbent government, but a high number of (60 percent or so) recommendations are accepted. The committee system is highly institutionalized and there is a link between and among all the stages of committee operation, i.e., committee formation, deliberation, recommendation and acceptance. The matter of implementation of recommendation is left to the government to act on. This is an institutional limitation of committee system in a parliamentary system of government and India is not an exception in this case. Hence, the job of committees is usually done once their recommendations are accepted by the government. In sum, institutionally India has got a working parliament and, therefore, a working committee system with significant scope in ensuring executive accountability.

Limitations of committees in Indian Parliament are several. Parliamentary committees have a restricted role in law-making. In India, the average turnover of committee members is high, i.e., 33 percent. This deters committee members from developing specialized knowledge and expertise in making committees more effective. Ministers have rarely accepted the recommendations or observations of the committees when they relate to substantive issues like changing procedures, taking action against errant employees or changing the status quo.

An institutionalized parliament and parliamentary committee have evolved over time and taken root in India. Parliamentary committees have developed their own distinctive identities guided by their own institutional ability. Parliamentary committees in India depend on the prevailing macro-political context of the country. The institutionalized committee system originates mainly from the context and is shaped in part by the prevailing hierarchical culture of India.

Rahman investigates the role of parliament and parliamentary committees in Sri Lanka in holding the government to account in the light of a theoretical framework backed by primary and secondary data. The formal institutional structure of the political system in Sri Lanka appears seriously disadvantaged in checking the unbridled power and authority of the executive and is virtually unable to hold the government to account. All the major characteristics of a strong legislature are, in practice, absent in Sri Lanka and the parliament plays into the hands of the president even in time of cohabitation. The president is all-powerful and can dissolve the parliament at will after one year of its life. All the major political institutions including the parliament (let alone parliamentary committees), the judiciary, the provincial parliaments and the local government units are made captive to the vagaries of the President.

In another study, Choudhury (1995) deals with legislature in Bangladesh under the rubric of constitutionalism. In her study, she finds some constitutional limits to the proper functions of the parliament. In this case, she shows the limits of parliamentary committees. In her views, the parliament in Bangladesh has undergone reforms after the 12th Amendment to the Constitution. Its institutional capacity has improved than ever before, yet there is scope still to improve. Article-70 of the Constitution remains a major obstacle to the effective role of the parliament in the democratization of the country. Moreover, it is important to strengthen the parliamentary committees as these are still lacking powers to enforce their recommendations over any financial malpractice committed by the ministries.

Jamshed (2008) uncovers reasons for the failures and unexpected end of the first parliamentary experiment in Bangladesh. The author attributes the factors for the failure of first parliamentary government during 1972-75 in post-liberation Bangladesh to the lack of experience of the then incumbent elites of parliamentary governance. As the country at that time emerged as an independent state through an armed struggle, and the transition of power did not pass through negotiation and dialogue. This fact influenced the leadership in their handling with political crises in the post-liberation Bangladesh. More specifically, Sheikh Mujib's (Bangabandhu Sheikh Mujibur Rahman) personality largely strained the institutional capacity of the parliament. Along with these factors, socio-economic crises, corruption, underground leftist activities, factionalism within the state institutions, famine in 1974 due to food shortage, etc., all combined to bring about the grounds for the 4th

Amendment to the Bangladesh Constitution which replaced the parliamentary government by a one party namely, BAKSAL dominant presidential system.

Khan (2014) explores the executive-legislature relations in Bangladesh and observes the executive's dominance over the legislative agenda, which reduces the status of the legislative body. A number of factors are responsible for this, such as, the extremely powerful position of the Prime Minister, use of the ordinance-making power by the President, regular quorum crisis, less debate on policy and regulation in the legislature, ineffectiveness of legislative committees and passage of unfavorable laws.

Research Gap

In the review of literature, two types of literature have been found. The first category deals with the topic under research. The second one of literature is more general, but the literature has direct relevance to further understanding of the research. The study in Indonesia by Ziegenhain (1998) focuses on the first category of literature. This study clearly reveals that the parliament has a role in the democratization process. Decisions were reached through law-making. It appears from the review that at least three conditions became fulfilled in the Indonesian case: (i) political leaders were ready to make compromise, (ii) the understanding between the ruling and the opposition elites were evident, and (iii) the debates and discussions in the parliament produced some positive laws conducive to the democratization. However, this study only focused on 6-years' time of democratic transition in Indonesia during 1998 to 2004. To understand the journey towards democracy, more time is necessary to pass the test of time. Although Ziegenhain (1998) highlighted representative, oversight and legislative functions of the Indonesian parliament, the present study focuses only on the legislative function of the parliament in case of Bangladesh. In addition, the participation of the people's representatives in this regard will be examined.

The researchers included for review are Ahmed (2002), Choudhury (1992), Hasanuzzaman (1998), Rahman (2008), Choudhury (1995), Jamshed (2008), and Khan (2014). These authors have all addressed the institutional development and deficit of the parliament in Bangladesh. Of these studies, Rahman (2008) touches on the accountability function of the parliament which definitely includes the democratic functions of the parliament. This is, of course, an important study on the parliament and its function.

However, the law-making role of the parliament has remained underrated, despite its enormous significance to understand the authority of the parliament. In this case, parliamentary rules, regulations, structures and conventions have definite influence. Laws have a specific role to influence the behavior of actors and institutions designed for democratization. In this regard, none of the researchers, mentioned above, has concentrated on the role of parliament through law-making in the democratization process of the country. This study aims to fill this gap.

Research Problem Specified

Although parliament in Bangladesh has become the center of political decision-making since 1991 in a renewed fashion, the reality remains far behind from the ideal scenario. In decision-making, the executive dominance outweighs and bypasses the role of parliament in decision-making. Even under democratic governments, law-making by ordinance, lack of substantive debate on issues of national importance and taking decisions on many issues out of the parliament such as transit, water and energy issues, etc. have largely undermined the status of parliament as the center of decision-making. There are also some legal issues that have affected the performance of the parliament. Article 70 in the Bangladesh Constitution considerably undermines MP's deliberative powers in the parliament, thus contributing to its low performance. In addition, parliamentary committees lack adequate powers to implement its recommendations. Instead of representing the interests of the people, parliament or JS in Bangladesh, the MPs have been so careful in the legislative functions through orchestration and consolidation of interests of the ruling class, interest groups and some other organized interests (Interview with Jamal Khan: March 27, 2016). Another analyst said, 'no bourgeoisie, no democracy' (Mahbubullah April 15, 2016). If there is no development of the bourgeoisie, there will be no democracy in Bangladesh. Little to disagree with this view, but a country cannot wait for a long time for the development of bourgeoisie. In that case, it is realistic to count on parliament, as it is the central political institution for democratization. Above all, lack of meaningful cooperation and competition between the ruling and the opposition parties often leads to dysfunctional parliament. Against this backdrop, the central question of my research is: **To what extent has the Bangladesh Jatiya Sangsad contributed to the democratization process of the country through law-making? More specifically, I have looked into the MPs participation in the law-making process of the Bangladesh Jatiya Sangsad.**

To supplement these questions, a number of additional questions have been attempted to answer:

1. What roles does the parliament play in the law-making process?
2. Under what conditions can Jatiya Sangsad work for the successful democratization through law-making with the participation of MPs?
3. To what extent have the constitutional amendments from 11th to 15th contributed to the democratization process of Bangladesh?

Objectives of the Research

The objectives of this study are:

- (1) To identify the factors under which the JS acts as the central site of law-making through participation of the people's representatives; and
- (2) To examine the factors that ensure effective participation of the people's representatives in the law-making of the JS resulting in strengthening of the democratization process during the period 1991-2013 in Bangladesh.

Justifications of the Research

The discharge of the parliament's various functions has a direct impact on the state of democracy in a country. If the parliament does not properly function, the political system becomes either authoritarian or less democratic. So this study has addressed the importance of parliament as central law-making authority for democratization and contributed to raising the consciousness of the parliamentarians about the collective role of Jatiya Sangsad in promoting democracy in Bangladesh. In addition, policy-makers, political activists and observers of Bangladesh politics will hopefully gain first-hand knowledge and information regarding the matter. Finally, the study could fill the gap of information and achievement of democratization in Bangladesh.

Scope of the Study

This study covered the activities of five successive parliaments since 1991, such as the 5th Parliament during the period 1991 to 1995 and one very short-lived (12 days), the 6th Parliament of 1996, the 7th Parliament during the period 1996 to 2001, the 8th Parliament during the period 2001 to 2006, exceptional Fakhruddin's interregnum during the period 2007 to 2008, and the 9th Parliament during the period 2008 to 2013. It discussed how parliament members exercised their authority in law-making, through deliberation, debate

or discussion. The study included how far MPs had engaged in debates in open sessions and had attended deliberations through committee meetings. Of 15 amendments so far to the Bangladesh constitution, I have focused only on 5 (five), 11th to 15th amendments, which took place during the research timeframe.

Summary of Five Amendments

Table 1.2

Summary of Five Amendments from 11th to 15th

Date of Passing	Jatiya Sangsad	Amendments	Summary of features
August 06, 1991	5 th Parliament	11 th Amendment	Legalizing the appointment of Shahabuddin Ahmed; Chief Justice of Bangladesh, as Vice President of Bangladesh and his all activities as the Acting President and, then, the return to his previous position of the Chief Justice of Bangladesh
August 06, 1991	5 th Parliament	12 th Amendment	Reintroducing the parliamentary democracy system
March 26, 1996	6 th Parliament	13 th Amendment	Provision for Caretaker Government
May 16, 2004	8 th Parliament	14 th Amendment	Re-introducing reserved seats for women in Parliament and enhancing retirement age limit of Judges
June 30, 2011	9 th Parliament	15 th Amendment	Provisions of caretaker government abolished; and inclusion of secularism; from Bangladeshi to Bangalee nationalism and some major changes in the Constitution.

Source: Researcher; Halim (2015)

Hypotheses

The following hypotheses have been tested throughout the thesis. These are as follows:

1. Although the Parliament or Jatiya Sangsad-as a collective actor- is supposed to play a central role in law-making through participation of the people's representatives (PR), in practice, it has hardly done so in Bangladesh.

2. Will of the political leaders (party chief and the chief executive) has significantly dominated the law-making in the Jatiya Sangsad.
3. Instead of cooperative and competitive relationship between the ruling and the opposition parties, confrontational relationship has resulted in most cases the ‘one-party’ dominant participation in the parliament.

Methodology

This is primarily a qualitative study. A theoretical framework connecting three variables – Jatiya Sangsad, Law-making and Democratization – has been developed. Primary data have been collected using in-depth interviews of political leaders, academics, parliament researchers, civil society elites including civil servants. The interviews were conducted on the basis of open-ended questionnaire (Appendix-1). A total of 18 interviews have been taken (Appendix-2). A balance has been maintained in sampling consisting of the ruling and the opposition political elites for interviews. Of this 18, a good numbers of civil society intellectual and academicians were also interviewed, too. The justification for such type of elite interviewing lies in the fact that the role of parliament could be better grasped by the elites. People do have little knowledge about the technical aspects of law-making in the parliament. Secondary data have been collected from journals, newspapers and research works done by different researchers, press reports on parliament and committees, election commission, parliamentary proceedings, research institutions, related books, working papers and monographs on parliament. Some statistical data have been used as secondary data, too. Content analysis has been followed in analyzing data collected from the primary and secondary sources.

Limitations of the Study

In doing this research, the researcher faced many difficulties. Over and above, the job in a postgraduate private college and involvement in family affairs stand in the way to concentrate in comprehensive research. The most difficult part of research in Bangladesh is collecting data and it is more difficult for qualitative research when getting appointments of politicians and civil servants for interview is a must. In all cases, I ran after them, but sometimes failed to get right persons at the right time. Especially, it is really tough to get hold of the ruling elites as they are always busy with their official assignments. I collected some basic information in this regard from searching papers written in different perspectives. In the constraints of time, energy and facilities, I had to

complete the research. It would have been more realistic, if more efforts could be employed.

Outline of the Chapters

This thesis is divided into eight chapters.

In the first chapter, after describing the background of the study, I have reviewed the literature followed by the research problem specified. Then, the study has moved along with the mention of research questions, objectives, hypotheses, scope and limitations. A short description of methodology has been discussed. At the end, an outline of the chapters has been given.

The second chapter explains various concepts of the research which led to develop an analytical framework.

In the third chapter, the development and decline of democratization has been outlined. In independent Bangladesh, democracy flourished between 1972 and 1975, and from 1975 due to martial law and army intervention democracy began to decline till 1990. This chapter focuses on the 1972 Constitution of Bangladesh in which parliamentary system was introduced as a form of governance of the country. It also discusses about first parliament election in Bangladesh held in 1973. Unfortunately, democracy failed to function for a plethora of socio-economic and political reasons. The system was changed soon through the 4th Amendment to the Constitution. After this turn-over of the system, military rule continued to reign in the country marking a period of decline of democratization in the country.

The chapter four analyses the background of restoration of democracy from the General Ershad's military rule (1982-1990), by discussing the mass movement against his rule forcing him to resign at the end of the 1990 (December 06). Ershad's step-down from power opened the door for the democratic transition. Before a new beginning of democratization under Khaleda Zia in 1991, a non-party interim government held the state power headed by Justice Shahabuddin Ahmed to conduct an election, so as peaceful transfer of power could take place. Then the discussion on activities of the interim government confirmed. At the end of the chapter, the most important debates, discussions and activities took place in the 5th Jatiya Sangsad, that ended in framing 11th as well as 12th amendments, have been critically discussed.

In chapter five, discussions include political harmony created among the political alliances in the 90s broke down from March 1994 over holding rigged by-election at Magura and later in Mirpur. As a result, one-sided 6thJatiya Sangsad election was held on February 15, 1996 and the new innovation of caretaker government system through the 13th amendment to the constitution came into being following the discussion on the fact and friction. The achievements of the Bangladesh Jatiya Sangsad and its impact on the democratization process have been discussed during the period of 7th parliament from July 14, 1996 to July 13, 2001. In this regime, various efforts were made to establish a democratic order in Bangladesh and many initiatives were taken in parliamentary rules of procedure (RoP). These helped to develop accountability of the executive to Jatiya Sangsad, showing a promising sign for democratic consolidation. There was no constitutional amendment in this regime.

Chapter six begins with the take-over of Khaleda Zia regime from October 28, 2001 when the newly-elected 8thJatiya Sangsad began its operation. The regime of this Jatiya Sangsad together with the PM of Khaleda Zia lasted until October 27, 2006. The 14th Amendment to the Constitution took place during this period and the seeds of discontent in the democratization process in Bangladesh politics were sown. Because through the 14th amendment the retirement age of the Supreme Court Judge were increased. To the opposition AL, this was allegedly orchestrated to induct Justice K M Hasan as the next caretaker chief who seems to be a BNP sympathizer. The AL's comprehension was that Justice Hasan might tilt towards BNP during election time. The case of constitutional amendment as stated above resulted in political turmoil. Later, situation turned worse and no political consensus developed due to confrontational political culture of Bangladesh. The election and politics of the country again fell under uncertainty. As a result, Fakhruddin Ahmed-led emergency government came into power.

Chapter seven discusses the activities of the emergency government in the first section. The army-backed Fakhruddin interregnum (2007-2008) ran the country for two years without Jatiya Sangsad. The Fakhruddin interregnum suggests that military can contribute to the process of democratization even if they do not have people's mandate. Afterwards, the discussion revolves on the activities of the 9thJatiya Sangsad which was formed through the election held on December 29, 2008. The new government led by Prime Minister Sheikh Hasina was installed. This regime has been more important than the previous two regimes. The powerful PM along with weak opposition in JS was noticeable.

The relationships between the ruling and the opposition parties were not friendly. The core discussion of this chapter is on the 15th Amendment to the constitution. I have looked at this amendment process in light of participation of the representatives of the people.

Chapter eight forms the final chapter of the thesis which has presented the overview, comparison, findings and analyses. In the conclusion, I have shed light on three hypotheses set out in the introductory chapter. I have concluded that the research has proved its hypotheses. However, I do not claim that this research is the be all and end all of democratization in Bangladesh. There are some other issues need to be researched. Last but not the least, the findings of this research fit in the context of Bangladesh. I argue that it may be equally applicable to other contexts.

Conclusion

In conclusion, I argue that as a central political institution, the role of the JS in democratization in Bangladesh is yet to be properly examined. So, this research is a pioneer study in Bangladesh in the relevant area. Using primarily qualitative data, the study mainly focuses on law-making in the JS and participation therein by the people's representatives. The study covers the time-frame from 1991 to 2013, over five parliaments including very short-lived one, i.e., the 6th JS and five amendments passed through different JSs, in the path of the democratic journey of Bangladesh. The main argument of the thesis is: MPs participation remains peripheral in the law-making process of the JS in Bangladesh. This argument has been proved throughout all the next chapters of this thesis.

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Chapter Two

Parliament and Democratization: Linkages, Causes and Consequences

Introduction

This chapter provides a theoretical framework of the proposed study. In representative democracy – parliamentary or presidential form of government, parliament or legislature plays a critical role in the law-making process. By law-making the parliament either can play positive role in the democratization process or it may hurt the process by taking abusive laws, avoiding participation of representatives of the people in the process. Yet, it is believed that parliament of a country represents the whole nation; oversees the governance functions and acts as the supreme agency to make laws. This is the place for the meeting to arrive at national consensus amongst the politicians through debates and discussions on vital issues of national importance. In this chapter, I propose an analytical framework whereby parliament's role can be analyzed.

However, this chapter has been divided into four sections. After the introduction, the first section identifies and defines the key concepts used in this research, such as: parliament, functions of parliament, law-making process, democracy and democratization. The second section presents the theories of democratization. This section further explains the differences between democratic transition and consolidation. The third section deals with various modes of participation. The penultimate section focuses on the analytical framework of the study followed by a conclusion.

Parliament: Interpreting the Concept

The word parliament comes from the French word “Parler”, which means “to talk” (Political Science Dictionary, Second Part, 1974: 89). Moreover, the French word “Parler” originated from the Latin word “Parabol are”. It also means “to talk”. The current use of the word parliament comes from the old French word “Parlement”. During that time it meant discussion, debate and conference (Ayto, 1992). On the other hand, another opinion is that the word parliament comes from the French word, “Parli”, which means, ‘Parlay or Conference’, that also means public representatives’ conference, but governmental name is Legislature or National Assembly or Congress or Sangsad or Parliament or other names

like Diet or Duma, etc. (Political Science Dictionary, 1974:89). In 1236, the British Legislature is first called “Parliament” (HMSO, 1991). From the beginning it was used as an advisory council of the Prince. The “Althing” of the Iceland is the oldest Assembly of the world that was functional since 1042 (Political Science Dictionary, 1974). There are two types of legislature or parliament: unicameral and bicameral parliament. Bicameral parliament consists of two chambers: upper chamber and lower chamber or popular chamber. The UK, the USA, Canada, France, Russia, Indonesia, India, etc., have bicameral parliament and Bangladesh, China, Greece, Turkey, New Zealand, Denmark, Sweden, etc., have unicameral parliament. In the unicameral parliament, representatives or MPs are elected by direct election. On the other hand, in bicameral parliament lower house is the most powerful house and its representatives are also elected by direct election. Upper chamber’s members are elected in different ways in different countries, like in the USA senate members are elected directly by public vote; in the UK members of the House of Lord are selected by heredity, in Canada upper chamber’s members are elected by nomination and in France, the members of upper chamber are appointed by indirect election process.

Primarily modern parliament or legislature is an elected institution of the state. The institution or agency or organ, which enacts new laws, modifies the old laws and also amends them, is called the parliament or legislature. It is popularly known as a central law-making, policy-making and approving body. It represents the different segments of the population. Some scholars would not define congress of the USA as a parliament, because it neither selects nor unseats the chief executive. Others would argue that the term “legislature”, is usually used referring to the US Congress, is not appropriate for the British parliament (Olson, 1994:2). A legislature refers usually to a presidential government with a clear separation of power between executive and legislature, where the legislature’s power is based essentially on its competencies in legislation and budgetary affairs (the power of the purse). A parliament, on the other hand, determines the composition and tenure of the government (Ziegenhain, 2008: 3).

According to the constitution, Bangladesh is a unitary, democratic and parliamentary republic. In Bangladesh, the prime minister as well as his or her cabinet is collectively accountable to Jastiya Sangsad for their activities at present. Head of the government (PM) is appointed by the head of the state (President of the People’s Republic of Bangladesh)

from the majority winner parliamentary party. At times, parliament or PM elects the head of the state. The Bangladesh Parliament can also impeach the president. Where the law-making body or assembly does these works, particularly in parliamentary system of government and especially in unicameral legislature, is called parliament. However, Bangladesh JS carries out these functions as a central political institution. The Constitution of the People's Republic of Bangladesh empowered it for these functions to carry out. So, Bangladesh Jatiya Sangsad can conceptually be called Parliament, because it elects and removes head of the state and head of the government and other important posts of the state particularly constitutional or statutory bodies.

Functions of the Parliament

All parliaments have a number of functions to perform. Variations in patterns of activities are vast, but in general, “the more powerful a legislature, the more comprehensive its functions will be and the more extensive will be its societal impact” (Smith and Musolf 1979: 44). There is saying about power of the British Parliament, “Parliament can do and undo each and everything without man to woman and woman to man”. Particularly, in the parliamentary democratic system, parliament is the national icon for a country. Its main functions are law making, approving the budget, tax fixation, controlling the executive; electing the head of the state and government, speaker and deputy-speaker and so on and overseeing the executive activities. But, we have seen in modern countries, all parliaments do not perform identical functions. In all places they pass laws, determine the ways of rising and spending public revenues, discuss matters of public importance and almost everywhere they have main parts in the process of amending the constitution (Appardorai, 1954: 512). In a parliamentary state, it controls the executive, for instance, Britain, Bangladesh, and Canada. The upper chambers of some countries have also judicial functions; for instance, the House of Lords of Britain, the Lords of Appeal and the Lord of Chancellor. A number of parliaments or legislatures have elective functions, for example Switzerland and the USSR, now Russia. A few parliaments contribute to executive functions: the consent of the Senate is necessary in the USA. for the appointment of officers and the making of treaties; in France, under the Third Republic, the Senate's consent was necessary for the dissolution of the Lower House. Moreover, in many countries it brings impeachment against judges and removes them (Appardorai, 1954). Bangladesh parliament has three main functions: legislative, representative and oversight.

For this study, I have only looked into the legislative functions of the parliament, although the two other functions of the parliament are also significant to be researched.

To enact legislation is the first and foremost function of a parliament, which is a complex and difficult job. J. S. Mill said that “a numerous representative assembly is not fitted for the direct business of legislation, which is skilled work demanding study and experience. It is not competent to do work itself but it can cause it to be done, it is competent to determine to whom or to what sort of people this shall be confined, and to give or withhold the national sanction when it has been done. Every provision of a law to be framed with the most accurate and long-sighted perception of its effects on all the other provisions; and the law when made should be capable of fitting into a consistent whole with the previously existing laws (Mill, 1861: 170). Further, Mill himself suggested that the duty of making the laws should be entrusted to a small body of experts, a Commission of Legislation, not exceeding in number the members of a cabinet. No one would wish, he added, that this body should of itself have any power to *enact* laws; the Commission would only embody the element of intelligence in their construction; parliament would represent that of will. Indeed, it should be a rule that no measure can become law until expressly sanctioned by parliament. Technical knowledge needs to be tempered by the representatives’ knowledge of social needs and the desires of the public. While Mill’s specific suggestion has not anywhere been adopted, it is significant that the responsibility for the initiation of new legislation in most parliamentary democracies is vested in the Executive, which avails itself of the advice of experts and of advisory bodies representing special interests (cited in, Ibid: 513).

Representation Roles

A parliament is the embodiment of people’s sovereignty. Parliaments represent the interests and opinions of all parts of the population. The representation role can be seen as the true common denominator of all sorts of parliaments, regardless of a country’s political system (Laundy, 1989: 11). The legitimization of political decisions is one of the main tasks of parliaments. The quality of this legitimacy depends to a considerable extent on the degree of parliamentary representation and the provision of an institutionalized arena for public debate (Ziegenhain, 2008: 34). Furthermore, parliament’s legitimacy depends, among other factors, upon their closeness to the people, which can be guaranteed by regular elections and fixed terms of office. According to traditional democratic theory,

citizens control policy-making “by choosing ‘fiduciary agents’ to act on their behalf, taking part in legislative deliberations in the same person” (Davidson, 1990: 48). It is agreed that elected representative should not completely ignore the wishes of his constituents. Therefore, a short analysis of the socio-economic profile of a legislature makes sense. Parliament is the most important institution to reflect the unity in diversity of a society (Von Beyme, 1997: 359). A parliament should be composed of representatives of the most important social groupings. A specific characteristic is the connection between the legislative arena and the public the parliament members represent. Another aspect of the representative function is the legislator’s role as an intermediary between citizens and the state. Under this function several activities of parliament can be subsumed: lobbying bureaucrats or dealing with complaints of citizen on poor government performance or mismanagement and corruption among the executive members (Ibid: 36).

Parliaments represent the population of their constituencies. They have to take care of the general and specific interests that are prevalent in their territorial area. The success of re-election depends on the individual legislator’s ability to channel government funds and services toward their constituency, especially when a majority election system is adopted. In such a system, members of the parliament are “expected to deliver or affect to deliver or face electoral defeat” (Mezey, 1979: 16). It is, therefore, the task of legislators to care about the interests and demands of the people, because they “enjoy an access to the central government departments and to members of the government that is unquestionably greater than that of most citizens” (Blondel, 1973: 97). Citizens’ demands they should take seriously as they were elected by them. It should be the legislator’s responsibility to protect the main interests of his or her constituency in the development and implementation of public policy.

Legislature ensures that there are always communication between the people and the executive. As a result, it should be possible for citizens to raise their demands in the decision-making process. If citizens feel that their interests are being represented, they will be more likely to support government and its policies and the political order, meaning that democracy can be sustained by a good representation of citizen’s interests. Legislatures therefore have a direct impact on the citizens’ attitude toward the political system (Ziegenhain, 2008: 37). Legislators are expected to be responsive, meaning that they are in permanent connection with the population they represent and that a mutual exchange of

information and opinions is guaranteed. However, in many newly democratized countries, legislators tend to give the relations with their constituents only a low priority. In Central and Eastern Europe, the members of the communist parliaments rate attention to their district voters as less important than the tasks of either legislative or party work (Olson, 2002: 23).

One aspect of representation activity is what Walter Begehut (2001), called the “expressive function.” In the work and deliberation of a legislature, many opinions of various sectors of society should be voiced. Nowadays, many scholars prefer to use the term “interest will permit the more expeditions management of conflict and reduce the likelihood of disruption or instability in the political system” (Mezey, 1979: 17). Since a productive debate in parliament ensures that different opinions can be voiced and discussed, conflicts are therefore carried out with words and arguments rather than violent means (Ibid: 41). A democratic state cannot systematically exclude important segments of its citizens from participation in policy-making (Close, 1995: 3). Performing the representation function of serious demands first and foremost require a democratic group’s access to parliamentary mandates. In some mostly authoritarian counties, members of parliament (MPs) are not popularly elected, but installed by appointment.

The power of political parties over their elected representatives is relatively weak in presidential systems, like the United States of America, but stronger in parliamentary government systems. The power of party leaders over the rank and file member is stronger in parliamentary government systems, such as the United Kingdom and Germany. In any case, it is incompatible with democratic representative principles to give party leadership the right to recall and replace their elected legislators (Von Beyme, 1999: 247), since they are the people’s representatives. It is, however, a common practice in most democracies that parties can put their representatives under pressure by threatening to punish their dissent in the following elections. In a proportional election system, parties could either not place them on the party list, or place them in a bad position on the party list. In a popular voting system, however, the party could nominate another candidate for the constituency.

Party discipline is also a point to consider. If legislators in parliamentary government systems have questionable loyalty to their party, the fall of the government could follow

very easily. Additionally, if legislators put their personal interest above the national interest, the result would be an ineffective parliament. If they do not meet the expectations of their voters, because they stray too much from the party line and their undisciplined behavior becomes regular, public dissatisfaction may be directed to the whole parliament since its action become too unpredictable and erratic. However, too much party discipline results in less flexibility to form necessary compromises. Such behavior produces less legislative effectiveness when partisanship outweighs national legislative goals. As a result, in most established democracies, especially in parliamentary government system, some kind of “rationalized parliamentary mechanism” should exist. However, there is a permanent tension between the representative function and the efficiency of parliament.

Oversight

To watch and control the executive, or more specifically the government, is one of the main tasks of representative assemblies. The oversight role is one of the most important functions, “while deprecating the presumed obsolescence of legislatures as law-making institutions in modern ‘technocratic’ or ‘managerial’ society” (Smith and Musolf 1979: 52). In a parliamentary system, the legislative oversight function has a different meaning than in presidential systems, since the government usually has a majority within parliament. A president possesses his own base of legitimacy as a result of this direct election. The oversight function of parliaments may have two recipients; first they want to focus public attention on the actions of the executive branch via media reports. This is particularly important for parliamentary supervisory mechanisms, such as, interpellation, investigative committee and hearings. The capacity to control the potential excess of executive initiative and power is considered a basic of parliament. In liberal democracies, legislators are expected to gain policy concessions by using their capacity to criticize, embarrass, delay, and obstruct the government. The idea that legislators should intervene with bureaucrats and the government on behalf of citizens carries a heavy emphasis of the representative function. Legislators can use the above-mentioned techniques to act as a “watchdog”, guarding the people’s interests against the executive policy-makers exposing corruption, lack of efficiency and irresponsible actions (Mezey, 1979: 16). They should be among the most prominent and important watchdog of democracy. It is of high public interest when legislators are expected to make recommendations either to the public or to the government.

Another criterion which I rate as part of the oversight function of parliament is the elective function. Bagehot (2001) defined the elective function as one of the major functions of the British House of Commons. In presidential government system, the president is usually not elected by parliament, but directly by the people. In a parliamentary government system, parliament is, because it elects the government, the initiator of the initiator. By having an important say in personal appointments of these officials, parliament can effectively control the executive branch. As this is also the case in Indonesia, the budgetary function will be discussed as part of the parliamentary oversight function. These findings specifically apply to parliamentary government system, where a parliamentary majority supports the government. A classic example is the British House of Commons.

Parliament as a Collective Agent

Parliament offers a space or place to the parties inside and outside of the House to elect or select any case or bill so as to debate, to deliberate, to propose, to make or arrange voting for passing a bill. Informed and engaged participation by the MPs across the party makes the parliament a collective agent. Parliament can mediate in a political conflict. In 2006, the speaker of the parliament in Bangladesh mediated a conflict between AL and BNP, but no avail. Parliament moderates the extreme views of the MPs, thus creates a position for political consensus. This sort of consensus was reached between the major political parties when the 12th amendment took place in Bangladesh JS in 1991.

Law-making and the Parliament

Law is the supreme command of the state. All modern states are run by the law. All existing laws of a country may be classified into two types: public law and private law (Halim, 2015: 21). Public law determines and controls the organization and functioning of the state. It establishes the relationships of the state with its citizens. Public law has several streams, for instance, constitutional law, executive law, criminal law, income tax law, and so on (Ibid, 2015: 21). As part of public law, constitutional law as a matter of fact forms the spine of public law. It is that stream of public law which decides the spirit of the state, character and structure of its management – its controls, roles, division of authorities amid different constitutional bodies and their bonds to each other.

The constitutional law defines the boundaries among the organizations and authorities, determines the roles of the major parts of the government; specially demarcates the jurisdiction of legislative, judiciary and other constitutional bodies such as the Election Commission (EC), Public Service Commission (PSC), Comptroller and Auditor General (CAG), etc. Public law deals with public bodies, their responsibilities, rights, duties, jurisdiction, control, work agenda, resolution of agreements and disagreements.

Private law is that stream of law which refers to relationship among the citizens. In the domain of private law, parties are private individuals and the state. Taking the position of an arbitrator, the state through its judicial organ, adjudicates the matters in dispute between them. Law of contracts, torts, property, etc. are examples of private law. Both public and private law may be substantive law or procedural law. When a specific law indicates rights or crimes or any status, it is called substantive law, for example, law of agreement, law of property, penal law are substantive laws. When a particular law determines the remedies or outlines the procedures of litigation, it is called procedural law, e.g., Civil Procedure Code, Criminal Procedure Code, etc. (Halim, 2015: 23). Be that as it may, the distinction between the substantive and procedural laws' is not an easy and clear-cut one. The same law may be procedural as well as substantive (cited in Halim 2015: 23; Salmond: 461).

All laws apart from constitutional law are called ordinary law, because they can be made and amended by the ordinary law-making process. On the other hand, no condition of these laws can be contradictory with the constitutional law. In those countries where constitution is unwritten and flexible, Constitutional Law has got the same status as other laws. It is not in any way superior to any other law. Where the constitution is written and flexible, there cannot be any separation amid fundamental law and common law. In Britain parliament being the supreme law making body and the constitution being unwritten and flexible, parliament can amend any constitutional law by ordinary law making procedure and hence constitutional law exists on the same footing with other laws of an ordinary nature (Halim, 2015).

But in those countries where the constitution is written, the constitutional law has a distinct position. In these countries the constitution is regarded as the supreme law of the country. This is supreme law of the land in that sense of view; on position it is ranked over

all the laws: no law is on top of the constitution; and all ordinary laws find their life, validity, weight, force, legality, authority and legitimacy from the constitution; no law can be contradictory with the constitutional law. According to Gettel, “Constitutional law locates sovereignty within the state and thus indicates the source of law” (Gettel, 1950). This is why constitutional law is considered the touchstone or yard-stick to test the validity of all other laws, be it public or private, substantive or procedural (Ibid).

In Bangladesh, we may cite examples of public laws here. The most important legislation in this category was the Constitution (Twelfth) (Amendment) Act of 1991, providing for the restoration of the parliamentary system of government abolished in 1975. Another important measure was the enactment of the Parliament Secretariat Bill in May 1994. The Act provided for setting up an independent Secretariat for the Parliament (Ali, 1994).

Parliament and the Legislative Process

Different countries have different types of law-making process by the parliament. The functioning of the process is determined by the historical tradition, existing culture of practice, customs, conventions and the rules of a country. In Western parliamentary democracies, such as, the U.K. Canada, Spain, etc., law-making process has evolved through trials and errors over the centuries. But new born countries like India and Bangladesh, where there were no opportunity for the exercise of democracy, these countries had to follow and create new rules and regulations and conventions for law-making (cited in Chowdhury 25-28: 2014, Hall, 1986). For instance, India followed the ‘The Government of India Act 1935’ that was enacted before the country achieved her independence for their initial law-making process. In case of Bangladesh, the 1972’s Constitution was adopted before the first election held in 1973 and after the election; the parliament enacted Rules of Procedure in 1974. Thus, law-making process developed along two methods: History based Institutionalization and Rule based Institutionalization (Rahman, 2008: 19).

Nicholas (cited, Ibid: 28) divided the theories of law-making into two kinds: *partisan based theories* of law-making and *preference based theories* of law-making. Rohde and Rodhe (1991) considered Conditional Party Government (CPG) theory instead of partisan based theory. Two theories of partisan law-making process exist. One group (Rhode and Rhode, 1991) says that the role of the power of the party itself and how much the party

rank and file is ready to hand over this to the party chief. Therefore, law-making depends on the relations between the rank member and the file member of the party. According to CPG theorists, the party support is significant in law-making, when the rank members and file members of the party collectively support the chief of the party and, thus, they assist the party to make laws. In this way, will of the party chief is made vital in the law-making process. Furthermore, Cox and McCubbins (2005) challenged the CPG theorists. They argued in their Procedural Cartel theory that the law-making process is strictly controlled by the party and party chief and it is actually party agenda to propose the bill. Both the theorists sum up that in case of law-making party plays the main role, the difference is the relation of the rank and the file members. This concept is suitable for the parliamentary democracy like England and Bangladesh. However, they argued that in parliamentary democracy where party chief becomes prime minister, he or she control or influence his or her cabinet (rank or front-bencher) and file member (back-bencher) in the case of law-making (cited in Chowdhury 2014: 29-30; Cox and McCubbins, 2005). As the majority winner party forms the government, the party chief makes the key role in the decisions of law-making and policy making and other members of the party, be they rank or file, do not play vital role in decision making process independently due to various obstacles. The main theme of the above discussion is that the bill turns into law absolutely depending on party chief or party decision in parliamentary democracy. In the parliament of the advanced democratic countries, the file members get the chance to support or reject the bill and in some transitional democracies rank members only get the chance to express their opinion on bill.

In addition, as explained in preference based theories, instead of party, the legislator plays the key role in law-making. Keith Krehbiel (1998) argued that law-making is an individual and impartial function and Congressmen independently take the decision and it is not the party's collective will rather it is the outcome of the individual ideal, thought, expression. In his theory used a new notion of "pivotal legislator" that means a legislator who plays a pivotal role in various law-making steps. This concept is suitable for presidential form of democracy like America. According to Krehbiel there are three visible characteristics in this law-making process: full convergence to the legislative median, partial convergence to the legislative median and gridlock (executive veto).

Law-making processes differ on the basis of the system of government, relationship between executive and legislature and nature of the bill. After the exit from the British colonial rule, new states either maintained or followed the law-making process of the rules of procedure of the British House of Commons. There are three kinds of government system: presidential, parliamentary and hybrid or mixed political system. However, the notable differences are on the initiative of the Bill and approval of the Bill. Particularly the House of Commons directed by 'Standing Order of the House'; Indian parliament and Bangladesh JS are also run by rules of procedure in the law-making process. However, in presidential democracy parliament enjoy more freedom in the law-making process. On the other hand, in England law-making includes three independent stages, namely, pre-legislative, legislative and post-legislative. The executive makes proposal which is placed in any House of the British Parliament. Any member of the House of Commons or House of Lords introduces the bill and from introducing a bill in parliament, legislative stage starts. These stages are popularly known in parliamentary system as First reading, Second reading and Third reading. These stages are also known as introduction, consideration and passing. In the Third stage if the bill is introduced in the House of Commons, the bill is sent to the House of Lords for consideration or *vis-a-vis*. And if the bill overcomes three stages in both Houses, the bill is sent to the King/Queen for His/Her consent. If in the bill, the King/Queen puts the signature, the bill turns into law. The British parliament introduced two types of bills, namely, public bill and private bill. The public bill is also divided into two types: Government bill and private member bill. When the bill is proposed by a minister, it is called public bill and, if the bill is proposed by non-minister MP it is called private member bill.

The Indian parliament is also following in their law-making process almost the British parliamentary system. In India, bill has to be approved by the two Houses of parliament. As in the UK, the bill needs to pass through three stages. The difference from the UK is that if the bill faces any obstacles in any House by the members who proposed the bill and those who opposed, it then goes to the president. The president could solve the gridlock through joint meeting of the Houses (RoP: 108).

When a bill completing three stages, is passed through voting of MPs by Parliament, it shall be presented to the President for consent. The President within fifteen days after a bill is presented to him, may consent to the bill, or, if it is not a money bill, may return it to

Parliament with a message requesting that the bill or any particular provisions thereof be reconsidered, and that any amendments specified by him in the message be considered; and if he fails to do so, he shall be deemed to have assented to the Bill at the expiration of that period. If the President so returns the Bill, Parliament shall consider it together with the President's message, and if the bill is again passed by Parliament with or without amendments, it shall be presented to the President for his assent, whereupon the President shall assent to the bill within the period of seven days after it has been presented to him and, if he fails to do so, he shall be deemed to have assented to the bill on the expiration of that period. When the President has assented or is deemed to have assented to a Bill passed by Parliament, it shall become law and shall be called an Act of Parliament. No money bill, or any bill which involves expenditure from public moneys, shall be introduced into Parliament except on the recommendation of the President. Provided that [in any money bill] no recommendation shall be required under this article for the moving of an amendment making provision for the reduction or abolition of any tax (Article 80, 81, The Constitution of the People's Republic of Bangladesh, April, 2016: 29-30).

The parliament or Jatiya Sangsad in Bangladesh is the supreme law-making institution in Bangladesh. As per Article 65 (1) of the Constitution, legislative powers of the Republic are vested in the parliament.¹ The Parliament, however, can delegate to any person or authority power to make orders, rules, regulations, by-laws and other instruments having legislative effects.

I plan to address the JS's roles in the democratization process of Bangladesh through the legislative process. Where in Bangladesh JS, there are three stages of the law making system. These are: pre-legislative, legislative and post-legislative stages (See the details in chapter three).

Democracy

There is no universally accepted definition of 'democracy', although some argue that it is a universal value. It is one of the most used and contested terms in political science and is capable of generating passionate debates and discussions among political scientists and policy-makers alike. Schumpeter defined democracy as an 'institutional arrangement for

¹ Article 65 (1) of the Constitution provides: "There shall be a Parliament for Bangladesh in which subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic" (Government of the People's Republic of Bangladesh, 2011).

arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote' (Schumpeter 1975: 242,269). In the view of Samuel P. Huntington, democracy is 'a political system in which the most powerful collective decision makers are selected through fair, honest and periodic elections in which the candidates freely compete for votes and in which virtually all the adult population is eligible to vote' (cited in Riaz 2016: 110; Samuel P. Huntington). Further extension of Huntington's minimalist electoral democracy and the meaning of democracy reflect clearly in the words of Beetham: democracy is a mode of decision-making about collectively binding rules and policies over which the people exercise control, and the most democratic arrangement [is] that where all members of the collectivity enjoy effective equal rights to take part in such decision-making directly-one, that is to say, which realises to the greatest conceivable degree the principles of popular control and equality in its exercise (Beetham 1992: 40, cited in Grugel 2002: 12).

In the larger context of democracy, Beetham's collectivity may mean the electorate as a whole, may also mean the collectivity in any organization. In this sense, parliament refers to the collectivity whose members are directly elected through vote. In the views of Schumpeter, Huntington and Beetham, democracy is a set of institutional arrangements by which collectively binding decisions are made.

In real life, the institutional democracy turns into 'polyarchy' model (Dhal, 1971) based on the following criteria:

- Freedom to form and join organizations (associational autonomy)
- Freedom of expression
- Right to vote
- Eligibility for public office
- Right of political leaders to compare for support/votes
- Alternative sources of information
- Free and fair elections
- Institutions for making governmental political decisions depend on votes and other expressions of preferences.

It is possible to trace two principal strands of democratic theorizing: direct and representative democracy. In direct democracy, citizens should decide laws and make

public policy without the mediation of political representatives. But the idea of representative democracy comes from the liberal idea of the individual, who has a right, but not an obligation, to participate in politics (Grugel 2002: 13-14).

In the definitions of democracy, some ideas about formal democracy surfaces. Formal democracy is a system where all the democratic institutions exist, but they are usually either abused or managed by a small group of elites for narrow interests and personal gains. The system may allow regular elections, methods of apparent political participations, and some semblance of the rule of law; but in essence functions as an oligarchy of some kind. Substantive democracy, on the other hand, evinces the spirit of democracy; that is the empowerment of people to pursue their interests autonomously from the entrenched structures and dominance of privileged segments of the society (Riaz, 2016: 111-112). After the discussion on democracies; we now turn to the meaning of democratization.

Democratization

Early studies of the democratization in the 1970s and 1980s, meant simply a transformation of the political system from non-democracy towards accountable and representative government. These studies adopted a process oriented approach, concentrating on identifying the mechanisms or paths that lead to democratization. An important distinction was made between transition, or the beginning of the building of democracy, during which politics is fluid and democracy remains not assured, and consolidation, when democracy becomes ‘the only game in town’ (cited in Grugel 2002; Linz and Stepan 1996:5). According to Stepan, there are eight paths leading to democratization. These include internal restoration after external reconquest, internal reformation, externally monitored installation, democratization initiated from within authoritarian regimes, society-led termination, party pact, organized violent revolt (led by democratic parties) and Marxist-led revolutionary war (cited in, *ibid*: 4).

As democratization developed, it became evident that although some countries made a successful transition to democracy, others broke down and many more remained in the category of problematic democracies. The result was a shift in academic interest towards identifying those factors that made new democracies endure and those that, conversely, make for fragility or weakness. The consolidation of democracy became the principal focus for research in the 1990s, resulting in a shift in the democratization debate, from a

primary interest in structure and agency and their respective roles in causation, towards a focus on how political culture (Diamond, 1999), political economy (Haggard and Kaufman, 1995) and institutionalism (Remmer, 1997) shape outcomes.

From the perspective of political studies, democratization has been understood along a continuum from a minimal to a maximalist position, with most commentators positioning themselves at different points in the middle. The basic minimalist definition sees democratization as the regular holding of clean elections and the introduction of basic norms (e.g. an absence of intimidation, competition from at least two political parties, and an inclusive suffrage) that make free elections possible. A slightly more inclusive definition demands of the introduction of liberal individual rights (freedom of assembly, religious freedom, a free press, freedom to stand for public office, etc.) or the creation of the polyarchic order. We need to remember the broader definition of democratization which includes the introduction and extension of citizenship rights and the creation of a democratic state. Another way to think of this is as rights-based or 'substantive' democratization in contrast to 'formal' democratization (Ibid, 2002: 5).

Theories of Democratization

There are three theories explaining democratization. These are as follows: modernization theory, historical sociology and transitions theories.

Modernization Theory

As a theory of change, modernization is functionalist and economic, in that it sees democracy as an outcome of capitalism. According to Lipset, capitalism is the heart of democracy because it produced wealth (which he unproblematically assumed would trickle down and lead to higher levels of mass consumption), led to an educated middle class and produced a number of cultural changes favourable to democracy, such as increased secularism and a diminution in ascriptive and primordial identities (Grugel 2002: 46-51).

Lipset's notion of capitalism as the source of democracy was strengthened by the work of Walt Rostow in the 1960s (Rostow, 1960). He suggests that a numerically small, but politically powerful bourgeoisie uses the state to maximize profit through repression. However modernization theory is unable to explain why trends to democratization are so often contradictory and partial.

Historical Sociology

Historical Sociologists or Structuralists trace the transformation of the state through class conflict over time, in order to explain how democracy – which they see as state transformation – has sometimes emerged. Structuralism also contains elements of a political economy of democratization, in that it emphasizes how changes in the economy, for example, the expansion of production for the market – lead to social or class conflict, although economic change is not, on its own, regarded as determining political outcomes (Grugel 2002: 52). According to this perspective, change in the economic structure particularly in feudalism led to the rise of bourgeoisie and industrial working classes. These two classes had a positive role in promoting democratization in many European countries, for instance, the case of United Kingdom. The weaknesses in structuralist account lies in the facts that it ignores the role of individual agent or institutions' role in democratization which the transition theories deal with.

It was logical, therefore, especially in the light of the rise of agency-based theories of political behavior through the 1980s that dissatisfaction with structuralism would lead directly to a new agency-centered paradigm of democracy.

Finally, structuralism is important in contextualizing and situating the debate about democratization. It allows for the identification of global structures that condition and shapes the environment in which democratization takes place and points to the importance of 'underlying economic conditions and social forces' in democratization (Haggard and Kaufman, 1997).

Transition Theories

The transition approach, or, as it is sometimes termed the agency approach, sees democracy as created by conscious and committed actors, providing that they possess a degree of luck and show a willingness to compromise. Democracy is not, therefore, a question of waiting for economic conditions to mature or the political struggles unleashed by economic change to be won. The divide between agency-centred scholars, on the one hand, and structuralists and modernization theories, on the other, turns on the roles of actors, structure, culture and class relations in democratization and regime change.

Agency perspectives suggest that democracy can be created independent of the structural context. It hypothesizes that the creation of democracy is a dynamic process in the context

of ‘a prolonged and inconclusive political struggle’ (Rustow, 1970: 352), which passes through three stages – a preparatory phase, a decision phase, in which the choices and negotiations of ‘a small circle of leaders’ play a particularly crucial role (Rustow, 1970: 356), and in a habituation phase in which citizens and leaders fully adapt to the new system. These stages were later transformed into liberalization, transition and consolidation.

Transition studies offer a ‘political’ explanation of democratization. Democratization is seen as a process. For process-oriented scholars, ‘choices are caught up in a continuous redefinition of actors’ perceptions of preferences and constraints’ (Kitschelt, 1992: 1028).

Above all, transition studies emphasize the agency and interactions of elites. They have thus made an important contribution in this area. By detailing how elite pacts, formal or informal, or compromises, or shapes new democracies in the first place and contribute to their institutionalization. Because of the emphasis on elites, agency-centred perspectives have devoted relatively little time to the analysis of civil society, associational life, social and political struggles and citizenship in the construction of democracy.

Democracy is visualized as a set of procedures for government negotiated by and between political leaders. Thus the transition approach separates democracy from its essential meaning as rule by the people and conceptualizes it principally as the establishment of a set of governing institutions. At the same time, the perspective’s elitism consigns the mass of the people to a bystander role in the creation of new regimes. Finally, democratic transitions do not explain why democratic outcomes vary from country to country.

From Transition to Consolidation

Juan Linz (1990) gave a minimalist definition of the democratic consolidation. He said that democratic consolidation is step towards democratization in which none of major political actors, parties, or organized interests, forces, or institutions consider that there is any alternative to democratic process to gain power, and that no political institution or group has a claim to veto the action of democratically elected decision makers. O’Donnell (1996), thought that as long as elections are institutionalized, polyarchies are likely to endure. Many scholars did not agree with Linz and O’Donnell. They further argued that only institutionalizing free elections is not sufficient to classify a system as fully democratic. They argued that consolidatio should be conceived not as a “phase”, but as a

“process”, that may temporarily overlap with that of transition, where all politically significant groups regarded its key political institutions as the only legitimate framework for political contestation. Linz and Stephen further argued that election as a necessary, but by no mean, sufficient condition for the completion of democratic consolidation. The consolidation of democracy gives emphasis on institutionalization, which is the process by which organizations and procedures acquire value and stability, and institutions are stable, valued, recurring patterns of behavior (Ibid: 215). Scholars argued that consolidation and institutionalization are not the same phenomenon. Institutionalization is one of the conditions of the way of democratic consolidation. Shin (1994) argued that the institutionalization exists only with the duration or persistence of a democratic regime. Consolidation refers to significant changes in the quality of its performance.

Democratic transition theorists divided a transitional process into three different phases, (i) the liberalization period, (ii) the democratization period and (iii) the consolidation period (cited in Ziegenhaim, O’Donnell and Schmitter, 1986; Boss, 1994:85-87). In authoritarian regimes, a leader or occasionally a small group exercise power within formally ill-defined limits (Linz, 2000:159). Other main features of an authoritarian political system are depolarization and limited participation. Its main problem is legitimacy.

A liberalization period starts when the authoritarian rulers modify their own rules in such a way that individuals and groups have more rights. The legitimacy of the most authoritarian regime declines over time, as “choices are made, promises are unrealized and frustration develops (Huntington, 1991:48). When a parliament exists in an authoritarian order, it is most likely tightly controlled by the executive or has little or no political will. In political transition, parliaments are assigned only a minor role in the starting of a democratization process. It is argued that it is more dominant by the social movements. In the world history, parliaments rarely led a revolutionary movement (Beyme, 1999: 65).

In research on transitions, most studies conclude that parliament in authoritarian regimes are not representative of the population, do not control the government and have no significant impact on legislation.

The second stage in a political transition process is the democratization period. It is described by Agh as “a chaotic, yet creative, period characterized by the coexistence of two systems (the old and the new)” (Agh 2003, p. 44ff.). In this phase, the “institution-

building” takes place. Olson recently pointed out, “political parties and interest groups, originating in their respective societies, resemble Western practices the least. Legislatures occupy an intermediate status, reflecting international influences upon constitutions, but also reflecting the unique attributes of the societies which they represent” (Olson, 2002: 22).

While parliaments are generally considered as less important in the beginning of a transition process, they can play a crucial role during the democratization period. David M. Olson argues that parliaments matter particularly in the phase directly after a regime change. He argues that “in unstable regimes, they are threatened with dissolution by coup or party diktat. In stable democratic regimes, they are reduced to decorative impotence. It is in new democratic systems that parliaments have their greatest opportunity to act” (Olson 1994a: 35).

After a regime change, parliaments have a two-fold function. Firstly, those are responsible for the removal of undemocratic residues from the authoritarian regime, resulting in a complete overhaul of the political system. Parliaments are, therefore, responsible for the inauguration of democratic rules. Secondly, they must either democratize their internal rules, procedures and decision-making processes or newly draft and establish them.

However, after a long period of authoritarian rule, parliaments become very important for the development of new democracies (Liebert and Cotta, 1990). As presented by a study of Liebert and Cotta in Southern Europe (Spain, Greece and Portugal) in the 1970s, parliaments were the central sites, and parties the major actors of democratic transition. The autonomy and the importance of parliaments are far greater in the fragile new democracies, because unlike established democracies, external sources of power like interest groups do not exist or are not well organized (Olson, 1994b: 115).

The consolidation period marks the last sequence of a democratization process. It starts with a new and freely elected non-authoritarian government and lasts until the new political system is in a stable democratic condition (Bos 1994: 86). The starting point in most democratization process can be defined quite easily, but the end of the consolidation period, meaning the presence of a full-fledged democracy, is an open question depending on the criteria of the analyst.

Consolidation of democracy means the effective functioning of democratic state institutions in a democratic political system, which enjoys a broad public legitimacy. The “rules of the game” should be independent of the ruling figures, groups and parties. Democratic consolidation can be described as a process which transforms the ad-hoc patterns typical for the democratization period into more stable structures and procedures, which determine the rules governing political decision-making. Democratic consolidation depends to a great extent on extra-parliamentary actors such as civil society (Diamond 1994: 16). If a civic culture with the active and passive support of ordinary citizens for the new democracy can be reached, the chances for the survival of democracy increase.

Thus, a well-functioning parliament during the consolidation period cannot only serve as a symbol for the consequent implementation of principles of democracy, representation, people’s sovereignty and participation, but also as an arena to integrate political forces and to develop a fundamental consensus on political, social and economic principles. In post-Franco Spain, parliamentary negotiations during the constitutional drafting process and the first legislature from 1977 to 1982 were found to be “capable instruments in diminishing the traditional conflict between the Spanish Left, Right and the Nationalists, and became a ‘symbol of tolerance’” (Liebert 1989: 2).

Liebert (1989) further stated that parliaments are crucial for the consolidation of new democracies because they can decisively contribute to reaching a fundamental consensus or historical compromise between a maximum of political and social forces under democratic conditions. During the consolidation period, parliaments become “major public arenas of partisan dispute, of encounters with social subjects, of negotiations and important decision-making” (Ibid). These important steps for democratic consolidation can be better reached by a parliament than by any other institution, be it an elected president, a coalition government or a hegemonic party.

The consolidation of a new democratic political system depends to a great extent on properly functioning parliaments, in which people’s representatives execute their constitutional rights and duties. When parliaments are constantly changing and unstable majorities are unproductive and too fragmented, the tendency for the whole political system is to suffer from slow progression. The historic example of the German parliament

in the Weimar Republic (1919-33) showed how an unstable parliament contributed to authoritarian backlash in a new democracy.

Despite some of inherent limitations, I take **transition theories** for explaining democratization in the context of Bangladesh. I argue that democratization in Bangladesh is still going through the transition phase. The democratic transition in the country has still remained incomplete. The following reasons are advanced.

The consistent pattern of democratic behavior is of evidence that the political actors remain significantly absent in Bangladesh. The most striking argument in favor of democratic transition lies in the fact that political leaders of the country are yet to show a genuine consensus about the *modus operandi* regarding peaceful transfer of power. A good number of elections have been held in the country. But the opposition has always questioned the credibility of the results of those elections. The election under the incumbent government still remains controversial and unacceptable amongst the mainstream political actors. Many new institutions emerged within the parliament, but they bore no fruits. For example, non-Minister MP heading the parliamentary committee in Bangladesh is having little impact on the performances of the committees.

However, it cannot be denied that the features of consolidation sometimes have overlapped with transition. The political elites did not sustain the spree for democratic consolidation which led to the democratic break-down.

Modes of Participation by People's Representatives in the Parliament

In the parliamentary process, collective decision is an output of parliamentary deliberation. Susan Stokes defines deliberation by its outcome: “the endogenous change of preferences resulting from communication”. On this definition, propaganda as well as rational debate counts as deliberation. On the other hand, Diego Gambetta citing Austin-Smith, defines the idea by features of the process: “a conversation whereby individuals speak and listen sequentially and carefully before making a collective decision” (Cited in Elster 1998: 8). Deliberation depends on the extent of the freedom of speech being exercised in the country. Where deliberation by free, equal, and rational individuals in parliamentary process takes the following modes-

Discussion: Discussion is seen as a means of revealing private information which can only be when the members of the group do not understand themselves to have

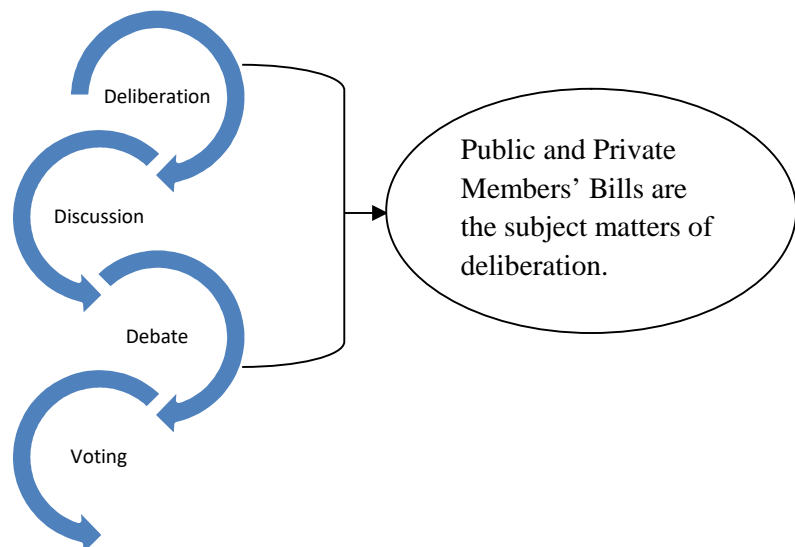
widely divergent or conflicting interests. Discussion allows people to express diverse intensities of preference- that is, whether they have strong or indifferent feelings about particular choices (Fearson 1998: 45, 47). Cohen distinguishes “deliberation” from “discussion” by arguing that the former makes recourse to “reasons” while the latter is restricted to a mere pooling of information (cited in, Przeworski 1998:142).

Debate: Debate in the parliament consists in the presentation of the arguments and counter-arguments by the Members of the Parliament (MPs) on a particular bill placed in the parliament. Separating each mode one from the other is difficult to mark off in the practical debates taken place in the Bangladesh Jatiya Sangsad. Therefore, this research uses the above three modes interchangeably.

Voting: In Bangladesh parliament, any decision is finally taken by voting. The MPs in the Jatiya Sangsad finally gives their consent after a prolonged deliberation on a bill. There are different practices of voting in the JS, such as Voice voting, Division voting, etc. According to Rules -94 the bill is passed through vote.

Figure 2.1

Modes of Participation in Parliamentary Deliberation



Source: Developed by researcher

Private Members' Bill

Along with the public bill, private members' bill forms the subject matter of deliberation. The members of the cabinet including the members on the shadow cabinet are not entitled to be the members as private members (Ahmed 2016: 211). The members of the parliament, apart from the ministers, are entitled to place the bill in the parliament called as Private Members' Bill (Ahmed, 2013: 179). In the Bangladesh case, RoP (72 - 75) explains the procedure for raising the private members' bill in the parliament. Despite the placement of the bill in the parliament, its passing is difficult. The PMB has to be placed in the parliament on a particular day.² Private Members' Bill is presented on a particular day in a week. And on all other days no business other than government business shall be carried out. The Rules specify that private members' business shall consist of Bill, Resolutions, Amendments and other motions introduced or initiated by members (Ahmed : 179). All private members' bills, immediately after their introduction in Sangsad, are automatically referred to the Committee on Private Members' Bills and Resolutions (CPMBR) for scrutiny. The CPMBR, a ten-member committee consisted of the MPs of the treasury and the opposition sides, can recommend major changes including rejection of bills referred to it (Ibid: 182). In contrast, public bills are not subject to such careful examination. The PMB also face other procedural difficulties. For instance, the PMBs cannot deal with or be about the financial subject related issues. Such bills also need the previous approval of the president. The complexities as mentioned above often discourage the backbenchers from taking the initiative in law-making. Again, the limited prospect of private members' bills being enacted into law compounds. However, a number of bills were also submitted during the period of the 2nd, 5th, 7th, 8th and 9th Sangsads later discussed. No private members' bill was submitted in the 1st and the 6th Sangsads and the numbers of bills submitted in the period of 3rd and 4th JSs were very nominal – 4 and 6 respectively (Ibid: 181). The above modes of participation inside the parliament work in two spheres: in the plenary session in the parliament and in the committee meetings. In the plenary sessions, a large number of MPs can take part in the deliberation of the Committee meetings.

² If any Private Member wants to place the Finance Bill, he/she needs to tag financial memorandum with the bill. To place the bill in the parliament, a Private Member must give a written notice for 15 days seeking permission to place the bill.

Women's Participation in Law-making

Although women represent more or less half of the population of Bangladesh, yet, they remain underrepresented in the law-making process in Bangladesh JS. There is no bar for women to contest in general seats. However, in the 1st JS of Bangladesh there was no woman elected from the general seat. Recently, the numbers of woman elected from general seats are also gradually improving. Since 2004 the provision for proportional distribution of reserved seats among the parliamentary parties began. Before 2004 the elected MPS from general seats also elected the reserved women law-makers. This policy was allowed to “winner takes all”, i.e., majority party of the JS winning to claim all reserved seats for women. However, now nowhere in the world can one find a representative assembly, other than Bangladesh where the Speaker, the Leader of the JS or Chief of Executive body or Prime Minister, the Deputy Leader of the JS and the Leader of the Opposition is women. Formally, the parliament leadership is occupied by women. In practice, the structure of power in parliament is still male-dominated (Ahmed, 2013:364). Important committees are still headed by men. Since 1973, a total of 260 women MPs have been elected indirectly to the JS. In contrast, 48 women MPs have been elected on popular votes – 2 in 1979, 5 in 1986, 4 in 1988, 4 in 1991, 3 in February 1996, 5 in June 1996, 6 in 2001 and 19 in 2008 (Ibid: 365).

Analytical Framework

I would argue in this section that the following factors determine the outcome of MPs' participation in the law-making process of the parliament. These factors are as follows: the will of political leaders; cooperation and competitive relationships between the ruling and the opposition parties in the parliament. Besides these two factors, a proper legal framework is also an important factor in this regard. However, there is no denying that these factors may not equally affect the outcome of law-making. The effectiveness of participation depends on the quality of existing democracy within the country.

Will of Political Leaders

The role of political leaders is central to the institutionalization of democracy in a country like Bangladesh. Unfortunately, in Bangladesh, political leaders have considerably failed to sustain the democratic traditions in the country. In the words of Juan Linz, it attributes to the lack of ‘loyalty’ to the democratic system (cited in Choudhury 1995: 217).

Democratization, therefore, flourishes not only due to the “will of the voters” or “will of people”, but also owing to “political will” of leader(s).

In parliamentary democracy, political will is considered sufficient to solve the political problems with cooperation between ruling and opposition parties and elites that can contribute to the democratization process or make impediment to the process. It is seen as the process of aggregation of individual and group preferences around one policy or the other without attempting to understand the horizon, where the preferences or wants may be formed at all (Mujkic, 2015:16).

But still it is largely remained undetectable, seldom to discuss in many political system. This is usually mentioned in reference to the center of power and to political decision makers (Illerhures, 2015: 07). It is particularly said about the political order, relation, decision, legislation, competition, parties’, process, outcome, cooperation and structure, etc. “A political will” is individual-based, fractionatee, absent or present, “invisible”, “hegemonic” and “doesn’t have an alternative” (Ibid: 09). Generally, it is a solid understanding of the executive desire (Mujkic, 2015:15). This research chose the actors that are in the position to adopt or implement a policy- the elected or appointed officials (Ibid, 2015: 15).

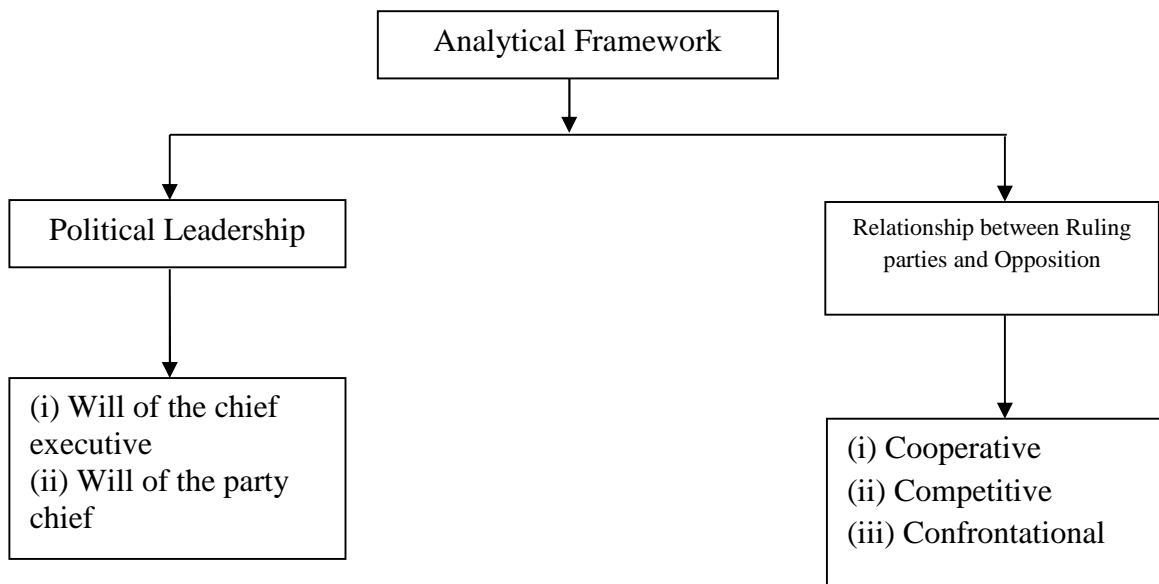
However, in this study political will is referred to the will of those who are in the position to agree to or execute a bill, or a policy – who are elected representatives and top political elites among the main parties of the country. The system of representative democracy or parliamentary democracy, in its ideal form, builds upon the premise, and the promise, that those actors, i.e., the political elites, represent voters’ interest and implement their collective will (Ibid: 15). Jelena Brkic Smigoc explored the term political will from the perspective of psychology and she introduced a number of concepts to illustrate the key variables that influence the political behavior of the individual in the context of a complex social structure. Filipovic argued that the will is a psychological process related directly to deliberated action (1984: 352). The will is self-feeling of motivation and decision-making (1988: 237). The political activity is essentially the matter of acting in the “common” interest, which constitutes the ultimate horizon, motivation and decision of the political will. However, the political is not merely a dimension of human existence rather it is an essential feature of the human being.

However, in this study it is observed that there is strong relationship between the political will of the chief executive or the party chief and people’s representatives inside and outside of the JS that has an impact on the law-making process or decision making process or to realize the people’s will in the country’s democratization process. Here, it may be even argued that the political will does not always serve the good of the interests of the people through law-making. At times they act as partisan in their motivation. In Bangladesh, an unavoidable reality persists in hampering democratization is that the party chief holds the positions as the chief executive including leader of the House. Through dynastic political culture, party chief even exercises much more powers than he/she usually formally deserves.

Summing up the above discussion, we may say that political will means the will of the executive or will of the party chief and will of the ruling and the opposition party leaders. In parliamentary democracy, when political will of the ruling elites positively functions, the participation of the opposition in the law-making smoothly works. When the party chief desires to make the process of law-making open for the back-bencher MPs’ participation, the back-benchers participate in the process. This is how the law-making in the parliament becomes democratic in the parliament.

Analytical Framework

Figure 2.2



Source: Developed by researcher

Relationship between Ruling and Opposition Parties

The role of the opposition is crucial in a parliamentary system. Without a responsible opposition in parliament, its functions are seriously malfunctioning. In the absence of a proper opposition, with adequate strength and enjoying recognition, there can be, it is said, no healthy parliamentary government, for the government will be uncontrolled and unresponsive. The main tasks of a responsible opposition in parliaments are scrutinizing, supervising, criticizing and examining the executive's activities inside and outside of the House. For example, the Indian systematic stability is mainly a creation of the leadership quality of Jawaharlal Nehru, the democratic structure of the internal organization of the Congress Party and criticism/suggestions put forward by the parliamentary committees. The Nehru government, in spite of having an absolute majority, treated and behaved with the opposition with due respect to a parliamentary opposition deserves (Ibid: 326). The law-making in the parliament is a collective undertaking. All the MPs – ruling and opposition – participate in this effort. If the opposition boycotts the parliament, law-making becomes the sole responsibility of the ruling party, merely 'one party' dominant affairs, causing democratic deficit in the process. But in parliamentary democracy, the opposition's role is the keystone (Interview with Rounaq Jahan April 07, 2016).

Lane and Ersson stated that democracies not only allow freedom of expression, thought, speech and contract, but also promote independence of political organizations and institutions. It has been commented that democracy implies government and as well as opposition and thus democracy functions properly when there is enough room for cleavages to foster space for political differences and oppositions. Indeed both government and opposition in a democratic polity operate on the foundation of concurrence, that the party which obtains a majority in elections will be in power for a fixed term while the minority party which becomes the opposition will enjoy the right to disgrace the ruling party and uncover the fact that the government becomes incompetent to remain in offices. Without conflict and contention of opposing forces, there can be no democracy. This implies that the most important element of democratic political culture has been the tolerance of opposition and dissent in the political order.

In light of the above discussion, three patterns of relationship between the ruling and the opposition parties can be identified in parliamentary democracy: cooperative, competitive and confrontational. Cooperative relationships mean that both the ruling and the

opposition parties help each other through debates, discussion and deliberation to arrive at a consensus on any political decision. In matters of the 12th Amendment, the then ruling BNP and the opposition AL cooperated each other to bring about this amendment. The opposition all together participated in the deliberations of the Select Committee on that issue. In order to amend the Constitution, the opposition first placed the bill in the parliament. The then ruling BNP did the same later. This may be termed as competitive relationship. In parliamentary democracy, the opposition must be vibrant (Interview with Mirza Fakhrul Alamgir, April 26, 2016) which we saw in case of the 12th amendment. In most cases, afterwards, the relationship between the ruling and the opposition parties has remained confrontational. The ruling and the opposition parties were never united in bringing 13th, 14th and 15th Amendments in the parliaments ever since. Except in the approval of the 12th amendment, the opposition has always boycotted in case of other amendments. The role of JS or parliament remains incomplete without looking into legal framework in which the parliament will be functioning.

Legal Framework

In this research provisions related to the parliament in the Constitution of the People's Republic of Bangladesh and the Rules and Procedure of the JS are considered as Legal Framework. In line with the Constitution - "There shall be a Parliament for Bangladesh (to be known as the House of the Nation, (here the "Jatiya Sangsad") in which, subject to the provision, shall be vested the legislative powers of the Republic" [Article 65(1)]. Its functions are maintained by the Constitution and the RoP. The Constitution of Bangladesh certainly specified "the procedure of Parliament shall be regulated by rules of the procedure made by it" [Article: 75/1(a)]. It has observed that some constitutional Articles, namely, Article-70,³ Article-72 (1 and 2),⁴ Article-81(3),⁵ Article-82⁶ and Article- 93(1)s⁷

³ A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he-

- (a) resigns from that party; or
- (b) votes in Parliament against that party;

but shall not thereby be disqualified for subsequent election as a member of Parliament.

⁴ (1) Parliament shall be summoned, prorogued and dissolved by the President by public notification, and when summoning Parliament the President shall specify the time and place of the first meeting:

¹[Provided that ²[except the period of ninety days as mentioned in sub-clause (a) of clause (3) of article 123 for remaining term] a period exceeding sixty days shall not intervene between the end of one session and the first sitting of Parliament in the next session:

Provided further that in the exercise of his functions under this clause, the President shall act in accordance with the advice of the Prime Minister tendered to him in writing.]

(2) Notwithstanding the provisions of clause (1) Parliament shall be summoned to meet within thirty days after the declaration of the results of polling at any general election of members of Parliament.

more or less, have created obstacles to the path of the participation to express the representatives' opinion, decision and proposal independently and timely in the law-making process (See, Chapter-9). A few Rules and Procedure of the JS, namely, RoP-25,⁸ 30(2, 3),⁹ 32(4),¹⁰ 71(4),¹¹ 72(1, 2, 3),¹² and 74(1, 2)¹³ also have been impeding the path of the participation to express the representatives' opinion, decision and proposal independently and timely in the law-making process (see Chapter- 8).

MPs participation in law-making is severely constrained in Bangladesh by the way they get elected. In large numbers, the MPs use money, muscle in their elections. This election process motivates them to serve their own interests in the parliament (Interview with Emajuddin Ahmed, April 25, 2016). In addition, the law-makers are more involved in local development, control local power but they are not interested in law-making. Beside,

⁵ Every Money Bill shall, when it is presented to the President for his assent, bear a certificate under the hand of the Speaker that it is a Money Bill, and such certificate shall be conclusive for all purposes and shall not be questioned in any court.

⁶ No Money Bill, or any Bill which involves expenditure from public moneys, shall be introduced into Parliament except on the recommendation of the President:

Provided that ¹[in any Money Bill] no recommendation shall be required under this article for the moving of an amendment making provision for the reduction or abolition of any tax.

⁷ At any time when ¹[Parliament stands dissolved or is not in session], if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament.

⁸ On Thursday private members' business shall have precedence, and on all other days, no business other than government business shall be transacted.

⁹ (2) Private members' business set down for any day and not moved on that day shall not be set down for any subsequent day, unless it has gained precedence at the ballot held with reference to that day.

(3) Subject to the provisions of sub-rule (2), all business appointed for any day and not disposed of on that day shall stand over until the next working day, unless the Speaker, in consultation with the Leader of the House, directs otherwise.

¹⁰ Unless the Speaker otherwise directs, not more than five resolutions (in addition to any resolution commenced on, and outstanding from, a previous day) shall be set down in the Orders of the Day for any day allotted for the disposal of Private Members' resolutions.

¹¹ In the event of more than three matters being presented for the same day, priority shall be given to such three matters which, in the opinion of the Speaker, are more urgent and important.

¹² (1) Subject to the provisions of these rules any member, other than a Minister, desiring to move for leave to introduce a Bill, shall give to Secretary fifteen days' written notice of his intention to do so and shall together with the notice submit three copies of the Bill along with an explanatory statement of objects and reasons which shall not contain arguments.

(2) If the Bill is one which under the Constitution requires the previous recommendation of the President for its introduction, the notice shall also be accompanied by a copy of such recommendation conveyed through the Minister concerned, and the notice shall not be valid until this requirement is complied with.

(3) If the Bill is one which involves expenditure from public moneys, it shall be accompanied by a financial memorandum which shall invite particular attention to the clauses involving expenditure and shall also give an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law.

¹³ (1) Motions for leave to introduce Private Members Bills shall be set down in the Orders of the Day for a day meant for Private Members business.

(2) If a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement by the member moving for leave and by the member opposing it, may without further debate put the question.

the types of preparations and expert knowledge required for law-making, the law-makers lack all these qualities (Badiul Alam Majumder, April 5, 2016).

Conclusion

From the preceding analyses, we conclude that JS or the parliament in Bangladesh is the main body of law-making. In democratization, making of new laws have formative impact on the transition towards democratic consolidation. But effective law-making in parliament invariably depends on the participation of the people's representatives in the law-making process. MPs, as representatives of the people, participate in this process through debates, discussion, and deliberation. In the ultimate analysis, the successful law-making in the parliament is contingent upon the following factors: (i) the will of the political leaders (chief executive and the party chief); and (ii) relations between the ruling and the opposition parties, especially the role of opposition in the parliament. In addition, a legal framework continues to support the role of JS in democratization.

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Chapter Three

Development and Decline of Democracy (1973-1990)

Introduction

The main objective of this chapter is to provide an overview of the beginning of the country's political system and the role of parliament in democratic transition. After achieving independence in 1971, Bangladesh adopted its Constitution in 1972 which was the outcome of deliberation/discussion/debate and finally by voting of the Constituent Assembly members comprising of the members who was elected in 1970's Election. Parliamentary democracy was included as the form of government in that Constitution. However, intra-elite conflict within the then ruling party, deterioration of law and order, corruption, famine and the polarization of world politics between the Capitalist and the Socialist blocks led Bangabandhu Sheikh Mujibur Rahman to change the parliamentary government into one party system, namely, Bangladesh Krishak Sramik Aawami League (BAKSAL) dominant authoritarian government. With these developments and declines, democratization began to set on foot in Bangladesh. This spiral began with the killing of Bangabandhu Sheikh Mujibur Rahman on August 15, 1975, and ended in 1990 up to General Ershad's stepdown under the pressure of mass movement. Against this backdrop, this chapter attempts to answer the following questions: (i) How did parliamentary democracy start its initial journey in Bangladesh? (ii) Why did it decline so soon? (iii) What law-making structures were in place under the then parliamentary democracy? (iv) What were the roles of first four JSs in the country's democratization process through law-making by MPs participation?

This chapter is divided in four sections. In the first section, after introduction, I have described the outline of law-making process in Bangladesh which was started under the first constitution of Bangladesh, i.e., 1972's Constitution. The second section include discussion the first regime of Bangabandhu Sheikh Mujibur Rahman that sowed "a fair seed time" (Islam, 2016) for future governance and 1st JS of Bangladesh between April 7, 1973 and November 6, 1975 (virtually August 14, 1975). In the third section discussion concentrated on the regime of President General Ziaur Rahman and more specifically 2nd JS of Bangladesh between April 2, 1979 and March 24, 1982. The fourth section concentrated on the discussion of the regime of Ershad including 3rd and 4th JSs of

Bangladesh, covering the period from March 24, 1982; when Ershad took state power by means of military intervention to December 6, 1990, when he was forced to step down.

Bangladesh's JS and Law-making

As per the Article 65 of the Constitution of the People's Republic of Bangladesh, there is a legislative council for the nation which is named "Bangladesh Jatiya Sangsad". At present, the number of the members of the unicameral Jatiya Sangsad is 350 (three hundred and fifty). Through the 15th Amendment to Constitution, the total number of seats had been raised to 350 with 50 reserved seats for women as per Article-65(3/A). Among the 350 MPs of Bangladesh, 300 MPs are directly elected. The rest 50 seats are proportionally distributed among the winning parties in the JS. A Speaker and a Deputy-Speaker are elected from among the members of the parliament Article 74(1). Article-76(1) holds rules for the JS to perform its functions through different committees. These committees are called by scholars the "mini parliaments". Each ministry has a committee of its own. Among them, the important committees are: (1) Public Accounts Committee; (2) Special Rights Committee; and (c) Other Standing Committees regarding the roles of the JS. In this way, the JS of Bangladesh is formed as the Sovereign Legislative Council. However, the tenure of each Sangsad is 5 (five) years. There shall not be a gap of more than 60 days from one session to the other. The Constitution and the Rules of Procedure (RoP) of the JS regulate Article 75(1)[A] the powers and roles of the JS (GPRB, 2011: 21-27).

The main responsibilities and powers of articulating laws of the People's Republic of Bangladesh are vested in the JS. As per the Article 80(1-5) of the constitution, it can make any new laws, and change any existing laws through amendments. The outline of any bill is placed in the JS. If the majority of the MPs in the JS support the bill, then; it turns into a law. Besides, the JS is the only authority to resist any kinds of intervention in the constitution. According to the Article-142, JS can change, amend and modify the constitution (Ibid: 55). The Bangladesh Jatiya Sangsad (BJS) can bring no-confidence motion against the Prime Minister, the Speaker, the Deputy-Speaker and the cabinet and remove them from the office for violating the constitution and their massive misconduct. In addition, JS can also impeach the President for his being involved in the violation of constitution and in any act of moral turpitude. According to the Article 81 (1a-e), the JS is the custodian of the national exchequer. Without the sanction by the JS, no tax can be collected or imposed. It approves and passes a budget for the nation for every financial (July 01–June 30) year (Ibid: 29). The Finance Minister places a financial bill of a budget to the JS and it enacts the finance bill through debates and discussions. The PM and the

members of the cabinet are accountable to the JS collectively. The JS can exercise control over the executive by raising the adjournment motion, criticize motion, asking questions, arranging discussions by point of order and moving no-confidence motion.

The Making of Legislation: Pre-legislative Stage

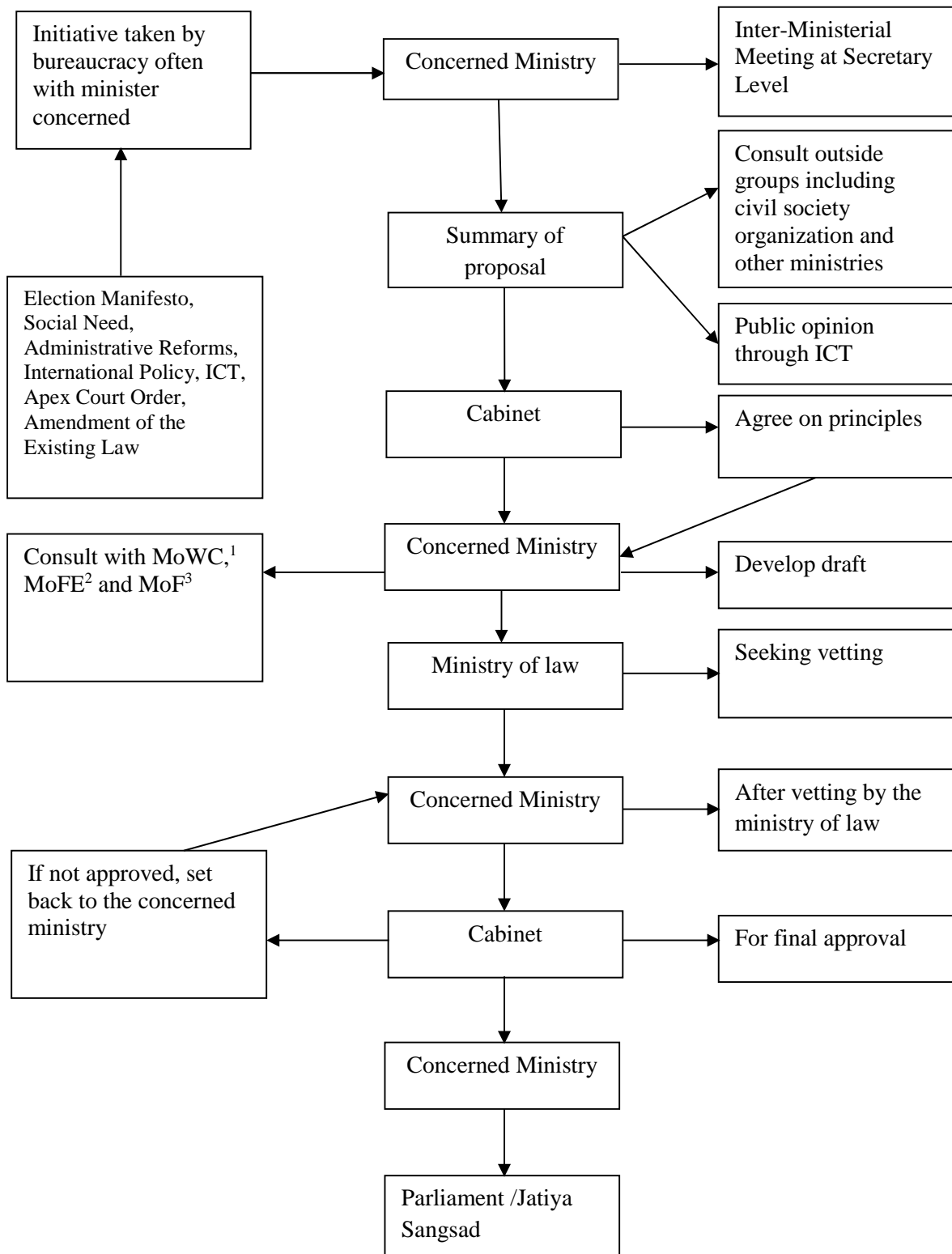
Bangladesh Jatiya Sangsad, henceforth, will be known as BJS. The BJS is considered to be the highest lawmaking organ in Bangladesh. However, legislation mostly originates outside of the JS. The JS is probably the least important among the actors having the power to influence legislation. Article 76(2) of the constitution provides for review of draft bills and other legislative proposals (GPRB: 27). After the first reading, rarely bills are referred to committees at the pre-legislative stage, although it has now become a common practice to refer bills to committees. Suffice it here to observe that the JS compares unfavorably with other actors active in the legislative arena. Legislation emanates from a variety of sources, of which the most important is the bureaucracy. The omnipresence of the bureaucracy is, however, not a peculiar Bangladeshi characteristic; it can be noticed everywhere in Westminster-style democracies (Ahmed, 2013: 125).

The experience of the last two and half decades of democratic rule does not provide indication of any diminished influence of the bureaucracy in the legislative process. To the contrary, the influence of the bureaucracy has increased to an enormous extent. Most bills originate in individual ministry. After a draft bill is finalized, an executive summary is sent to the Cabinet. Legislative initiatives are taken mostly by bureaucrats, often with minister's concurrence. Parliamentarians remain seriously disadvantaged; they lack any knowledge of government's legislation until bills are submitted to the Parliament Secretariat for introduction. In western democracies front-benchers generally share with back-benchers the types of programme including legislation to be introduced in Parliament in party caucuses held once a week, especially when the Parliament is in session. But parliamentary parties meet infrequently in Bangladesh. Whenever they meet, they mostly deliberate on issues which are political in nature. Rarely issues that relate to legislation or policy are discussed in party caucus meetings in Bangladesh. Although the Rules allow parliamentarians to initiate legislative proposals on their own, they are not encouraged to play any proactive role in this area, as it is always fraught with difficulties arising from practical political attitudes of party elites (Ibid: 125-126).

Jatiya Sangsad Law-making: Pre-legislative Stage

Figure 3.1

Jatiya Sangsad Law-making: Pre-legislative Stage



¹ Ministry of Women and Children Affairs

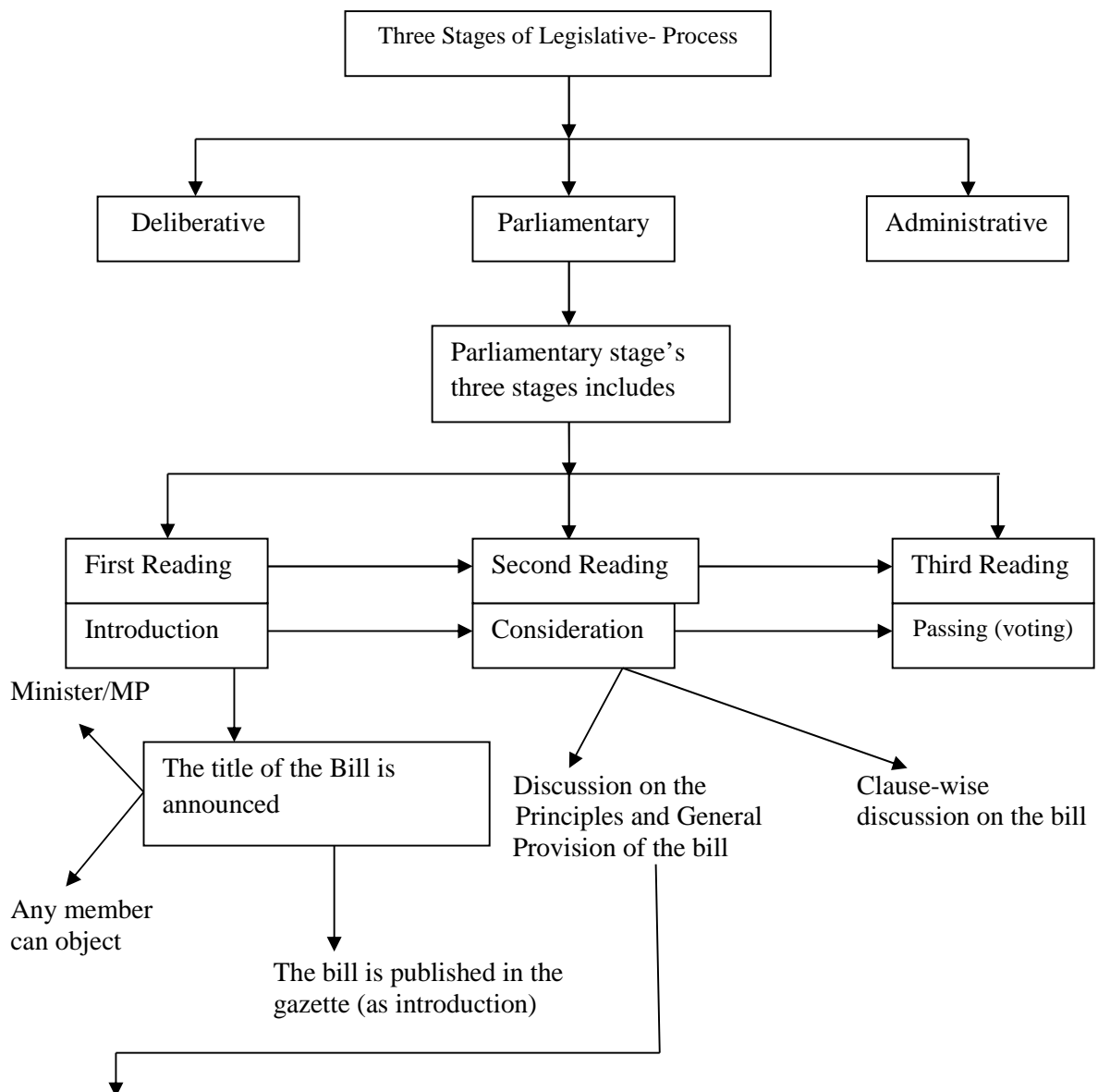
² Ministry of Forestry and Environment

³ Ministry of Finance

Source: Developed by the researcher (2015)

The Legislative Process in Bangladesh JS

Figure 3.2
The Legislative-Process within the Jatiya Sangsad



The four principles are set out here:

- i) that the bill be taken into consideration by the House at once or at some future day to be specified in the motion
- ii) or that it be referred to a Standing Committee
- iii) or that it be referred to a Select Committee
- iv) or that it be circulated for the purpose of eliciting opinion thereon.

Source: Rules of Procedure, 2013: 77

The second reading proposals have at least two features.

First Reading: None of the above mentioned steps can be made until copies of a bill are supplied to members at least three days before such step is made. Any MP can object to any such motion on the ground she or he has not received a copy of the bill.

Second Reading: No one except the minister/member-in-charge can make any of the above mentioned steps unless prior permission has been sought in writing from the speaker to allow another minister/member of the motion.

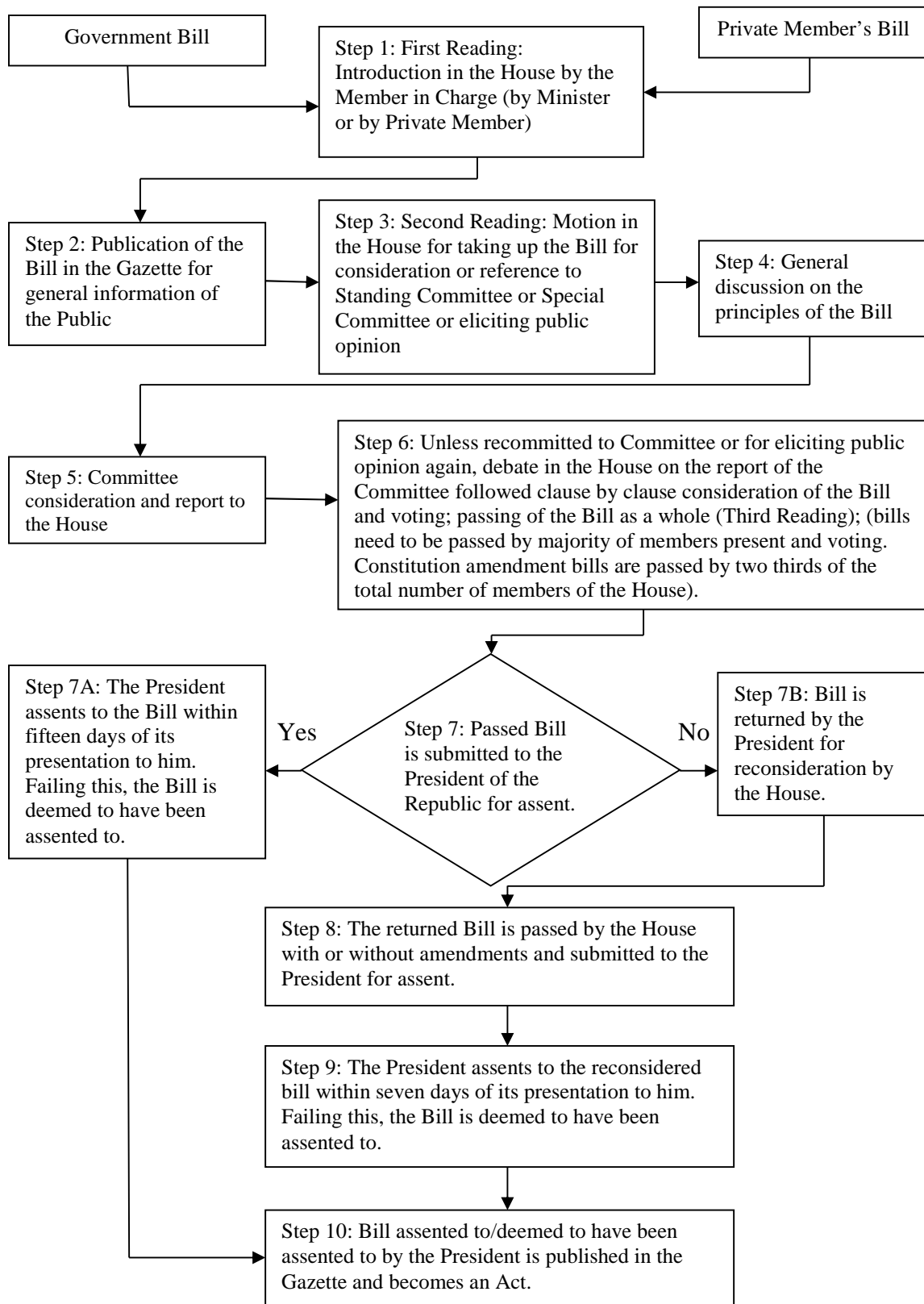
Third Reading: Unless recommitted to Committee or for eliciting public opinion again, debate in the House on the report of the Committee followed clause by clause consideration of the Bill and voting; passing of the Bill as a whole (Third Reading); (bills need to be passed by majority of members being present and casting vote. Constitution amendment bills are passed by two thirds of the total number of members of the House).

After the voting the bill is sent to the president for his assent. The presidential law-making authority has, however, certain limits. He (president) can promulgate ordinances when the parliament is not in session, or it stands dissolved. The president places before the parliament at its first meeting held immediately after their promulgation. These can become permanent laws only after the Parliament has passed them. Another limitation is that no ordinance promulgated by the President can make any provision which cannot be lawfully made by an act of parliament. Nor can an ordinance provide for altering or repealing any article of the Constitution.

Article 48(3) of the Constitution provides that in the exercise of all president's functions, save only that of appointing the Prime Minister and the Chief Justice, the President shall act in accordance with the written advice of the Prime Minister (Government of the People's Republic of Bangladesh: 32). The initiative for ordinance making as well as other important government business is taken by the Prime Minister, or/and the cabinet. The President cannot refuse consent to a proposal made by the Prime Minister. This contrasts with the Indian system where the President can exercise at least some discretion. The President, however, cannot return a money bill for reconsideration by the Parliament. The Constitution provides for judicial review of legislative actions, thereby imposing some restrictions on the 'supremacy' of the Parliament. Article 7(2) of the Constitution provides: "If any other law is inconsistent with this Constitution, that other law shall, to the extent of inconsistency, be void" (GPRB, 2016: 3). However, it can be observed that although the Parliament is formally responsible for lawmaking, other actors are also involved, in one way or another, with the legislative process. Parliament also shares its law-making acts with extra players, especially the executive.

The Process Turning Bill into Law in JS:

Figure 3.3
The Process Bill turns into Law in Jatiya Sangsad



Source: <http://bdlaws.Minlaw.gov.bd/>

Until 1996, bills were rarely sent to committees. A minister in charge of a bill used to propose after the first reading that it be immediately taken up for consideration. But now bills are routinely sent to the concerned standing committees for scrutiny except money bills that cannot be referred to any committee. One of the important differences that can be noticed between Bangladesh and most of the Westminster-style parliaments is that unlike the latter where bills are referred to committees after the second reading, bills in the Bangladesh Parliament now have a committee-stage hearing after the first reading. The main significance lies in the fact that when a bill is referred to a committee after the second reading, it cannot make any change in the principles which have already been agreed. The minister-in charge/member responds to motions made by members. It is at this stage that members may move clause-wise amendments. Thereafter, the minister-in-charge/member responds to proposals/criticisms made by members (Ahmed, 2013: 127).

There is evidently better scope for an ‘informed’ scrutiny at the second stage of the second reading than at the first stage. At the third reading stage, the minister-in-charge moves the motion for the passage of the bill either the way the concerned standing committee has recommended it or the way it has been decided in the House. There is no scope for discussion/amendment at this stage. What is apparent from the above is that there exists widespread scope for deliberation over legislation.

1972 Constitution: A Prelude to Democratic Transition

After the surrender of the Pakistani Army on December 16, 1971, and the return of Bangabandhu to Bangladesh on January 10, 1972, a constitution for the new state was inevitable for the state building process. While returning from captivity in Pakistan as president, Bangabandhu shared his idea with Kamal Hossain, a lawyer prominent Awami league leader about the possible form of government. He was reminded of the past regarding this matter. In the words of Kamal (Hossain):

“He was returning as president of Bangladesh: yet the Awami League had always been committed to a parliamentary form of government in which the prime minister would be the chief executive. Since I had been dealing with constitutional matters in the party, he asked me for my views. My option was clearly for a parliamentary form of government, headed by a prime minister. This had been part of the Six Points Programme. It would also be in the long term interest of the country, to provide for executive authority to be exercised by a Cabinet, led by a Prime Minister, who would be accountable to Parliament. It would help to develop the concept of collective responsibility, as well as the capabilities of a team which would, in the future, be able to provide leadership” (Hossain, 2016: 136).

On January 11, 1972, Sheikh Mujibur Rahman introduced parliamentary form of government by a presidential order. Bangabandhu demonstrated his political will in favour of parliamentary form of government. His commitment to democracy further reflected in various steps he took. He constituted an assembly by the members of national assembly and Pakistan Provincial Assembly elected during December 1970 to January 1971. There was no legally recognized opposition party, but Suranjit Sen Gupta acted as the opposition's *de facto* leader. The principal objective of the Constituent Assembly was the framing of the Constitution of the People's Republic of Bangladesh. Sheikh Mujibur Rahman as the Prime Minister and Leader of the House, set up a thirty four (34) member parliamentary Committee headed by Kamal Hossain to formulate the draft of the proposed constitution. Finally, the Constitution of the People's Republic of Bangladesh enshrined four fundamental principles, namely, democracy, nationalism, socialism and secularism (Dev and Samad 2014: 313). Thus the framing of the Constitution with democracy as one of the state principles laid the formal-legal basis of democratization in the newly independent country, Bangladesh.

The 1972 Constitution contained guarantees of freedom of thought and expression, security of life and ownership of properties, safeguards to human rights and other laudable democratic values. The constitution recognized three forms of ownership of properties: private and public and cooperative. All these issues added further impetus to the process of democratization. Sheikh Mujibur Rahman's political will towards establishing parliamentary democracy began to translate into reality by holding the first parliament election in 1973.

1973 Election: One Step Forward towards Democratic Transition

After the adoption of the Constitution, the first parliamentary election of Bangladesh was held on March 7, 1973. In this election fourteen political parties contested and only three political parties had been able to send their representative in the first parliament. Among the 300 seats in the parliament, the Awami League won 293, JSD and Jatiya League got one seat each. The independent candidates won 5 seats. 55.62% vote was casted. Of this, Awami League got 73.20% votes. Out of 315 seats, including 15 reserved women seats, Awami League got 308 seats. In the first JS, first session was held on April 7, 1973 and last working day was July 17, 1975. It had endured total 134 working days. The longevity of the first JS was two and half years. However, in the first parliament 122 laws were

made, of these 55 laws were the presidential ordinances. Out of 122 laws, only 37 laws covered the amendment (Ali, 2016: 38-39). Further 137 laws were placed which were not scrutinized by parliament. The first JS had brought four amendments to the constitution. It was dissolved on November 6, 1975. However, in this parliament there was no official opposition. Due to the one party dominance in the parliament and the towering personality of Bangabandhu, the parliament formed after the election held in 1973 came to the fore.

Democratization in Bangladesh: A Punctuated Journey (1973-1990)

The 1973 election legitimized transition towards parliamentary democracy in Bangladesh. Nevertheless, the country within a very short time was oriented to one party, namely, “Bangladesh Krishok Sramik Awami League (BAKSAL)”. In other words, BAKSAL was the presidential system without check and balance. The benefits of this system were accrued by the military rulers who took over state power after 1975 (Ahmed, 2013:01). The following table outlines the details about the particulars of first four JSs.

An Outline of first 4 JSs and their Elections

Table 3.1
An Outline of First 4 JSs and the Elections

Description	1 st JS Election	2 nd JS Election	3 rd JS Election	4 th JS Election
Date of Election	March 7, 1973	February 18, 1979	May 7, 1986	March 3, 1988
No. of Parties	14	29	28	8
Total No. of Candidates	1091	2125	1527	977
No. of Independent Candidates	120	422	453	214
No. of Voters	3,52,05,642	3,83,63,858	4,78,76,979	4,98,63,829
No. of Votes Cast	1,93,29,683	1,96,76,128	2,88,73,540	2,61,69,071
% of Votes Cast	55.61	50.24	60.31	54.93
Party in Power	AL	BNP	JP	JP
Party Winning	AL	BNP	JP	JP
No. of Seats Won	293	207	153	251
No. of Votes Received	1,37,93,717	79,34,236	1,20,79,259	1,76,80,133
% of Votes Received	73.16	41.17	42.34	68.44
2 nd Largest Party	Independents	AL	AL	COP
No. of Seats Won	5	39	76	19
No. of Votes Received	9,89,884	47,34,277	74,62,157	32,63,340
% of Votes Received	5.26	24.56	26.16	12.63
No. of Parties Winning at Least One Seat	3	11	11	4
% of Parties that failed to win any Seat	78.57	62.67	60.71	50.00
No. of Seats won by Independent Candidates	5	16	32	25
No. of Votes Received by Independent Candidates	9,89,884	19,63,345	46,19,025	34,87,457
Percentage (%) of Votes Received by Independent Candidates	5.25	10.19	16.19	13.50

Source: Hakim, 1993: 43

Table 3.1 shows that in all the first four national elections the party in power at the time of polls has won the required majority seats in the JS for forming the government. In all

elections, 50% to 70% of the contesting political parties failed to win any seat. The figure of contesting political parties in 1979 became more than the two fold of what it had been in the 1973 election. It also remained almost constant in 1986 and decreased sharply in 1988. The percentage of parties that failed to win any seats was the highest in 1973. The percentage of votes received and the number of seats won by the independent candidates was also highest in 1986. The highest and the lowest number of candidates were in the 1979 and 1988 elections, respectively (Hakim, 1993: 44). None of the first four elections was intensely competitive. The opposition parties could not even come close to the party in power in terms of the number of votes received or seats won. Each of the four parliamentary elections was, more or less, a one-party show (Ibid, 1993: 43).

There was very little outlet for the people's of Bangladesh to participate in politics, let alone law-making process in the country and as a result, democratization process could not expand in any way. Paradoxically, not any of the first four JSs could complete its full tenures. Military takeovers led to the dissolution of 1973 and 1979 parliaments. The third parliament was dissolved in the face of movement by the opposition parties for the removal of the regime in power, namely, President Ershad, in 1987. The fourth parliament came to an end when an irresistible movement forced Ershad to relinquish power after nearly nine years of rule in 1990. This only shows that succession of power through constitutional transition was yet to take place in Bangladesh before 1990. While the first parliament was dissolved by the military after the coup in August 1975, the last three parliaments were dissolved by the Ershad government (Ibid: 44). The first four JSs were simply rubber-stamping bodies in the hands of the authoritarian or dictator rulers. They failed to assert themselves in the country's law-making and policy-making process. Both under parliamentary and presidential systems, the parliament were made subservient to the whims of the omnipotent rulers who preferred to use it as a forum for formalizing their personal caprices. The docility of its members helped the rulers to curtail the powers of the parliament and reduce it to an impotent speech-making assembly for their own interest (Ibid: 45). Now, I shall analyze the developments and declines of democratization regime by regime.

The Regime of Bangabandhu Sheikh Mujibur Rahman (1972-1975)

The immediate problems faced by Sheikh Mujibur Rahman and the Awami League Government were as follows: (1) strengthening the administration; (2) rehabilitation of

about 10 million refugees who were to return from India; (3) restoration of the law and order situation and handling of the freedom fighters and others possessing arms; (4) restoration of roads, bridges and railway lines destroyed or damaged during the war; (5) putting the economy back on the track, particularly industries and the financial institutions. Besides, there were some urgent social and political problems and issues relating to and arising out of (a) the presence of the Indian Army in Bangladesh; (b) smuggling across the border; (c) presence of the collaborators who assisted the Pakistani Army during the war; (d) the issue of the prisoners of war; (6) the presence of the non-locals, or 'Beharis' and the Stranded Pakistanese in Bangladesh and the Bengalese in Pakistan (Ahmed, 1991: 14). Then there was of course the question of meeting the expectations and aspirations of the people which rised to a great height through all the struggling years. So it was now Mujib's turn to recreate his dreamland "*Sonar Bangla*" and bring a smile on people's faces.

Bangabandhu Sheikh Mujib's choice for parliamentary government may be attributed to more than one reason. The people of Bangladesh were used to have elective local bodies for a long time and it was introduced in Bengal before any other part of British India and the elective legislatures functioned in Bengal for over 50 years (Hossain, 1977: 18). Secondly, from the inception of the Awami League in 1949, the party was committed to introduce a parliamentary system in the country. Through all the major political movements from the 21-point programme in 1954 to the 6 points programme in 1966 and 11 points programme in 1968-69 and finally the election held in 1970-71, firm pledge was made to the people by Sheikh Mujib that he believed in a democratic system and parliamentary form of government would be established in the country (Ahmed, 1991: 10). Yet in years after independence, the legislative powers continued to remain vested in the executive body, there was a cabinet of Ministers which was not accountable to the people and a Prime Minister who could not be removed from his office.

The assurance of democracy, the nation-building through the nationalization, land reforms, populist politics, the charismatic leader with appeal to people for gender equality and removal of other social barriers were the priorities of the regime. The failure to provide economic success, to check the deterioration of law and order, to address rampant corruption, and to deal with the power-demonstration of party members, decreased the popular appeal of the regime within a very short time (Ibid: 2-3). To the challenges of

upward economic and political crises, the vanishing of ideological hegemony, the regime shifted to coercive actions rather than the underlying reasons and attempts to solve the crises. However, in absence of minimal opposition representatives and absolute majority of ruling side in JS the situation tuned into a tool for legitimizing the coercive actions of the government instead of being a forum of discussion and debate about the direction of the country. Amending the constitution and manipulating the electoral procedure, the passing of repressive laws, the establishment of a paramilitary force named the Jatiya Rakkhi Bahini, (the National Defense Force) with enormous power, using the military to solve law and order problems (Riaz, 2011: 3), became the policy of the ruling regime.

The first general election held in March 1973 was marred by intimidation of political opponents, and abuse of government power to sway the votes in favor of the AL. The disunity among opposition political parties and their failure to present any pragmatic alternative program to that of the AL, weakened the opposition's appeal to the voters. The ruling party utilized the state-controlled mass media, including radio and television, as a virtual "party-spokesman," despite having a unique asset: Sheikh Mujibur Rahman. Although the Awami League was rapidly losing its popularity, Mujib still enjoyed the enormous confidence of the people. To the common people, Mujib was still their friend: Bangabandhu (Riaz: *ibid*: 4).

Allegations abound that the ruling party resorted to rigging and violence leading up to and during the election. The exact magnitude of the electoral manipulation is difficult to determine, and the opposition parties, in some cases, exaggerated the facts while the ruling party completely rejected any such charges. But analysts, for example Barua, noted that the landslide victory of the AL did not represent the popular mood. He insists that, "a reasonably free and fair election would have returned to the first Parliament about fifty to sixty opposition members, and these would have included fifteen to twenty major opposition party leaders" (Barua, 1978: 168). Chowdhury and Barman pointed to the far-reaching impact of the AL's actions during the election: "the Awami League strategy of applying maximum pressure to win every parliamentary seat (and) wipe out the opposition parties had a dysfunctional impact on the fledgling parliamentary system" (Chowdhury and Barman, 1998: 131).

One of the major accomplishments of the AL regime in the early days of independence was the framing of a constitution in less than seven months. The constitution encapsulated the four fundamental principles of the state: democracy, secularism, nationalism, and socialism. The salient features of the Constitution include the introduction of a Westminster-type parliamentary system, providing the Parliament with supreme authority on important issues like declaration of, or participation in, war and imposing and collecting taxes. Additionally, the Constitution made provisions which appeared to amount to “guaranteeing” the fundamental rights of the people and “ensured” the separation of the judiciary from the executive organ of the state. But it was less democratic than it appeared at first sight; because, alongside these provisions, there remained others that could enable the government to “legitimately” act to the contrary.

The democratic spirit of the constitution suffered a serious blow on September 22, 1973, as the ruling party introduced the Constitution (Second Amendment) Bill, which incorporated provisions relating to preventive detention and proclamation of a state of emergency (Part IXA). One of the significant features of this amendment was that the government could now detain anyone for an initial period of six months in order to prevent that person from engaging in any action which, in the opinion of the government, constituted a threat to public safety and the sovereignty of the state. With the incorporation of Part IXA in the constitution, provisions were made that the President could issue a proclamation of emergency, make laws inconsistent with the fundamental rights enshrined in the constitution, and suspend the court’s authority to enforce the fundamental rights during the period of emergency.

By late 1974, the regime officially resorted to emergency rule. The proclamation of the emergency, on December 28, 1974, essentially brought an end to parliamentary rule and the constitutional state. Some vestiges, however, remained until the fourth amendment of the constitution was passed on January 25, 1975. The Constitution (Fourth Amendment) Act (Act No. II of 1975) made sweeping changes. The country entered into a new constitutional arrangement where only one political party could exist and the executive branch with the President at its apex assumed supremacy over the legislative and judicial organs of the state. Additionally, by the amendment itself, Sheikh Mujibur Rahman was elected by the parliament as President for the next five years with an opportunity to hold the office for an unlimited term. On the one hand, authoritarianism was now enshrined in

the constitution, while the newly organized party BAKSAL, established as a last ditch effort to don the populist garb, on the other. This may be termed as decline of democracy, although there is an opinion that it was inevitable. The pro-AL scholars saw it as a necessity. As opposed to the prime ministerial powers, through the articles 95 and 96, the powers of president had increased to the case of appointment and impeachment of the judges of the Supreme Court. Through the article 117(A), if the president desires he could ban the existing political parties of the country and form only national party (Ali, 2016: 51-52). The article 70 was changed and the MPs' powers were reduced to express their personal opinion and vote.

Law-making and MPs Participation: The First JS

In the first JS, only the seven members of the opposition tried to take upon themselves the responsibilities of an opposition. Aaur Rahman Khan was their unofficial leader. But this Opposition was feeble, frustrated and unable to offer an alternate government. No private members' bill was submitted in the first JS. The ruling party showed intolerance even to this opposition. The Question Hour (QH) is an important part of parliamentary activities through which grievances are ventilated and individual rights are protected. In the case of the first Parliament, the QH activity began from the second session (Ibid, 1995:117). In all, the House accepted 5,288 starred and 22 unstarred written questions. The number of short-notice questions was 30 starred and 11 unstarred. Only one-third of the total questions were answered. Out of all the sessions of the first Parliament, the QH was most interesting during the second session, when Aaur Rahman Khan raised issues relating to the printing of Bangladeshi currency in India, with the finance minister. During the QH, debates are not supposed to run along party lines, but most Treasury-Bench MPs were apprehensive and extra-careful not to step out of line. During the eighth session, there was no QH at all. Similarly, the short-notice questions and supplementary questions also could not generate interest and public debate as happens in most developed democracies, where the back-benchers' as pointed out before, 'take a delight in heckling a Minister' (Ibid:118). Four notices for half-an-hour were similarly ignored. Even the procedure, an innovation of the Indian Parliament used in place of the adjournment motion which is associated with some tension, was not properly used. There were only five such notices of which two were accepted for discussion interestingly, one such discussion was on the glorious role played by Sheikh Mujibur Rahman in the Non-Aligned Conference held in Algiers. The House also accepted 52 notices for calling attention to matters of urgent public importance and

discussed only 16. It is quite obvious that the House because of the 'brute majority' of the ruling party and its high-handed attitude – could neither criticize nor scrutinize nor check the government arbitrary actions, nor stop the government from infringing on individual liberties and civil rights (Ibid:119). K C Wheare (1967), uttered 'the House was unable to make the Government behave' (Cited in Choudhury, 1995:119). In September 1973, the Prime Minister further curtailed the powers of Parliament through the Constitution (Second Amendment) Bill 1973, which increased the number of days in between the sessions from 60 to 120 days and armed the executive with emergency powers and preventive detention. The Bill was neither sent for eliciting public opinion, nor to the Select Committee, as suggested by the Opposition. It was passed by a division vote of 250-0, and took only two hours in the midst of a walk-out by Ataur Rahman and Janab Abdus Sattar (Jatiya Sangsad Debates, September 25, 1973:174-180). According to the rules of procedure, no bill is opposed at the first-reading stage. But in the Indian Parliament, such a convention was broken for the first time on November 23, 1954, when voting by division was forced at the time the Preventive Detention (Amendment) Bill, 1954, was introduced in the House. It was, however, carried by 146-36 votes (Ibid: 230). Such was the difference of parliamentary procedures between the Indian Parliament and the Bangladesh first Jatiya Sangsad.

However, the House usually spends the bulk of its time scrutinizing, examining and modifying various bills mainly initiated by the government which affect national interest. On the other hand, the beginning time though one-party parliamentary democracy in India, recommendations and amendments suggested by parliamentary committees cannot be ignored by the government, if it wants to remain sensitive to public opinion. During the first JS, 110 Acts were passed out of which 91 were Presidential Ordinances. As stated in Chapter—2, according to Article 93(1) of the Constitution, the president has law-making powers during extraordinary circumstances or when the House is not in session. But even at a glance, one is able to comprehend how the Parliament was by-passed by the executive. And even Constitutional provisions like the Representative of the People (Seats for Women) and Presidential Ordinances mounting abridgement of constitutional provisions of fundamental rights, were incorporated in the Constitution through presidential orders, only to be laid before a tamed Parliament in order to have its seal of approval.

Therefore, a variety of contentious ordinances were put before first JS in the form of bills. The Printing Presses and Publications (Declaration and Registration) Bill, 1973; the Jatiyo Rakhi Bahini (Amendment) Bill, 1974; the Special Powers Act, 1974; the Special Powers (Amendment) Act, 1974; the Special Powers (Second Amendment) Act, 1974; the Emergency Powers Bill, 1975; and the controversial Constitution (Fourth Amendment) Bill, etc. all were passed without either eliciting public opinion or being sent to the Select Committees (Ibid: 120). The Parliament's ineffective powers in scrutinizing these bills were evidenced by the short lengths of time spent on them, which were as follows: the Printing Presses & Publication (Declaration & Registration) (Amendment) Bill, 1974, took one hour and 45 minutes with participation by four opposition and one government MP, and a walk-out by the Opposition; the Jatiyo Rakhi Bahini (Amendment) Bill, 1974, took two and a half hours, with participation by four Opposition and two government MPs, with a walk-out by the Opposition; the Special Powers Act, 1974 took four hours, with participation by six Opposition and one government MPs, with a walk-out by the Opposition; the Special Powers (Amendment) Bill, 1974, took three hours and ten minutes, with participation by four Opposition and two government MPs, with a walk-out by the Opposition; the Special Powers (Second Amendment) Bill, 1974, took twenty-five minutes, with participation by two Opposition and one government MPs, with a walk-out by the Opposition, and the controversial Emergency Powers Bill, 1975, as well as the Constitution (Fourth Amendment) Bill, 1975, together took only half-an-hour. Bills of such a nature which struck at the very core of a democratic order had unbelievably smooth sailing (Ibid: 121). In comparison, the Indian Parliament took fifty-seven and a half hours to pass the Preventive Detention Bill, 1952; fifty two hours to pass the Press (Incitement to Crime) Bill, 1951; and thirty-nine hours to pass the Representation of the People (No. 2) Bill, 1950 respectively. Similarly, compared to the amendments accepted by the government of Bangladesh, the Indian government accepted more amendments, demonstrating that even in a parliament dominated by one-party, individual members brought amendments in order to make their mark (Ibid: 322-323).

There were seven Standing Committees, including a Public Accounts Committee, and only a few Select Committees on non-important bills. A Petition Committee was set up during the sixth session of the House, but no petition was submitted. The government took up all the time in parliamentary business. Unlike in India, no specific period was set aside for private members' business as such. During the first parliament there were neither any

private member's bills nor any private members' resolutions before the House. This clearly demonstrated the dominating position of the executive over parliament (Ibid: 122). Ataur Rahman pointed out that the motion had not followed the proper rules of procedure. He was told by the Speaker that rules 130-144 would not be applicable in this case and a special procedure would be followed which was then applied. The bill was introduced by Law Minister Monoranjan Dhar, who declared that rules 78, 79, 82 and 91 of parliamentary procedure would be suspended in the application of the motion (JS Debated, 1975:41).

Abdullah Sarkar raised objections and asked permission of the House for discussion; otherwise it was bound to be passed in an undemocratic manner. The Chief Whip informed the House that no discussion would be allowed. The bill was, however, passed without either any formal voting or participation by the MPs ((Ibid, 1975:4). Another significant and crucial bill, namely the Constitution (Fourth Amendment) Bill, 1975, which completely changed the fundamental structure of the Constitution, was passed in a similar hurried manner. Usually, a bill is introduced in the House with seven or three days notice. In the case of the above-mentioned bill, it was circulated among the members after their arrival in the House. Excepting a few associates of Mujib's, the majority of the MPs were not even aware of the contents of the bill. The Prime Minister, upon his arrival in the House, exchanged pleasantries with some of the top ranking MPs of the AL Parliamentary Party. Not a word was mentioned about the bill or its contents (Ibid, 1995:122).

Once again rules 78, 79, 82 and 91 of parliamentary procedure were suspended in their application to the motion, as moved by Law Minister Monoranjan Dhar in the case of the Constitution (Fourth Amendment) Bill, 1975. Voting was over in three minutes by a division vote of 294-0 in the midst of an Opposition walk-out. The entire procedure took less than half-an-hour with participation by one Opposition MP. Thus, the seal of approval was given by Parliament which turned it into a sham show. Such was the power of Parliament in checking the arbitrary action of the executive (Ibid, 1975:123).

The first JS could not fulfill the dream of the new nation. Due to absence of constitutional opposition in JS, parliamentary leadership was greatly twisted in favor of the government. The ruling party's attitude towards the opposition was also one of bigotry and unresponsiveness. The fact that there was no Private Members' bill or Private Members'

Resolution, demonstrated that the wishes of the opposition were not taken into account. Regrettably, Sheikh Mujib could not institutionalize his personal popularity, unlike Jawaharlal Nehru of India, who in a similar situation, managed to do so. He could not rise beyond the party. His government, in effect, became a party government and parliament being dominated by the party became a 'rubber stamp' one (Choudhury, 1995:125). Yet considering structural and procedural rule, the first JS was a sovereign one. However, the factors like the law-making roles, the role of the legislators, formulation of policy, control of finance, criticism and supervision of the executive, providing channels for ventilation of grievances, and lastly, parliament's powers to remove the executive through a vote of no-confidence, etc. may be termed as some of the limitations. The fact that there were no Private Members' Bills and Private Members Resolutions and there were no serious amendments to government bills and the way legislative measures were rushed through parliament proved that the legislature's powers lacked substance, and in effect the cabinet was the de facto legislature. Thus the rising expectation and the aspirations of the people during the post-liberation period were not reflected in JS and established a constitutional dictatorship.

When the era of populist authoritarianism came to an end, the nation paid a high price. On the morning of August 15, 1975, President Sheikh Mujibur Rahman along with most of the members of his family and his close associates were murdered in a military coup, and a prolonged era of military dominated regimes was prevalent in Bangladesh. Decline of democratization gained momentum with the military's intervention in politics. The military rulers both General Ziaur Rahman and General Ershad continued to keep hold the military's dominance in political system with occasional showdown of the democratic semblance. The section that follows concentrates on the decline of democratization under the influence of the military rule.

Regime of Military-dominated Rule (1975-1990)

During the fifteen years of military dominated rule of two strong-men – Ziaur Rahman (1975-1981) and Hossain Muhammad Ershad (1982-1990) – dominated the political scene of Bangladesh, but the nature and course of politics under their rule was virtually identical. These regimes faced similar crises, and adopted similar policies to earn legitimacy and sustain themselves in power. While there were attempts to civilianize the regimes, and one brief interregnum (June 1981-March 1982), both regimes were characterized by

repression, curtailment of democratic rights, and the manipulation of constitutional processes, and brought religion into the political arena.

The coup of August 15, 1975 was followed by eighty-four days of chaos and confusion, coups and counter coups, killings and counter-killings, conspiracy and uprising paving the way for the rise of Ziaur Rahman as the strongman. “Zia’s success, it appears, was due mainly to the fact that, despite his pre-eminent stature in the military elite, until the decisive final stages of the power struggle – in which he was, of course, a key participant – he remained without firm ideological or personal commitments” (Ibid, 2013: 6). Events on the ground included the killings of four national leaders inside the jail on November 4, 1975, and of a number of army officials by their comrades. Also important was that the killers of Mujibur Rahman (and his family and associates) were provided with indemnity; that the bureaucrats who had been associated with the Pakistan administration in different capacities and marginalized after independence were back in policy-making positions; and that the organizers of the August coup were given safe passage outside the country. Zia was the first military ruler in Bangladesh; he had tried to bring about substantive changes in the society. The world press characterized him as ‘hard-working’, ‘incorruptible’ and ‘a man with stability’ (Masoom, 2006: 242).

Although Ziaur Rahman did not assume the presidency until 1977, he emerged as the *de facto* ruler of the country from November 7, 1975. Until 1978, the regime faced periodic rebellions within the army organized either by a radical left political party – the Jatiya Samajtantrik Dal (JSD, National Socialist Party) – which was at the forefront of the uprising that brought Zia to power, or by the followers of the August 15 coup who felt betrayed by Zia. These rebellions were dealt with by large-scale summary executions. According to one account at least 1,100 military personnel were executed after an abortive coup in 1977. It is well to bear in mind that the regime faced more than three well-organized coup attempts and many sporadic rebellions.

In the face of violent opposition from within the military, Zia sought both political and constitutional legitimacy to his rule. To gain political legitimacy, he amended the fundamental principles of the constitution and charted a new course for the country. These amendments, proclaimed through an Executive Order (Second Proclamation Order no. 1, April 23, 1977), included redefining the state principles, and identifying the citizens as

'Bangladeshi' as opposed to Bangalee (Bengali). The most important element of these changes was Islamization of the constitution and the policy. The word "secularism," appearing in the Preamble and Article 8 as one of the four fundamental principles, was substituted with "absolute trust and faith in the Almighty Allah"; and a new clause (IA) was inserted to emphasize that "absolute trust and faith in almighty Allah" should be "the basis of all actions." Additionally, the words "*Bismillah ar-Rahman ar-Rahim*" (In the name of Allah, the Beneficent, the Merciful) were inserted in the above Preamble. Thus Zia had been successful to entrench his position. Haque (1986) observed:

"President General Zia was fairly successful in consolidating his power and maintaining his regime. In spite of democratization and civilization of his regime through the presidential referendum of 1977, the presidential election of 1978 and parliamentary general election of 1979, it essentially remained a personal rule as was the case in the Mujib regime (cited in Masoom 2006, Haque, 1986: 165)".

The military elite catapulted into power in 1975 promising to take Bangladesh back to democracy and stability step by step. To that and several other policies, such as the dissolution of Mujib's one party system, the 1977 referendum and Union Parishad elections, allowing the organization and operation of political parties, the presidential and parliamentary elections, the withdrawal of Martial Law (April 1979) and Emergency (November 1979), and Students' Unions elections (1979) in colleges and universities (for the first time since 1973), were put into effect by the military elite. With better management of the economy by President Ziaur Rahman's administration; Bangladesh rose above the stigma of being an "international bottomless basket case". However, unrest (including armed clashes) on the university campuses, a series of strikes throughout the year, spiraling prices for essential commodities, widespread corruption, the polarization of political forces with violent outbursts, the deteriorating law and order situation, and rumors of indiscipline in the army were the disquieting phenomena of politics in 1979 ((Haque 1979: 217). Hence, some pertinent questions involving Bangladesh politics agitated not only the opposition, but also the people in general.

The year 1979 began with hectic preparations for general election to elect a Parliament that would work within a system of government in which the president would be an elective and omnipotent chief executive. The long-awaited parliamentary elections (the second since 1971) came on February 18, 1979. The parliamentary elections, originally scheduled for February 1977, had been postponed in the wake of the serious Ganges water

dispute with India, pressures on the border, a deteriorating law and order situation within the country, and alleged indiscipline in the army. However, with the easing of the law and order situation and the pressure on the border following Mrs. Gandhi's fall in March 1977, Ziaur Rahman, who took over as President in April 1977 from Justice A S M Sayem, took some positive steps for a "passage to democracy". Massive victories (98.88% confidence vote) in the 1977 referendum (May 30) and presidential election (76.63% of the votes) June 3, 1978, legitimizing Zia's capture of power, and the Farakka Agreement (November 1977) with India favoured the president to show the political situation stabilized substantially. As a result, in November 1978 Zia announced that parliamentary election would be held on January 27, 1979, with promise that the parliament would be sovereign, equipped with powers to enact and amend laws, and to approve the budget and agreements entered into with foreign countries, amend the constitution, impeach or remove the president, and that martial law would be withdrawn within a week of the new parliament's first meeting.

However, the opposition political parties sharply reacted to the government's election announcement. After a series of dialogues, 12 of the political parties decided to boycott the election unless their five point demands – namely, withdrawal of martial law and restoration of fundamental rights, restoration of parliamentary democracy through repealing the Fourth Amendment, unconditional release of all political prisoners, Zia's retirement from the army if he is to continue in politics, and restoration of press freedom – were not met (Haque 1979: 218). Supported and encouraged by the pro-election stand of some rightist and leftist political groups, President Zia, through a series of "concessions", long "parleys" with the opposition leaders, and deferring elections (in two installments) of February 18 finally got the opposition to participate in the election.

Of the total 2,125 candidates, 1,709 belonging to 30 political parties and 416 independents contested for 300 seats. None of the major parties could put up candidates for all 300 seats. There were three notable aspects of the election. First, the formation of electoral alliances by the smaller parties: an extreme rightist alliance; the ideologically heterogeneous "Bangladesh Gono Front"; and a leftist-centrist combination. Second, both the Awami League (Malek) and Zia's Bangladesh National Party (BNP) nominated a good number of retired army personnel to contest the elections. Third, the marked absence of clear-cut political issues – the BNP campaigned for Bangladeshi nationalism, a

production-oriented democracy, a presidential form of government with a “sovereign” parliament; the AL (Malek) for the implementation of the programs of Mujib’s “second revolution”, the restoration of the 1972 Constitution (prior to the 4th Amendment); the leftists for people’s democracy; the rightists for parliamentary democracy and social justice based on Islam. In the elections, the BNP bagged 207 seats followed by 39 seats for the AL (Malek) and 20 seats for the rightist alliance (Haque, 218-219).

In his inaugural address President Zia paid homage to Maulana Bhashani, Sheikh Mujibur Rahman, and Mashiur Rahman, and asked the members to live up to the people’s expectations. The ruling BNP parliamentary party elected Shah Azizur Rahman, an Islamist of the moderate variety, and Dr. Badruddoza Chowdhury, a physician politician, as the Leader and the Deputy Leader of the House respectively, and Barrister Abul Hasnat as the Chief Whip of the parliamentary party. As leader of the largest parliamentary party, Asaduzzaman became the leader of the opposition, whom the government accorded the rank and privileges of a cabinet rank minister for the first time in Bangladesh.

The second session (i.e., the first budget session of the second parliament) sat for 41 days from May 21 to June 30. Unlike the first session, the budget session, even though marked by an unfortunate manhandling of a member of the lobby and by sharp debates on the Rajshahi University campus incidents, the Farakka issue, the food crisis, and spiraling prices, was noted for better cooperation among the opposition groups in the parliament. On May 31 all the opposition groups staged the first combined walkout as a mark of protest against the Deputy Speaker’s “in-decorous” remarks about the privileges of the opposition members. Further, in a joint statement they condemned his remark, and decided, in a joint meeting of the opposition groups, to boycott the sitting of the parliament when chaired by the Deputy Speaker.

President Ziaur Rahman’s Second Jatiya Sangsad

In contrast, the opposition, clamouring for a parliamentary system with a “sovereign parliament”, contended that Zia’s government was neither parliamentary nor presidential, nor an amalgamation of both, but rather an authoritarian one, in the Ayub style, under the garb of presidential democracy (Haque 1979: 220). The BNP political elites asserted that parliament was “independent and sovereign” since it had the power to enact laws, approve the budget, and “impeach” the president, who could not veto a bill passed by the

parliament for the second time. However, the inability of the parliament to remove a minister through a no-confidence vote (Ibid: 221), the provision under which one-fifth of the ministers could be taken from outside the parliament, and the repeated practice of bypassing parliament when it was not in session, the opposition asserted, infringed upon parliament's sovereignty, thereby making it just a "rubber stamp". Above all, the provisions of the 5th amendment validating all proclamations and martial law orders (making some parts of the constitution) since August 1975 and Zia's induction of a good number of army personnel into top positions in many government and autonomous organizations led the opposition to characterize Zia's system as "martial democracy" (Ibid: 222).

Zia called for a change in the social system through a new politics (i.e., peaceful revolution) to ensure consolidation of national independence, doubling of food production, and the exploitation of minerals, manpower, and other resources to ensure food, clothing, and education for all. He warned that if the "Revolution" did not take place through peaceful and democratic means through parliament, it was bound to be a "bloody" one. According to a top-level source, a bill on land reform was likely to be placed before the parliament during its January 1980 session. From the composition it looked better than the first parliament, as the House now had a constitutionally established opposition. It passed 110 acts out of which 27 were ordinances in the form of bills and subsequently passed by the House.

That parliament lacked of legislative and financial control, which deprived the legislature of its designed rights which are so zealously retained by most parliaments of the world. During Zia's rule, the cabinet presided over by the president initiated the bills. The institution was somewhat like that in France. In France the cabinet takes the responsibility. The cabinet was not responsible and in case of 'misbehavior' on the part of the House the president's power of dissolution could always make it 'behave'. Cabinet were by members of the legislature belonging to the president's party, and committees were by members there from, so these committees are indifferent about investigating actions of the executive. The relevant secretaries and senior civil servants were supporters, but they are also called outside witnesses. Obviously, the committees do a more thorough and detailed investigation of the executive than an individual MP can do. But the department committees in the second parliament were all chaired by ministers, including technocrat

ministers. Zia's parliament was, however, not a 'sovereign parliament', but a 'lame and tame' one, tailored to fulfill the needs of an all powerful executive. It had very little control over the executive's actions.

As we have pointed out in our discussion on the executive in Bangladesh, after the overthrow of the Mujib regime in August 1975, there was a period of political instability and a vacuum. Between August 15, 1975 and November 6, 1975, the status of parliament remained ambiguous. The main changes brought about by Ziaur Rahman under the Fifth Amendment of the Constitution were related to the executive. Under Zia's new political order there was no provision that the cabinet would be 'responsible to the parliament'. But, as we have indicated, Zia's political order was neither a full-fledged presidential system existing in the United States, nor was it a parliamentary system, that was totally denied under the Fourth amendment. Some writers have compared Zia's system with the French system under the Fifth Republic which can be described as a synthesis of a parliamentary and presidential system.

The 1979 parliamentary elections were held while the country was still under martial law. The presidential form of government with a sovereign parliament, a development-oriented economy, and a promise to withdraw martial law within a week of its first session. As the House now had a constitutionally-established opposition, it passed 110 acts out of which 27 were ordinances in the form of bills and subsequently passed by the House. Interestingly, the second Parliament experienced a larger volume of parliamentary activities. It received 49 adjournment motions, out of which 29 were discussed and two were dealt with by the statements of the concerned ministers. It accepted 5003 starred short and 572 unstarred written questions as well as 21 starred short-notice questions. More time were also assigned to Private Members' bills and Private Members resolutions. Zia also further developed the committee system. The House established seven standing committees, a few select committees on non-important bills, and thirty-six departmental committees which were to be chaired by the ministers concerned, including the technocrat ministers.

The House also passed the Ombudsman Ordinance of 1980. The Act stipulated the establishment of the office of Ombudsman appointed by the president on the recommendation of parliament. It was passed during the first session of the second

parliament, which was short and without any important parliamentary activities. The opposition raised objections to the point of order and rules of procedure, as well as on principle. The debate on the bill was lively, and at times acrimonious, but in a familiar demonstration of the House's incapacity to influence policy decisions of the government. As usual hours with 22 MPs taking part in the deliberations, the opposition was able to make a lot of noise, but its fundamental function, to check and control the executive, was non effective. The election was also to be contested under a multi-party system. The relationship under Zia was neither of a parliamentary or a presidential nature.

As Zia's cabinet initiated the bills, the situation was somewhat like France, but at least in France the cabinet takes the responsibility this may not be fair, as they have to take the responsibility for an unpopular bill, initiated by the president. The cabinet was not responsible and in case of 'misbehaviour' on the part of the House, the President's power of dissolution. In a genuine presidential system, as in the US, departmental committees may be chaired by members of the house legislators belonging to the presidents' party, but these committees are zealous indifferent about investigating actions of the executive. The relevant secretaries and senior civil servants, but they also call outside witness (Wheare, 1969: 91).

Moreover, none of these committees submitted their reports to the House. Zia himself said in his inaugural speech that it takes long to learn parliamentary conventions and traditions. Each MP needs to have knowledge about the structure and administration of the government before he can really fulfill his designated role. The honorable MP would be able to establish conventions and traditions which would help promote democracy. He also lectured the MPs about their expected role as MPs of a 'sovereign parliament (JS Debates, 1979:32-33). Zia's parliament was turned into a docile institution rendering needs of an all powerful executive. It had very little control over the executive's actions. I shall now turn to the discussion on Ershad regime.

President H. M. Ershad's Regime and Third and Fourth JSs

General H. M. Ershad took the state power from Justice Abdus Sattar in March, 1982 in a peaceful military coup. Again the country entered into a phase of martial law, with the Constitution suspended. He had, declared himself President of Bangladesh in December 1983. He followed Zia's restricted democratic politics. He inherited without any major

changes, Zia's 'lame and tame' legislature (Choudhury, 1995:137). In 1987 about one thousand and five hundred members of armed forces were appointed in civilian positions in the government (Choudhury, 1991: 41). He started the system of 'controlled democracy' or constitutional dictatorship and established it. Ershad's two JSs: (i) the third JS of 1986 and the fourth JS of 1988, were also acting as 'rubber stamp' JSs. An obvious consequence of this was a sharp increase in the defence budget every year (Choudhury, 1991: 74). In 1987, MP Ayen Uddin informed in his parliamentary discussion in JS, that police administration at the district level was so thoroughly militarized that at one time, in as many as 23 out of 64 districts, the Superintendents of Police (SP) were former military officer (Ibid, 1991: 41). Though, he ruled the longest period in Bangladesh, he faced complication in legitimizing his regime. The major political parties took a hard-line approach against him. Interestingly, the third JS controlled the largest parliamentary opposition since 1973, until the election of 1991, its role and functions were most disappointing. Elections under him became a farce and a mockery in all accounts. He held a referendum in 1985, two parliamentary elections in 1986 and 1987, and a presidential election in 1986 in quick successions as testimony to that effort. The Third JS, elected in 1986, passed the Sixth Amendment of the constitution approving the actions of the regime since its takeover, and, therefore, made the regime a legal authority from the constitutional point of view. Its role and functions were most disappointing.

During the second session of the third parliament, it met only for five hours, and eight minutes. Only the Constitution (Seventh Amendment) Bill, 1986, and three Ordinances were laid before the House. The proceedings of the second session were almost a caricature of actual parliamentary activities. It took four and a half hours of deliberation with the participation of fourteen MPs (mostly from the Treasury Bench) and was passed by a division vote of 223-0. There was no walkout, or an electing of public opinion. The Bill which ratified and confirmed all Proclamations, martial law orders, and other laws made during the period between March 24, 1982 and November 10, 1986, had a smooth sailing with some of the so-called opposition MPs supporting it.

During the time the House received 2,927 starred and 599 unstarred written questions, 13 short-notice questions, and 8 adjournment motions out of which one was discussed. The House only had Standing Committees and no Select Committees. As many as 21

Ordinances were laid before parliament and all were accepted. Very little time was, however, devoted to Private Members' bills or Private –Member concerns.

The fourth JS election was held in March 1988 that was boycotted by all major political parties. Even it had faced a challenge to give an official political opposition. This JS passed three Constitutional (Amendment) bills (Eighth, Ninth and Tenth), 92 ordinances, 112 acts and undertook voluminous parliamentary activities. It received 5,016 starred, 987 unstarred and 15 short-notice questions, most of which were dealt with. It accepted and discussed five adjournment motions, and accepted nine half-an-hour discussions, of which four were discussed. It also accepted 51 discussions on matters of public importance for short-duration of which 26 were taken care of. The statistics were impressive. The JS had also set-up an impressive Committee system. Private Member's bills were scanty. A few Private Members' bill was introduced and an innocuous Private Members Resolution was accepted. Interestingly there was one Private Members' bill which was similar to the Government's Constitution (Tenth Amendment) Bill, 1990.

The functions of third and fourth JSs under Ershad's regime were only eye-wash. MPs depended on the goodwill of the president, and the parliament was nothing more than a farce. In a parliament, debates do not raise any direct issues of maladministration, but they are supposed to raise new questions and serve the purpose of Private Members. Bills were with regard to specific matters of public importance. New issues raised by debates help check arbitrary policies of the executive (Ibid, 1995: 141). The fourth parliament's main task was nothing but to approve executive orders in JS. The seventh session of the fourth parliament faced a case in point which required the executive decision to send a contingent of troops to Saudi Arabia, during the Gulf War of 1990, was unanimously approved. Opposition thanked the president for giving an opportunity to parliament to discuss such a vital issue, which according to the MPs demonstrated the fact that the Jatiyo Sangsad was the centre of all national activities as promised by the president (Ibid). Other parliamentary activities like adjournment motions, question hour, even the question of motion of no-confidence in the context of the executive's non-dependence on parliament for his tenure became meaningless.

Conclusion

The above discussion leads us to conclude that Bangladesh – after independence – took two important steps towards democratization. The 1972 Bangladesh Constitution founded the formal-legal basis of democratization. Later on, the new democratic government had been able to manage its legitimacy through holding elections in 1973. Besides these two landmark developments in favor of democracy, the practice remained unsteady and unsustainable. Military's intervention, lack of will of the political leaders for further democratization, the absence of strong and vibrant opposition, too much dominance of the executive in parliamentary functions and inadequate practice of legal framework are some of the barriers toward sustainable democratization. Although there were visible practice of discussion and debate, little time was invested in such practices. On the whole, the executive dominance in the garb of civil-military power has dominated the parliamentary practices throughout the period mentioned above. Finally, it may be said that the consolidated expression of will for democracy by the political leaders and the masses as opposed to the military rule opened a new vista for democratic transition since 1991.

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Chapter Four

Democracy: Restoration and a New Beginning (1991-1995)

Introduction

This chapter investigates the role of Jatiya Sangsad in the democratization process of Bangladesh with a new beginning under the first BNP government led by Khaleda Zia (1991-1995). During this period, the form of parliamentary government was again restored through the 12th amendment to the Bangladesh Constitution. This amendment marked a transition towards democracy with a parliamentary form of government. Against this backdrop, the question is raised: How has the Amendment been brought about in Bangladesh? This chapter comprises four sections. The first section discusses the movement against General H M Ershad's military rule. General Ershad's military rule and his anti-democratic policies antagonized the urban middle class, and under the leadership of this urban middle class the mass movement against Ershad's military rule had advanced. Thus this movement led him to fall from grace creating the background for democratic transition. Subsequently the two constitutional amendments (11th & 12th) established the formal-legal basis of democratic transition. The second section addresses the issues of the Shahabuddin's interim government. The third section sheds light on the role of the 5th Jatiya Sangsad on the democratization process of Bangladesh. The fourth section analyses the two Amendments mentioned detailing the procedures leading to these two amendments which resulted in democratic transition of Bangladesh.

Movement against President Ershad

H M Ershad took the state power on March 24, 1982, without any confrontation. After assuming state power, he took a number of changes in the administration and gave third and fourth national elections as well as four constitutional amendments to legitimize his rule once again. But, none of his attempts was successful in legitimizing his regime (Siddiqui, 2013:173).

As a part of his legitimizing process, he took initiatives, like decentralization policy of the executive and judicial organs, and formulation of the Drug Policy 1982, the New Industrial Policy (NIP), 1982 and Revised Industrial Policy (RIP), 1986. A total of 222 state owned enterprises were privatized under the NIP-1982 and RIP-1986 during the

Ershad regime (Humphre, 1992:91). A press council was established by this regime for the development of the press, though it was totally contradictory in nature. H. M. Ershad from the very beginning declared Jihad (war) against corruption. He gave five main objectives in a meeting of the advisory council on the April 23, 1982. The objectives were: achieving seven percent growth; reducing wastage expenditure in government sectors; encouraging private investment; achieving self-reliance in food as well as population control (Bichitra: May, 1982). His innovation was establishment of Upazila/Thana Parishad as the base unit of development. All the above mentioned initiatives were merely show-up for sustaining his power, as people were always in suspicion between his words and deeds continued until the fall of his regime. However, when he attempted to conduct election for the Upazila Chairman, political parties, student organizations and different professional organizations got united to resist the elections. They considered the Upazila election prior to the parliamentary election as a strategy of Ershad to perpetuate his power by creating a new power base at local level politics (Ibid: 179).

Three Alliances' Movement

At the beginning, Ershad did not face any severe challenges from political forces and other pressure groups, because of the absence of any united movement against him. Although he, right from the start, went through legitimacy crisis and that was not enough reason for his downfall. Ershad's regime also failed to gain confidence from all the political forces such as students, youths, elite groups, civil society members, trade union, and professional organizations including all the political parties. The electoral system has totally collapsed. Opposition alliances and student organizations realized that free and fair election was not possible under authoritarian regime. So after many efforts, at the last phase of Ershad government's rule, all the three political alliances and organizations were united in a successful bid for ousting President Ershad. The opposition's movement led by three alliances was organized and sporadically violent. The 15-Party Alliance was led by the centre-left Awami League (AL) and 7-Party Alliance led by centre-right Bangladesh Nationalist Party (BNP) had been active in anti-Ershad movement.

AL led 15 parties' alliance raised 11-point demands. These demands included immediate withdrawal of Martial Law; freedom of expression, political rights, and parliamentary democracy. On the other hand, a 7 party alliance formed under the leadership of BNP also demanded withdrawal of Martial Law and restoration of democracy (UPP, NAP, Jatiya

League, Ganatantrik Party, Communist League, Krishak-Sramik Party). The 15-party and the 7-party alliances established a linkage with other political parties for an accord for the return of democracy and realization of 5–point demands. The alliances' of the 22 parties' 5-point demands were as: investigation for mid–February incidence, parliamentary election prior to any other election, withdrawal of all political cases and release of all political leaders, immediate withdrawal of martial law and restoration of fundamental rights and free political activities. Agreement between the two alliances gave a new motivation to the general people for the movement of the democracy against the authoritarian ruler. President Ershad invited the leaders of political parties at Bangabhaban for dialogue. But the 22 party alliances ignored the invitation. In the meantime the government stated the postponement of the Upazila election schedule and further called the two alliances for a dialogue. The autocratic government repeated its will to transfer power through election. In this condition, the opposition alliances and political parties decided to take part in the second dialogue.

The 15-party alliance, 7-party alliance, Khelafat Andolan and JI took part in this dialogue individually. Here it is noted that the 7-party alliance demanded complete restoration of the suspended constitution and the 15-party alliance demanded reestablishment of the original and unamended constitution through an amendment of the interim constitutional order (Ibid: 200). And harmony of the two alliances in fact moved for unlike opinion on constitution issue.

By holding Referendum and Upazila election, and making division among the oppositions' unity, Ershad made his position strong. On March 02, 1986 assuring free and fair election, he gave a speech to the nation. That day the EC announced the 3rd JS election schedule. The 7-party alliance rejected it for not meeting 5–point demands. The 15–party alliance and JI reacted in the same way. At this time Sheikh Hasina and Begum Khaleda Zia met thrice in a week on the issue of movement. Their meetings made the prospect of a joint movement. At last AL and JI participated in the elections. For this reason, 5 left-oriented political parties namely, the JSD (Shahjahan Siraj), Workers Party (Menon), BSD (Mahbub), BSD (Khaleq) and Samajbadi Dal left the forum of the 15-party alliance and they declared they would not participate in the election in anticipation of 5-point demands implementation. After that the 15-party turned into 8-party alliance. It was heard that the AL decided to participate in the election as a result of mediation by the PM of India, Rajib

Gandhi and the Ambassador of the USA for Bangladesh, Howard Sheffer (Islam, Rafiq:77). On the March 29, 1987 scrutinizing a critical crisis of democracy to the state, 31 scholars of Bangladesh gave a press release and they pointed out the necessity for instituting an acting government to make politics of the country free from military government. This appeal had an effect on political parties and AL realized the situation and decided that they would participate actively along with other opponents to force the autocrat to quit.

On July 12, 1987 the Zila Parishad bill was passed in the 3rd JS within 4 minutes in the face of stern resistances from the extra parliamentary and the parliamentary opposition. The bill aimed at adding an army officer's services in the Zila Parishad by amending its formation. Finally, in the backdrop of the countrywide resistance on the August 01, 1987, the President sent the bill back to the Speaker for reconsideration (Ibid: 222). Liaison committee of the three alliances arranged a meeting for launching united movement. Hasina mentioned one point demand: the resignation of Ershad. And the three alliances aimed to lead the movement for ousting Ershad. In contrast, noticing the disunity among the opposition factions for removing autocratic ruler, again 23 eminent intellectuals of Bangladesh gave a press statement on July 28 and they appealed to the political parties, social forces and the people to create a broad based consensus about the dissolution of the parliament and to form a neutral civil interim government (Ibid). The opposition parties welcomed the statement apart from the 8-party alliance. Meanwhile, distinctive groups of the people had been making force on the opposition to initiate a combined movement. Consequently, Khaleda and Hasina sat jointly and formulated a united declaration on October 28. In their declaration they mentioned that they would launch all the actions jointly to force the resignation of government. They also promised setting up democracy and appealed to all the democratic and progressive drives, no distinction of the party link, to join up the united movement for the resignation of the government. Combined declaration of the two supreme leaders gave confidence to the nation to build their involvements in the movement. To the face of external pressure Ershad dissolved the 3rd Sangsad on December 6, 1987.

On January 1, 1988, the EC announced that the 4th Jatiya Sangsad election would be held on February 28, 1988. Instantly the three alliances, the 6-party alliance led by Oli Ahad and the JI rejected the announcement and demanded leave of Ershad. Later on, announcing

the 4th Parliamentary election schedule, the constant issue was brought to the front further for the case of united movement of the opposition. Under this fact Begum Zia surprisingly met Sheikh Hasina at Bagabandhu House on January 1, 1988 to pronounce her unique concern for joint movement. Following the dialogue, the leaders announced that their just objective was to make certain the fall of the government and the need to uphold the unity of the rival. After all, the 4th JS election took place on March 3, 1988 without any effective resistance from the opposition (Siddiqui, 2013:226). There were many internal problems those could not be solved till the time. But the election was boycotted by the major opposition parties.

In a sudden move, the AL changed its position from 1-point demand of department of Ershad to 4-point demand on May 18, 1988 and the party stated only the change of person could not make any good to the people, unless the system was changed. Their demands were: reestablishment of parliamentary form of government and the four state principles, trial of Mujib's killing and ban on the religion-based political parties. Moreover, except these four- point demands, Sheikh Hasina, on June 7 again, announced another seven-point in a meeting of 8-party alliance for greater unity of the opposition. These were: reestablishment of the spirit and the values of the liberation war, trial of killing of four national leaders, introduction of the parliamentary government as it had been in vogue prior to the 4th amendment, independence of the judiciary, repeal of the 5th to 8th Amendments to the Constitution, pro-people decentralization and democratization of the administration. The shifting of its goal by AL also created mistrust among other oppositions and even its senior leaders did not accept it.

Role of Civil Society and Other Pressure Groups

Many professional and socio-cultural pressure groups played a vital role in the democratization process in the 90s. Their collaboration with political and student alliances' boosted the struggle for the democratization that finally enforced to end the autocratic regime. The Federation of University Teachers Associations (FUTA) was very active against the dictatorial regime. The government shut down the University of Dhaka (DU) and other major universities as well as educational institutions of the country on October 13, 1990 with a view to reducing the united movement of the students and teachers. The Syndicate of DU refused the government's decision. President of DUTA, Professor Dr. Yazuddin Ahmed said- "An illegal government is not conducive for the law

and order on the campus. So democracy is the precondition for a proper academic atmosphere. So we became a part in the anti-Ershad Struggle (Siddiqui, 2013:252). Association of Lawyers was one of the most active groups against the President Ershad. Joint Action Committee of the Newspaper and News Agencies, the Bangladesh Federal Union of Journalists (BFUJ) and Dhaka Union of Journalist (DUJ) were vibrant and expressed their grievances against this regime. The PROKRICHI (Prokowsali, Krishibid and Chikishak) and SKOP (Sramik Karmachari Oikkya Parishad), an union of sixteen labor federations expressed their consolidation and participated in the movement. Forty-three associations comprising cultural workers, literary, artists, intellectuals and different groups of the country formed earlier for participation in movement, expressed their critical individuals observations on the regime.

Female students along with seven female organizations and Bangladesh Mahila Parishad (women council) jointly demanded withdrawal of Martial Law (ML), parliamentary election before all elections; stopping of repression on women who also extended their active participation in the movement. BCS (Administration) Association including other civil servant associations also actively participated in anti-Ershad movement. On December 4, 1990 the high-officials and lower class employees came out from secretariat to the street repeating anti-government stance. Many civil servants and foreign service officers stopped their activities and resigned as a whole. Army Generals in a meeting on December 4, 1990, evaluating the situation of the country, decided not to support Ershad any more (Siddiqui, 2013:242). Donor agencies and countries observed the significance of the mass movement and cautioned the government, and told that they would defer the help if the government tried to control the opposition mass movement.

Removal of Ershad through a National Consensus

In the midst of 90's nonstop movement by the opposition alliances, student associations and other internal and external forces ensured the fall of Ershad. The three alliances started strikes for one month, July 1990, and continued joint movement for removal of the government, and free and fair election (FFE) under a NPCTG. The movement was so severe that it forced the government finally to offer dialogues with the rival alliances with the aim of holding free and fair election. The rival forces considered it as a trap, rejected the proposal and insisted on the step down of Ershad and handover of power to an impartial acting government. The incident of death of many persons including students at

Dhaka University on October 10, 1990 took the movement of the alliances to a high momentum and on the October 13, 1990, twenty-two major student organizations formed the All Party Students Unity (APSU). From October 10 to announcement of three alliances' joint-declaration on November 19, the APSU, SKOP and Opposition political alliances and other political parties kept on continuing various protest programs against the government. During the 1990 anti-government movements, the opposition alliances had shown unity among them which is more related to this study that if political forces remain united for an issue, they could reach the target successfully. In their agenda, there were government office besieging, protests, processions, strikes, besieging ministers' houses, radio, TV and railway blockades, other unrests and so on. Amid this turbulence, communal unrest added a new dimension due to demolition of Babri Mosque in India. Overall situation of the country was violent and confrontational. In the meantime, five persons were killed at Adamjee Jute mill on November 14, 1990. All the above mentioned issues fueled the opposition finally to be united for the movement against dictatorial rule in a body and came to an end through an agreement for establishing sovereign and effective JS and parliamentary system, thus contributing to the process of democratization in Bangladesh.

Three alliances, political parties and different associations had been staging strikes for insisting on the dissolution of the 4th JS, department of Ershad and next national election under NPCTG. Under these circumstances, APSU, AL-led 8-party alliance, the BNP backed 7-party alliance and the left-leaning 5-party alliance on November 19, 1990 signed out a joint declaration that outlined the formula of transition from an autocratic to a democratic polity (Hakim, 1993:32). In fact, this consensus was outlining the procedure to move to democracy. The main arguments of the joint-declaration were that the opposition alliances and parties would boycott and also resist all elections under Ershad, he must leave and give in power to a non-party caretaker government. The interim government would arrange a free, fair and neutral, and acceptable election which would ensure the political rights of the people; and thus finally the acting government would shift power to a sovereign JS. Above all establishing democracy and democratic system, which indicate a parliamentary form of government (Form the Joint Declaration of Three Alliances, see-Appendix), must be ensured. As a result of this historic joint-declaration by the political alliances and parties, people of the country became confident about the triumph of the movement.

However, the rivalry between the ruling and the opposition forces panicked the whole nation. The journalists and newspaper employees stopped the circulation of dailies throughout the country. The lawyers of the Supreme Court refused to attend the court for indefinite time. The apex body of 58 NGOs, Association of Development Agencies of Bangladesh (ADAB) also articulated their unity. Eminent professional groups of the country like university teachers, scientists, doctors, lawyers, engineers, journalists, artists, cultural personalities, civil and military elites' even Ershad's party men and 19 MPs including ex-deputy prime minister and three ministers submitted their resignation to the Speaker. Finding no alternatives on December 3, 1990, the autocratic ruler announced that parliamentary and presidential elections would be held on the same day and he would resign 15 days before submitting nomination paper, but he was refused by the oppositions instantly. On the same day in an interview with BBC, Khaleda Zia insisted that Ershad must resign immediately, and Dr. Kamal Hossain, rejecting the declaration of Ershad reiterated that the movement would continue. After the declaration of Ershad, thousands of people came out to the street on December 4 rejecting the declaration and chanted slogans: "Ershad must go now" (Siddiqui, 2013: 240-42). On December 4, a meeting of the army generals was held in army headquarter (HQ) for the assessment of the situation of the country and they decided not to support Ershad. Two of the very closest generals of Ershad requested him to hand over the power. Consequently, autocratic ruler of 9 years decided to resign, and dissolved the 4th JS on December 04. On December 05, the three alliances opted to select the running Chief Justice Shabuddin Ahmed as Vice-President for discharging the responsibility of the Acting President of the interim government. As per the proposal by the three alliances on December 6, 1990, Moudud Ahmed resigned from the post of Vice-President and Shahabuddin Ahmed was appointed by Ershad as new Vice-President. At that juncture, Ershad without delay resigned and the new Vice-President turned into the Acting President of Bangladesh. This was the first succession of power in independent Bangladesh through non-military means (Hakim, 1993:34).

Here, it may be mentioned that the students' force that came first with their predictable role participated in 90s democratic movement as all previous movements in creating the emergence of Bangladesh. Their glorious role for democracy is an inseparable part of the political history of Bangladesh (Siddiqui, 2013:188).

The students became highly vocal against the new education policy which was approved on principle by the government on September 4, 1982. It was the first organized movement of the students started against the Policy (Ibid: 189). 14 students' organizations along with 15 eminent citizens of the country gave a statement expressing grave resentment against the proposed policy and they considered it was "unscientific" and "anti-people". The student organizations collected more than one lakh signatures from the students throughout the country against this policy (Bichitra, March, 1984). Although the opposition political parties, and all other organizations observed 239 strikes throughout the year 1989, however they were not united. For disunity, autocrat did not face effective challenges from them. It is the students' community that desperately tried for a united movement of the opposition against the Ershad, and they succeeded. The Student Action Council (SAC) consisting of the 14 student organizations was formed on November 21, 1982. The SAC requested the political parties and other forces for the united movement against the autocratic ruler. The SAC revived and got momentum in the movement again on the issue of arrest of one of their leaders. On the February 14, 1983, thousands of students gathered at Dhaka University as per programme announced earlier. When the students started their procession towards secretariat to observe sit-in-strike there, the government agencies tried to scatter them by using baton, hurling tear gas shells and hot water and firing. Eight persons died and many students, guardians, kids were injured and arrested by government agencies (Ibid). In this situation, the movement of the student energized.

In the meantime, the 15-party alliance expressed their support to the student's movement. The SAC announced 10-points demand on March 26, 1983 at Dhaka University due to mid-February incident. Their 10-points demand were, in brief, immediate withdrawal of Martial Law; abolition of the denationalization policies; adopting independent and active foreign policy; proper investigation and action for mid-February incident; ensuring enough facilities for the students; abolish the proposed education policy, increase age limit from 27 to 30 for application to government services, upholding the spirit of the liberation war; implement the Bangla language in public and private offices; ensuring economic stability and removal of the discrimination against minority groups. Initially, the SAC goals were not met, because of the lack of the acute support from the political parties.

Incidents on October 10, 1990, a violent resistance between the government forces and political activities occurred; 5 persons were killed and hundreds including BNP chief Khaleda Zia, were injured and this occurrence motivated 22 major student organizations to form the All Party Students Unity (APSU) and they vowed to continue their agitation until the country was emancipated “from the clutches of autocratic Ershad and his regime” (Hakim, 1993:32). Here, it is mentionable that, pressure from the student leaders, three political alliances, convinced to make a united declaration on November 19, 1990 which ultimately ensured the fall of Ershad.

1990 Joint Declaration (JD): Political consensus towards Democratic Transition

The November 19, 1990, JD by three alliances was an historic event for all the diverse groups of Bangladesh to ensure the sovereignty of parliament and parliamentary government for the nation through free and fair election in future. It was observed that this joint declaration was the only instance of political consensus reached among the political parties in the political history Bangladesh. And, the joint declaration happened by a broad-based political consensus, which then, helped the regime to change that created the democratic transition process. During the time, the opposition was out of JS, but the main political parties or mainstream political parties of the country inked this contract by cooperative relationship of the opposition parties. However, this consensus was also created outside of the JS where all the political parties – irrespective of their colours – took part in the making of such consensus.

This cooperative relationship among the political parties is rare and exceptional in the political arena of Bangladesh. But consensus for 11th and 12th amendments was unique, in the sense that consensus for this law-making went forward through a procedure involving intense deliberation, discussion and debate inside the parliament by political parties who won in the 1991 election.

The central theme of the Joint Declaration of the Three Alliances (JDTA) is to establish a sovereign parliament through free and fair election. The government of the Republic will be accountable to JS. They promised that an elected government must not be unseated without election or through any other unconstitutional means. Finally, in JD they assured to establish the fundamental rights of the people and the rule of law (4/B, of JDTA see' Appendix: 5). The JDTA's ultimate goals were to establish a parliamentary system of

government that could ensure parliamentary process through functional and sovereign JS. The goals of three alliances were established, but had not sustained for long, because the collective political will did not last long afterwards to strengthen parliamentary democracy. Confrontational relationship instead of co-operational relationship between ruling and opposition parties ruined the process of this consensus.

Shahabuddin's Interim Government

Through a national consensus, Chief Justice of the country, Shahabuddin Ahmed took the charge of Acting- President of the country on December 6, 1990. The main task of the new interim government was to arrange a free, fair and neutral election for the nation. In December 1990, the interim government of Justice Shahabuddin Ahmed announced that the nation would go to the poll on February 27, 1991 (Hakim, 1993: 42). The main features of the declared election were: this election was the product of an extended movement by the opposition parties, professional groups and student unions that brought an end to the dictatorial regime of Ershad; for the first time the parliamentary election was held under a neutral caretaker government; the election was expected to decide the future system of government whether to restore the parliamentary system; for the first time the BNP and the JP contested in the parliamentary election with other parties where they were not part of government; the two major parties – the BNP and the AL – of a predominantly Muslim conservative society contested the election under the leadership of two strong women, Khaleda Zia and Sheikh Hasina.

The Process for Winning Confidence of Voters

The Election Commission was reconstituted with three sitting judges led by Justice Abdur Rouf as the CEC and empowered to strictly oversee the promising coming election. EC consulted with the many political parties, and prepared a 16-points code of conduct. The 16-points code of conduct laid it down, inter alia, that the participating parties must be respectful to mutual democratic rights, tension must not be created for disrupting the congenial atmosphere of election, everyone must refrain from indecorous slogans and comments, and meetings, rallies and other campaign activities could not be obstructed (Hakim, 1993:52). The Representation of the People's Order (RPO) was amended and particularly penal actions of election for violence increased. The acting government initiated a general drive to recover illegal arms and ammunition. For more effective impression the NPCTG promulgated Ordinances, such as, the Union Parishad and

Pourashva (Special Responsibilities) Ordinance, 1991 and Election Officers (Special Regulation) Ordinance 1990. Moreover, the NPCTG guaranteed press freedom via an ordinance. To reduce the influence of black money in the election process, the election law was amended and the maximum amount of money an individual candidate could spend was fixed at Tk 0.3 million (Ibid). Candidates were asked to give an account of their election-related expenditure to the EC within 15 days after the election. These changes were taken to earn in return the voters' confidence in the electoral process.

The 5th Jatiya Sangsad Election

On the December 6, 1990, at Bangabhaban, Justice Shahabuddin Amed affirmed before the political leaders that the only purpose he had taken the post of Acting-President was to arrange a free, fair and neutral election for the nation within the shortest possible time to ensure the restoration of law and order in the country. The new EC fixed and announced the 5th JS Election on February 27, 1991. January 13, 1991 was last date of the nomination papers submission by the political parties. After submitting their nomination papers, all parties started campaign in full swing to gain the support of the voters with their manifesto and ideology. AL highlighted the reinstalling of the 1972 Constitution, where the mode of government system was of parliamentary form, secular and pro-socialism; and presidential form of government by contrast. BNP highlighted Zia's 19-points programme and presidential form of government. The NAP and CPB were reluctant to ally with BNP for its negative attitude towards the restoration of parliamentary form of government (Ibid: 265). The JP proposed to emphasize the importance of Islamic principles and claimed to recognize their development contribution to voters for last 9 years. JI gave importance on the necessity of turning Bangladesh into an Islamic state as per the Quran and Sunnah, and the country would be run in that way. Here, in the table below, the different preferences to the form of government among the political parties are mentioned as per their ideologies.

Table 4.1**Ideological Orientations of Major Parties on Government System in Bangladesh**

Name of Parties	Form of Government
Bangladesh Nationalist Party (BNP)	Presidential form of Government
Bangladesh Awami League (AL)	Parliamentary form of Government
Jatiya Party (JP)	Balance between Powers of President and Parliament
Jamaat-e-Islami Bangladesh (JI)	Islamisation of Life and Society
Communist Party of Bangladesh (CPB)	Parliamentary form of Government
Bangladesh Krishak Sramik Awami League (BKSAL)	Parliamentary Form of Government

Source: Researcher; Hakim, 1993:50-51.

Despite ideological and programmatic differences among the political parties, they all supported the reintroduction of parliamentary form of government.

The 75 political parties and 2,787 candidates including 424 independent candidates had contested in the 5th JS election. Here, it may be noted that the number was the highest since independence. Among the political parties BNP was the only party that nominated candidates in all seats. A record number of 47 women, including Khaleda Zia, Sheikh Hasina, and AL General Secretary, Sajeda Chowdhury contested in the election. Khaleda contested in five constituencies, Sheikh Hasina contested in three seats and Ershad filed nomination papers for five seats in Rangpur district. Almost all prominent leaders of all political parties contested in 1991 election. The February 1991 elections were held throughout the country in an atmosphere of unprecedented peace except for some stray incidents at some places of the country (Ibid, 1993:46-53). This election was free, fair and impartial according to the foreign and local onlookers in the history of the last 20 years of independent Bangladesh. The 4-member election observation team of the British Parliament, the Japanese team, and the 4-country SAARC team visited many polling stations throughout the country on the election day and found the polling to be “free, fair, and impartial” (The Daily Ittefaq, March 2, 1991).

Table 4.2
The 5th JS Election Results of 1991

Name of Party/Independents	Number of Seats
Bangladesh Nationalist Party (BNP)	140
Bangladesh Awami League (AL)	88
Jatiya Party (JP)	35
Jamaat-e-Islami Bangladesh (JI)	18
Communist Party of Bangladesh (CPB)	5
Bangladesh Krishak Sramik Awami League (BAKSAL)	5
National Awami Party (NAP-Muzaffar)	1
Ganatantri Party (GP)	1
Workers Party (WP)	1
Jatiya Samajtantrik Dal (JSD-Siraj)	1
Islami Oikya Jote (IOJ)	1
National Democratic Party (NDP)	1
Independents	3
Total	300

Source: Election Commission (1991)

This was fascinating to observe that the election results were full of surprises, while 75 political parties participated in the election, a huge size, 93.66 % of total seats was won by 4 main political parties. The rest 71 parties got only 7.44 % seats, including 3 individual winners. Whereas six (NAP-Muzaffar, GP, WP, JSD-Siraj, IOJ and NDP) parties managed only one seat and CPB and BAKSAL both won 5 seats, respectively. The rest 84% of participating parties failed to win any seat. No party won majority to form the government in the 5th JS Election. The 5th JS election results proved all pre-election prediction. The BNP won 140 seats as the single largest party. The AL won only 88 seats and stood as opposition in parliament. The JP got 35 seats and ranked in 3rd position in parliament and JI also won 18 seats in this election. Another important mentionable issue on the results of 5th JS election was that the AL chief was defeated in two constituencies of Dhaka city by relatively unknown BNP candidates and some other stalwarts of the AL were also defeated among others, namely, Dr. Kamal Hossain, Zillur Rahman, Abdul Mannan, Amir Hossain Amu and Zohra Tajuddin. Some leaders of other political parties who suffered the debacle in the election were Abbas Ali Khan of JI, Saifuddin Ahmed of Communist Party of Bangladesh, Muzaffar Ahmed of National Awami Party, Saifur Rahman of BNP, Khaliqzaman of Bangladesh Samajtantrik Dal, A. S. M. Abdur Rab of Jatiya Samajtantrik Dal, and Mizanur Rahman Chowdhury of JP (Hakim,1993: 56). After such

an unexpected result, AL Chief Sheikh Hasina resigned from party on March 3, 1991, personally accepting all responsibilities for the party's defeat in the parliamentary election and later, however, she withdrew her resignation two days later at the insistence of party leaders and workers (March 4, 1991, *The Bangladesh Times*).

New Government Entered in 5th JS

It was remarkable for the 5th JS that it was impossible to form government for either of the largest two parties without support from other parties, as no political party gained absolute majority in election result. In this circumstance on March 1, 1991 Khaleda Zia expressed her party's readiness to form a coalition government with any patriotic and nationalist force. She was unanimously elected the chief of BNP faction on March 3, 1991 (Ibid, 1993: 63). To respond BNP's need on March 11, in a letter signed by Acting Ameer of JI, Abbas Ali Khan to the Acting President had informed that the JI would fully cooperate with and support the BNP parliamentary party in the formation of a stable government and a copy of the letter was handed over to the Secretary General of BNP. In the meantime, the non-partisan council of advisers was dissolved on March 15. Khaleda Zia took oath on March 20, 1991 as the Prime Minister with 11 cabinet and 21 state ministers. Acting President Shahabuddin Ahmed called the first session of 5th JS's on April 5, 1991.

An overview of functions, features and performances of the 5th JS is in the table 4.3 below.

Table 4.3
The 5th JS at a Glance

Issue	Actions
Election	February 27, 1991
1 st Session	April 5, 1991
Total Sessions	22
Working Day	400
President	Acting-President Justice Shahabuddin and Abdur Rahman Bishas
Leader of the House	Begum Kkaleda Zia
Leader of the Opposition	Sheikh Hasina
Speaker	Abdur Rahman Bishas and Sheikh Razzaq Ali
Deputy-Speaker	Sheikh Razzaq Ali and Humayun Rashid Khan Panni
Amendment	2 (11 th and 12 th)
Total Laws passed	172 (01 private member bill)
Ordinances	97
Dissolution	November 24, 1995

Source: Researcher using Jatiya Sangsad sources.

Journey towards Parliamentary Democracy

The 5th JS started with two certain issues. One was the legal process of going back of Acting President Shabhabuddin Ahmed to the previous post as a Chief Justice, what was assured to him at the time of his taking charge by the three political alliances and legalizing his functions during that time. The second one was the shift to parliamentary system from presidential one. During the movement against the autocratic regime, all alliances were firmly united in favour of the issue to ensure “sovereign parliament”. New government of Khaleda Zia took the oath along with her cabinet, under the Constitution which provided for a Presidential system of governance that defined Acting President Shahabuddin as to continue both as the Chief Executive and Head of the State. On the other hand, Khaleda Zia had the mandate of the people to govern the country and for all practical purposes she was already taking all the major decisions, it seemed she was acting as such under the presidential system. Though the ruling BNP also had declared in a public meeting before the historic declaration by the united alliances on November 19, 1990, that the new parliament would be sovereign, but BNP had neither changed their party charter nor their election manifesto (Ahmed, 2012:16). The party was in a dilemma

as to which system of governance they would support. It was a difficult situation for ruling party for it had received the mandate of the people to run the nation. After 3 months the ruling party became determined to modify its past position. It was mentioned before, BNP preferred presidential system. So there was no alternative before BNP to frame another amendment to the Constitution that would make the Prime Minister the chief executive of the state and the President would be only a titular head (Ahmed, 2012:17). The only other difference would be that the Prime Minister and his/her government would then be made accountable to the JS (Hakim, 1993).

The Process of making 11th and 12th Amendments

From the very beginning of the 5th JS, the main opposition AL and other political parties immensely pressured the government party from inside and outside of the House to introduce parliamentary form of government that was also their election manifesto and joint-declaration's commitment. These parties asserted that there was no alternative to the parliamentary form of government to establish "real democracy" (Ibid, 1993:73). Acting President Shahabuddin Ahmed also put importance on his address at the inaugural session of the 5th JS of the necessity to respect enthusiastically the pledges of the joint declaration. He said "Though the declaration does not bear any constitutional validity, it has sufficient political significance" (The Bangladesh Observer, April 6, 1991). His speech was full of indications of both the 11th and 12th amendments and greatly prejudiced public support in favor of the parliamentary government. On the other hand, other pressure groups of the House, the Supreme Court Bar Association, the Combined Action Committee of the Professionals, the opposition parties, the Combined Cultural Front and particularly several student organizations including the intellectual community who played active role in terminating the autocrat regime and thus demanded amendment of the constitution to establish parliamentary government. In the mean time, Abdus Samad Azad of AL served a notice of constitutional amendment bill to the Jatiya Sangsad Secretariat for dealing with and examination on April 14, 1991 (See appendix- 3). His bill recommended replacing the existing presidential with parliamentary system. His bill also added a provision to relieve Acting President Shahabuddin Ahmed and allow him to go back to the office of the Chief Justice of Bangladesh.

But initially PM Khaleda Zia was silent and a few influential leaders of the BNP strongly went against the proposed amendment bill. In this circumstances, the ruling BNP's

parliamentary party held a meeting on May 18, 1991, among them the issue of debate was the constitutional amendment and the form of government. In this discussion, three different opinions emerged (Ibid, 1993:74). Some members pleaded for a parliamentary form of government; some others favored the retention of presidential system; and still others voiced their opinion for a mixture between the presidential and parliamentary forms (The Daily Star, May 19, 1991). Later, in another meeting of BNP Central Executive Committee (BNPCEC), participated by 300 members from all over the country, of them out of 27 speakers in the meeting, 21 expressed their opinion in favor of the parliamentary system (The New Nation, June 10, 1991). On the other hand, JI started to demand for a parliamentary system in addition to the party's support to BNP to form government. Though, the party JP prefers to the presidential system, it would not oppose to go back to the parliamentary system at that time. Even the independent MPs and most of the minor parties in the JS demonstrated their keenness to offer approval to the constitutional amendment bills for the sake of parliamentary democracy and people's sentiment. Moreover, all the opposition parties in the 5th Parliament except the JP in late April, 1991, decided to work unitedly to pressurize the BNP into bringing a bill to change the form of government (Ibid, April 24, 1991). However, in her comments on the presidential speech, Begum Zia clearly indicated that the majority opinion would be honoured in taking final decision and that happened in mid-June the ruling party served a notice of constitutional amendment bill to the JS Secretariat (Ibid, June 11, 1991). And the PM in her address to the nation on July 1, said, "We have decided to introduce Parliamentary government in accordance with the need of the time" (Ibid: 76). Yielding tremendous pressure from inside and outside of the parliament, the ruling BNP had to agree to amendment to the constitution to shift the government system of Bangladesh and carried out the commitment among the opposition alliances in the recent past.

According to Hakim (1993), when the public sentiment, opinion in the opposition camp, and the view of the majority in the BNP itself heavily twisted in favor of parliamentary system, consequently the ruling party decided to switch over to the parliamentary form. After all, on July 2, 1991, Mirza Golom Hafiz, Law and Justice Minister introduced a Bill before the JS, known as the Constitution (Eleventh Amendment) Bill 1991 and on the same day Begum Khaleda Zia had cited for a Bill before the JS known as the Constitution (Twelfth Amendment) Bill 1991. The first one was to ratify and confirm the appointment on December 6, 1990, of CJ Shahabuddin Ahmed as Vice-President, the exercise and

performance of the powers and functions of the President by him and all laws and ordinances made and all acts and things done and all actions taken by him in that capacity and further for his return to the office of the Chief Justice of Bangladesh in accordance with the assurances given to him by the main political alliances and, the second Bill was to return the country from a presidential form to a parliamentary system of government as originally envisaged in the Constitution of 1972, and that nullified the Fourth (Constitutional Amendment) Act of January 25, 1975 (Ahmed, 2013:17-18).

On the other hand, on behalf of AL, Abdus Samad Azad moved a constitutional amendment bill on July 4 for reestablishment of parliamentary form of government. Rashed Khan Menon, the chief of WP also placed four bills on the same day for reviving the parliamentary form of government. Later on, all these bills came together and were sent to the special committee. This is discussed in the following section.

Law-making and the 5th JS

After a few days of heated discussion, the JS on July 9, decided to send the all proposed bills to a 15-members Special Select Committee (SC) consisting of the Treasury and opposition MPs for scrutiny and recommendations. The SC members' names are given in the following table.

Select Committee for 11th and 12th Amendments

Table 4.4
Select Committee (SC) for 11th and 12th Amendments

Name of MPs	Political Party	Position
Mirza Golom Hafiz	BNP	Convener
A. Q. M. Badruddoza Chowdhury	BNP	Member
Abdus Salam Talukder	BNP	Member
Majedul Haque	BNP	Member
Sheikh Razzaq Ali	BNP	Member
Khandoker Delowar Hossain	BNP	Member
Nazmul Huda	BNP	Member
Rafiqul Islam Mia	BNP	Member
Abdus Samad Azad	AL	Member
Mesbah Uddin Khan	AL	Member
Sudangshu Shekhar Haldar	AL	Member
Shawkat Ali	AL	Member
Moudud Ahmed	JP	Member
Sheikh Ansar Ali	JI	Member
Rashed Khan Menon	WP	Member

Source: Bangladesh Jatiya Sangsad Bulletin (in Bengali) July 9, 1991: 2

The above table indicated that eight members came from ruling BNP including head of the SC. Four members were selected from the main opposition, AL. One member each came from the JP and the JI ranked 3rd and 4th position in the 5th JS. Another member was selected from the chief of WP. The 15 members SC were consisted of five out of 12 parties of the parliament. For the first time in the political history of Bangladesh, a SC was formed for amendments to the constitution and that committee comprised of Treasury and Opposition benches. It was on the basis of the national consensus. From the beginning to end, all steps were taken cautiously by observing mutual understanding and relations between the government and the opposition, which worked successfully to solve the crisis that expedited the democratization process.

What is notable is that there was no single participation from the elected women's side to the committee; although there were some women members elected in the 5th JS. It was a remarkable fact that the chief justice of a country took the state power on the request from

the political parties and he returned to his previous post through an Amendment to the constitution. It was not only an example in Bangladesh, but also in the world's political history. It means that political will of the leaders could take any decision beyond their partisan loyalties. The ruling party had been ideologically supporting the presidential system. But on the basis of the demand of the opposition parties and need of the time, the Treasury bench changed its stances, ideologies, ethics and norms. When political will works for the demand from the other progressive groups in the society, democracy automatically speeds up. In the case of 12th Amendment to the constitution of Bangladesh, political will of the ruling and the opposition elites successfully worked to establish parliamentary democracy. None of parties served the party interest. The SC received the Bills on July 9, and they examined them through 100 hours of deliberation in 36 sittings (Ibid 1993:78) of 18 days in detail from July 10 to July 27, 1991 and finally submitted their report with recommendations before the Parliament on July 28, 1991 (Ibid, 2012:18).

Following table is a summary of the process of passing the 11th Amendment to Constitution.

A Summary of Profile of the Constitution's 11th Amendment Bill, 1991

Table 4.5
Profile of the Constitution's 11th Amendment Bill, 1991

Steps	Content	Outcome
Source of bill	Demand of Chief Justice to go to his previous job	Consensus among all parties
Bill introducer	Presented by Mirza Golam Hafiz, Law Minister, 5 th JS	Public Bill
Sending to the Select Committee (SC)	15-member Select Committee formed	All bills were deliberated in SC
Duration of SC	18 Days	Deliberation continued
Discussion in SC	Spend 100 hours in 36 sittings	SC reached a consensus
Type of SC	All-party elected to the parliament consisted of SC	First in the country's history
Debate on Bill	Bills were debated in the parliament for 10 days	Amendment enriched by new inputs
Number of participants in debates	14 MPs debated in Parliament	All supported the bill
Referendum	Not Held	Based on consensus
Vote in favor of Amendment	Return of the Chief Justice to his previous job	278 MPs cast their vote in favour of the amendment (except JP)
Present Status	Deleted by 15 th Amendment	Effective until 15 th Amendment
Type of Bill	Both Public and Private Bill	Constitutionally accepted

Source: Researcher (2015) using Jatiya Sangsad source.

The 11th Amendment and Democratic Transition

In the debate and discussion of the all-party SC, the 11th Amendment raised a lot of questions and disagreements. The bill had two sections- the first section was to approve, settle and legalize all what Justice Shahabuddin had done as the Acting President from December 6, 1990, till the date of the initiation of the 11th Amendment. And the rest section was to allow him to reoccupy his duties as the Chief Justice with a deeming clause counting the period of his governing the country as the President to be in “actual service”, as it mainly related to the question of Justice Shahabuddin Ahmed's taking oath as the Vice-President while still holding the post of the Chief Justice which was itself a violation of the Constitution (Ibid, 2012:18). After all, though it was critical, the JS passed the bill's

both sections, to permit to return to the Judiciary to continue his tenure again as the Chief Justice of Bangladesh that was committed to him by the political alliances. This difficult job was made possible by the collective will of the people. It was proved that any serious problem confronted by the nation could be overcome, if the government and the opposition parties were sincere and cooperative with each other.

Dynamics of Consensus between Treasury and Opposition for 11th and 12th Amendment Bills

Basically there were no major differences between the Treasury's and the opposition parties' bills. The two groups had a common purpose that changed presidential system into parliamentary government. The two sides became convinced that the president of Bangladesh shall be elected by MPs. But they were disagreed about who will conduct the election. Finally, the AL's proposal was accepted. The EC would conduct the presidential election. Another important difference was on non-elected technocrat ministers. What percentage of cabinet should come from non-elected technocrat ministers? According to AL, one-tenth of total cabinet would be chosen as technocrat ministers. In case of Article 70, they also gave different opinion. Here, it is mentionable that the ruling party presented two separate bills, one by Law Minister (11th Amendment), other by PM (12th Amendment). On the other hand, opposition party, AL presented one bill. If the Bills would have been analyzed, it would be observed that the ruling BNP emphasized for dominant executive. The AL emphasized the return to 1972's Constitution, though the party radically changed it through the 4th Amendments in 1975. However, the AL in their bill also gave the proposal to return Justice Shahabuddin to his previous post. It is unique that the Bill that first came from the opposition side, later it was passed. This is the first example in Bangladesh's parliamentary history.

If we scrutinize the bills, we will notice that opposition's demand is fulfilled more by the ruling party side. That is also another instance of the Constitutional amendment. These two Amendments were exceptional, unique and pro-people that enabled to reach to a consensus on Bangladesh's political and governmental issues. These Amendments fulfilled all procedures especially in the case of the 12th amendment. Ruling, oppositions, civil society community, pressure groups, and student communities, above all the people of the country supported and created a consensus that started the political liberalization in Bangladesh. The headline and main articles of the bill of AL submitted by Abdus Samad

Azad include: A bill to amend articles 11, 48, 59, 50, 51, 52, 53, 54, 55, 56, 57, 58, 58, 60, 66, 72, 73A, 88, 92A, 119, 122, 124, 125, 141A, 142, 145A, 147, 148, 152, and certain provisions of second, third and fourth schedules to the Constitution of the People's Republic of Bangladesh (detailed added in appendix-04). The main headline and the main proposal of the (Twelfth Amendment) Bill, 1991 moved by PM Khaleda Zia are enacted as follow:

1. Short title and Commencement – (i) This Act may be called the Constitution (Twelfth Amendment) Act, 1991. (ii) The provisions of this Act, except the provisions of section 12, shall come into force at once and the provisions of section 12 shall be deemed to have come into force on the 16th day of March, 1991.
2. Amendment of Article 11 of the Constitution – In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 11, after the word “guaranteed”, the comma and words, “and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured” shall be inserted.
3. Amendment of Part IV of the Constitution. In the Constitution, in Part IV, for Chapters I and II, the following shall be substituted, namely (for detailed added in appendix-05).

A Summary of the Process of Passing the 12th Amendment

Table 4.6
Profile of the Constitution's 12th Amendment Bill, 1991

Indicators	Content	Outcome
Source of Bill	Reintroduction of parliamentary form of government	Legal framework worked out
Bill introducer	Presented by PM Begum Khaleda Zia	Public Bill
Use of Select Committee (SC)	A 15-member Select Committee formed	All bills placed together in SC
Duration of SC	18 Days	Deliberation continued
Discussion in SC	Spent 100 hours in 36 sittings	SC reached a consensus
Type of SC	All party members elected to parliament consisted the committee	First in the country's history
Debate on Bill	Debates continued for 9 days in the parliament	Debates and discussion continued
Number of participants in Debate		
Referendum	Yes	First in this kind
Vote in favor of Amendment	307 - all MPs cast their vote in favor	All MPs supported the bill
Vote against the Amendment	No vote cast against the Amendment	Bill approved
Present status	Return of Parliamentary government	Parliamentary government approved
Type of Bill	Both Public and Private Bills	All MPs supported the bill

Source: Researcher (2016) using Jatiya Sangsad sources.

The 12th Amendment and Democratization

It is mentioned that six bills were brought in 5th JS aiming to change form of government and with some other specific provisions. The government bills were introduced by PM, and Law Justice and Parliament Affairs Minister. Opposition bill was introduced by Abdus Samad Azad, an AL MP, and other four bills were introduced by Rashed Khan Menon with some other specific provisions. The SC considered all the six bills together. However, the 12th Amendment of 1991 was connected to revive, delete, modify, innovate and change

the 1972's main Constitution that was abruptly changed by the 4th Amendment in 1975. The principal features of all the suggested amendments were to restore the provisions of the original Constitution of 1972, and so most of the amendments were similar or identical (Ahmed, 2012: 20). In their 18 days deliberation, the members of the SC determined the renovation of the system and were adept to turn up at a consensus. Finally, 11th and 12th Amendments were passed on August 6, 1991 with an unanimous mode of cheering. Opposition Leader, Sheikh Hasina said despite her party's dissent relating to certain provisions, the party accepted the bill "since we (AL) are committed to restoration of parliamentary democracy" (the Morning Sun, August 7, 1991). The Prime Minister viewed the passage of the bill as a "new journey in the path of democracy (The Newday, August 8, 1991).

Now, I will analyze the final version of the 12th Amendment Bill recommended by the 15-members SC and that was in the JS. Here, it will be analyzed to evaluate the provisions endorsed in the 12th Amendment compared to 1972's main Constitution. The Article-11 of 1972's first Constitution was returned that bestowed in this way. The Republic shall be a democracy in which fundamental human rights and freedoms of respect for the dignity and worth of the human person shall be guaranteed; then was inserted by the Constitution (Twelfth Amendment) Act, 1991 (Act XXVIII of 1991), section 2 "and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured" – The Constitution of The People's Republic of Bangladesh – (CPRB, October, 2011:04). These had been deleted by the 4th Amendment in 1975. By restoring these provisions, people – elected representatives' role was ensured at everywhere in administration, though legal practices are more different in Bangladesh. However, it ensured mandatory people's participation through representatives that is one of the most important conditions for democratization.

The Article 48 (Chapter 1 of Part IV) - the position of the President of the People's Republic of Bangladesh was restored- substituted, for Chapters I and II by the Constitution (Twelfth Amendment) Act, 1991 (Act XXXVIII of 1991), section 3 (CPRB, Ibid: 15), which bestowed the Constitution of 1972 where the original status of President was a 'titular head' (Ibid, 2012: 21). The 4th Amendment in 1975 had amended this and made the President an all-powerful ruler. That Amendment created a post of Vice-President. And all the provisions relating thereto were now deleted and Articles 49, 50, 51, 52, 53 and 54

were restored in the same form and language as were in the Constitution in 1972 (Ibid). Here, it was keenly observed that Article 48(2) was radically changed through the 4th Amendment. The position of the Prime Minister and the Cabinet had been taken totally under the control of the President. It ensured that all the Ministers including the Prime Minister, renamed as “Council of Ministers”, could be appointed from outside the Parliament and they would hold office only during the pleasure of the President (Ibid, 2012: 21). The type of “Council of Ministers” under Article 58 of the 4th Amendment was at present replaced with the provision of initial Article 55 of the Constitution of 1972, where the executive powers of the state was deposited in the PM’s hand. By this change the auspicious aspect of people’s demand and desire, and political commitment to ensure “sovereign parliament” that would help implement parliamentary democracy would be possible. The provision also ensured that PM and his/her Cabinet collectively be accountable and responsible to the JS. In the amended Article 56, the provision relating to the appointment of all ministers from amongst the members of Parliament, as provided in the original Constitution of 1972, was now modified to the extent that the Prime Minister was now empowered as per Article 56(2) to appoint one-tenth of the Ministers from outside the JS. To establish this provision the people’s power was curtailed. Unelected individual can be taken in cabinet, yet they have no voting power in JS. It also contradicts with the Article–11 of the constitution that was discussed above. After a long and protracted debate a consensus was arrived at in favour of this new provision by all the Members of the committee. But in the same original Article, clause (4) requiring such non-elected Ministers to get elected within six months of their appointment, was also deleted.

Article 57(2) holds the question of the tenure of the office of Prime Minister and dissolution of Parliament, and a change was made to the effect that if the Prime Minister loses to have support of a majority of the Members of Parliament or the Prime Minister resigns, the President would dissolve the Parliament, such as, “if he is satisfied that no other Member of Parliament commands support of the majority Members of Parliament” and this was added to provide for a situation where it would not be possible for another Member or a party or an alliance to form the government and thus ensure that the Parliament completes its tenure (Ibid, 2012:22). By this change the JS was made responsible to ensure to pass its full time duration that also promotes people’s participation

and democratization process, because an uneven parliament is the source of political turmoil and violence.

The provisions relating to the local government contained in Chapter III under Article 59 and 60 in the initial Constitution of 1972 was omitted by the 4th Amendment and those were fully restored by the 12th Amendment. Through this revival the local people could participate in local government election. In this way they can be even national leader from the local position. The relations between the MPs and local representatives are needed for all kinds of development. Finally, national policies, new rules and procedures can be implemented and reached by the locally elected people, and in this way democratization process would be enriched with more and more participation ensured. The members of the SC discussed at length whether to retain the offices of “Vice-President” established under the 4th Amendment in 1975 and “Deputy Prime Minister” introduced under the Second Proclamation Order No. (IV) in 1978. Although most of the Members including Professor Dr. A.Q.M. Badruddoza Chowdhury were in favor of retaining at least the office of “Deputy Prime Minister”, but the Committee had told that the high command of BNP would like both the offices to be abolished (Ahmed, 2012:22). By abolishing the two important posts it lost the check and balance over the post of chief executive. Then it was observed in the last 25 years’ parliamentary democracy that political stability faced serious problems. All issues and matters were controlled by one office of the PM. Here, political will turns into chief executive’s will.

The Article-70 relates to resignation and crossing of floor leading to vacating of seats of the Members of Parliament. The Committee examined the provision and decided to bring further amendment, thus, legalizing a split in parties in Parliament in line with the Indian Constitution. In the 4th Amendment, a more stringent provision was made in respect of crossing the floor by a Member of Parliament by adding an explanation to the effect that the seat of such a Member will stand vacated, if he being present in the Parliament, abstains from voting or absents himself from any sitting of Parliament ignoring the direction of the party which nominated him at the election as a candidate with direction not to do so, he will be deemed to have voted against that party. Adding two more clauses, Clause (2) provided a mechanism as to how the leadership issue would be resolved once any particular parliamentary party splits; and clause (3) has determined the status of a Member of Parliament elected independently, but joins a political party at a later stage

(Ibid and CPRB – October, 2011). In this regard, a prominent politician remarked that “no floor crossing, no democracy” (Interview with ASM Abdur Rob, April 23, 2016). His remark seems exaggerated and a historical one. In the past, in the pre-independence Bangladesh, there had been a lot of instances when the newly installed government collapsed due to uncontrolled floor crossing in the parliament. Given parochial, confrontational political culture in Bangladesh, this provision needs to be reformed, let alone deletion. It is a much talked issue to the Constitution of Bangladesh. Another veteran political echoed the similar sentiment. He said: “A nation cannot run under this Constitution”. It was included in the Constitution of 1972 in order to maintain the stability of the government (Interview with Kamal Hossain, April 27, 2016). But later it was not removed by any democrat or semi-military or military government. Using this provision the top party leaders aimed to bring discipline in party as well as in parliament. So the top political institutions became hostage to the top leader’s will and no law to be innovated against his/her will. As a result, Article-70 puts a serious obstacle to the path of democratization by blocking MPs freedom of thought and action to the largest extent.

Under the 4th Amendment, the Parliament was reduced to an insignificant institution to the extent that any law passed by the Parliament could be vetoed by the President and so the provision under Article 72 to hold session of Parliament within sixty days from the end of the last session was also reduced to only two sessions in a year. The SC for 12th Amendment restored the original provisions of 1972 Constitution and further added in Article 72(1) that in exercising his power in summoning, proroguing and dissolving the Parliament, the President shall do it in accordance with the “advice of the Prime Minister” tendered in writing. By adding this provision, whatever prerogative, the President’s power in this regard, was taken away by the 12th Amendment. The rest of the provisions contained in Article 72 continued to remain same. Above-mentioned provisions helped to promote democratic way as functional parliament is the main source of people’s participation through debate, discussion, PM’s question-answer hour, bring and amend law, and so on.

To strengthen the role of the EC, the SC recommended restoration of Article 119 of the original Constitution of 1972 with some improvements. Free, fair and neutral election is the precondition of modern democracy. For free and fair election, EC, must be made strong authority. So this provision helps the democratization path of the country. On the

question of time-frame for holding election under Article 123 of the Constitution, the Committee reviewed the changes made by the 4th Amendment and decided to restore the original provisions of 1972 Constitution with a modification. In Clause (4) a proviso was added to empower the EC to extend the time of holding by-elections from 90 days to another 90 days for reasons of an Act of God. Timely election immensely promotes people's participation. And people's participation is the main requirement for democracy deepening.

The President has to exercise power under Article 141A and 141C with the consent of the Prime Minister. Any Proclamation of Emergency made by the President would need the counter signature of the Prime Minister and no order of suspension of fundamental rights could be issued by the President without the advice of the Prime Minister. The other amendments made under the Twelfth Amendment in Article 73A, 88, 109, 122, 125, 142, 145A, 147, 148, 152 and in the Third and Fourth schedule were of minor and inconsequential nature and need no elaboration. Though by these provisions the chief executive was made stronger by centralizing all powers in his/her hand.

The Amendment bills were placed before the Parliament on August 6, 1991 for consideration. The day the bills were put to vote, Jatiyo Party changed its position and instantly decided to vote for the Twelfth Amendment which was passed unanimously in the midst of unprecedented enthusiasm and jubilation. It was one of the most important moments in the country's constitutional history. After sixteen years, the Constitution was amended to return to a Parliamentary form of government. It was a system for which people have struggled and aspired for from the time Pakistan was created. The Jatiyo Party however abstained from voting in the Eleventh Amendment Bill to which President assented on August 10, 1991.

The 11th and the 12th Amendment Bills: An Analytics of the Deliberation/Discussion/Debate

The above two bills were simultaneously placed in the parliament on July 02, 1991. The first bill was proposed by Mirza Golam Hafiz, the then Minister for Law and Parliamentary Affairs. The second bill was presented by the then Prime Minister Begum Khaleda Zia on the same day. After placing the bill, the general discussions on the

proposed bill were begun. While presenting the 11th Amendment bill **Mirza Golam Hafiz** said:

“Our acting President Justice Shahabuddin took charge on December 06, 1990 and he performed his duties according to the Constitution. And he also performed as the Chief of interim-government. During his term, he held free and fair election. As a result, we have got this noble parliament ----- He, during his tenure, repeatedly insisted on going back to his previous position as Chief Justice in the Appellate Division of the Supreme Court. We have framed this bill so that he could return his previous position” (Debate on 11th Amendment: July 02, 1990).

In presenting the bill on the 12th Amendment, the Leader of the House and **Prime Minister Khaleda Zia** said: “Let the two bills be part of to-day’s agenda. Afterwards, we have to think, discuss together, to arrive at consensus. Neither side in the parliament has the Two-Third Majority. The two sides form the Two-Third majority” (Ibid).

Making her statement regarding the bill, the then **Leader of the Opposition, Sheikh Hasina** said: “---- Honourable Law Minister has brought the bill in the parliament in 2-days notice as opposed to the provision for 7-days notice required.----- We prepared our own bill following the Declaration of 3-Alliance. ---- We prepared the bill non-partisan basis so that it becomes acceptable to all the MPs”. ---- Besides the government bill, “our bill should also be placed. The MPs should assess our bill, if anything contrary to the interests of the members, those should be withdrawn. In unequivocal terms, we could say that our bill has been made in line with the 3-party alliance. I call upon to place our bill, too. You will be benefitted by this step” (Ibid). --- the matter like the amendment to the Constitution is not determined by merely laws and rules of procedure. This is determined by the consensus” (Ibid)

Speaker, “Differences in opinion will remain in politics. We could fix up united aim and programme through discussion and compromise. Differences of opinion in politics are not harmful. But it should not be used as a deterrent to achieving a noble purpose” (Ibid).

AL leader **Abdur Razzaq** said:

“A law should be introduced into this amendment” so that no military take-over could take place in future. ----- one-tenth of the ministers may be considered from non-elected persons, but they should be elected within 60 days. --- President election should be held through secret ballot. ----- Article 70/B should be more specific, especially the absence of MPs from any session needs more clarification. -----Article 93 (Ordinance making powers of the President) should be abolished. ---- The referendum provision in the constitution must be done away with, because, it reduces the sovereignty of the parliament (Sangsad’s Debate August 05, 1991:3-5).

JSD (S) leader Shahjahan Siraj,

“I support the referendum for public opinion. It is important to avoid the the dominance of the 2/3 majority in the parliament. I agree with 10% technocrat ministers, but they must be elected within 06 months. (Sangsad’s debate, August 05, 1991: 31-37).

Khandokar Delowar Hossain (Chief Whip of 5th JS)

“Mr. Speaker, if an MP cast his vote against his party’s decision or remain absent from the parliament, his membership will cease to exist. Why he could not turn up, due to this failure of conveying information, his/her membership will be terminated, this is undemocratic (Ibid: 41).

AL senior leader Begum Motiya Choudhury

“I oppose the provision of technocrat minister system in parliamentary system. It is a humiliation to an MP and to the parliamentary system (Ibid: 50 – 54). -----Presidential election should follow the adult franchise system. ---Open voting is a bad practice (Sangsad debate, August 06, 1991: 05 – 06).

Salahuddin Kader Chowdhury of NDP

“The proposed bill is an ambitious bill. It is because a decision needs to be taken here that this decision cannot be implemented by a single political party. The decision is highly important and complex. ---- The bill has two parts one is changing of the form of government and electing of a new government. ---- Article –70 is a ‘barbaric provision’ of our constitution. This provision is established on the basis of mistrust and suspicion. No political system can be stable based on mistrust and suspicion” (Sangsad’s Debate, Ibid: 61-65).

Moudud Ahmed of JP

“Though I am a member of select committee, I put a note of dissent on changing of government system. Because my party believes in presidential form of government, if the party changes its decision, then, JP will cast vote in favour of amendment. Regarding the 12th amendment, AL and BNP brought almost same changes they had quoted from the 1972 Constitution. Amendment brought on Article– 11 was quite the same in both parties proposal. From Article 48 to 60 brought by BNP and AL were absolutely identical and quoted from 1972 constitution. These had only 03 differences. BNP demanded their proposal for open ballot voting in presidential election. The second difference was on the recruitment of technocrat ministers. BNP’s proposal was on 20%, it also then reduced to 10%.” -----“My party supports the referendum at least in the change of preamble and fundamental principles” (Sangsad Debate, August 05, 1991: 66-71).

Md. Nasim (Opposition chief whip of 5th JS)

“The first thing for democracy is that we have the right to discuss and debate openly.... a cabinet member is not only accountable to the PM, but also to the public and without election how is it possible to ensure accountability of a technocrat? On Concerning Article – 70, I do not have any objections on it, but reasonable absence of the MPs should be considered. In my view, election of the top post of the state should be definite and through secret ballot” (Sangsad Debate, August 05, 1991: 77 - 83).

Tofail Ahmed (Senior AL leader)

“Our deputy-leader Abdus Samad Azad, and Law, Justice and Parliamentary Affairs Ministers both proposed law which became together in select committee. What we brought that was real democracy. But by discussion with other members there were four differences came. Article – 70, more one clause added, we accept it because whoever form the government stable government is needed. The technocrat I do not support it. The case of Presidential Election will be conducted by the CEC as per law, but what law? It did not bring.

The BNP’s Bill proposed by Law Minister, there were many undemocratic clauses. Like within five years cannot be contested election..... if party desires party can sack one from the party..... In this case our Bill was ahead. Referendum that was also clearly written in 1972’s Constitution’s Article 142, but changed.... we do not want the referendum by the proclamation. Now this referendum we cannot support.

A. Q. M Badrudozza Chodhury (Deputy - Leader of the 5th JS)

“B. Chowdhury informed the Sangsad about the time and sitting of the select committee, Mr. Speaker the select committee passed 18 days, met 36 sittings and spent more than 100 hours..... Where we all MPs made a select committee and all members of the select committee put signatures. To create obstacle on it is shocking. All Bangladeshis and most of the MPs have the support on this amendment..... What proposal came from our side it should be discussed here? We should forget all misunderstandings. Yet we should act as per the Three Alliances Contact. It should be logical. And whole nation have been waiting for this” (Sangsad’s Debate, August 02, 1991: 05-06).

Abdus Samad Azad (Deputy – leader of the opposition of the 5th JS)

“We all should go against the referendum. This is minimizing the sovereignty of parliament. In SC we have tried to remove it, but they are not agreed with us. When the SC reports come to House the members of the parliament demanded debate and discussion on it and we should give that scope. Proposal should come from the ruling side. It should not come from our side, Mr. Speaker” (Ibid, 06 – 07).

Suronjit Sengupta (leader of Gonotantrik Dal)

“By the Article 142(1) [A] the sovereignty of the parliament has been limited. Unelected technocrats who are selected or appointed by PM they are not accountable to us (Sangsad), rather they are only accountable to the PM in this way the commitment we had done with the nation through the three alliance declaration November 19, 1990, historical declaration would not be fulfilled. Article - 70 that have two specific characteristics for interest of the stability of the government and for interest of the stability of the democracy we do not allow floor crossing. Whatever it has, this is enough, there is no need to include more with this clause. There is no chance to establish parliamentary democracy to ruin democracy. There is nowhere in the world for floor crossing MPs are losing their membership. It is that he loose his party’s position. The main theme of the democracy is freedom. Without freedom the democratization could not flourish (Sangsad’s Debate, August 03, 1991: 31).”

“Mr. Speaker, what has been kept in this bill, I am afraid. This situation was also evident in 1972. Executive powers only should not be vested in the hands of the prime minister. Executive power should be shared between the President and the Prime Minister. ----- Otherwise might lead to the prime ministerial autocracy (Sangsad’s Debate, August 03, 1991: 33)

“We should bear in mind that autocracy does rise not only in the presidential system it also rises in the parliamentary system. My suggestion is that the constitutional posts of CEC, CJ of Supreme Court, CAG and Attorney General be appointed by the President in consultation with the Prime Minister. This way balance would be ensured. Finally, I propose that we can keep the posts of Vice-President and Deputy-Prime Minister in the constitution. These are essential for fulfilling the gap of leadership and making balance of power with executive and reduce the possibility of the autocracy” (Ibid: 34-35).

Rashed Khan Menon (Chief of Workers Party)

There is no necessity of Article-142 related to referendum as it was written in constitution through military proclamation. The clause of the referendum in constitution reduces the sovereignty of the parliament. I have another different opinion on Article – 70. It was brought only to control the personal freedom. It is not democracy. It imposed not only floor crossing, but also strengthened the hands of the party chief. I put a note of dissent on this point, but then I withdrew it for the seek of the unity (Ibid, August 04, 1991: 17-18).

Mowlana Motiur Rahman Nizami (Leader of JI)

“This Sangsad is different than other Sangsad. These amendments (11th and 12th) also unique and innovative than others, because this parliament composed of different parties, no party got the brute majority. The beauty of this parliament is that it is originated through a free, fair and neutral national election under the neutral CTG. I will not say what is solved in SC by all our representatives. I am proising to include CTG and ensure independence of the judiciary. I opine that referendum is needed for the public judgment (Sangsad Debate, August 04, 1991: 31-32).

The above-mentioned extracts of the debates on the 12th amendment outline the following issues vital for the reintroduction of parliamentary democracy in Bangladesh. Several issues were discussed in the midst of debates, which are: recruitment of the technocrat ministers into the cabinet, floor crossing, system of the presidential election and referendum and balancing powers between the prime minister and the president. However, the way these issues were suggested to be reformed, these did not happen. For example, the President was made nominal executive compared to the prime minister. The powers of the prime minister were tantamount to the powers of an autocrat. Article-70 continued to exist with no qualitative reforms, stifling the use of the creative energy of MPs. The presidential election system was made partisan. So, parliamentary democracy under the

12th amendment was revived with limitations, making the system a weak one. This system remained closed to the participation of MPs in the law-making process.

Decision through Voting

MPs from all parties participated in the voting on the 12th amendment. 307 votes were cast in favour of the 12th amendment. On the 11th amendment 278 votes were cast in favour. One remarkable thing can be observed that there was no single vote cast against the both amendments. The JP party refrained from voting on the 11th amendment.

Women's Participation

Like other parliaments in the modern world, the JS of Bangladesh is also considered to be a representative institution. Bangladesh provides a deviant case where one can notice a major imbalance in the representation of women. Women presentations are seen not having satisfactory in parliament. But, women constitute more than half of the electorate. On the other hand, only a few women have the opportunity to contest from general constituencies (Ahmed, 2013:87). In the select committee for 11th and 12th amendments there was no woman's participation. In the second reading of the bill there were only 04 women MPs participated in the deliberation. But, all elected and women MPs including MPs in the reserved seats cast their votes in favor of the bill.

Private Members' Bill

Theoretically, each MP has the right to sponsor legislative measures and initiate other proposals in parliament. But, in practice, the task of law-making in Bangladesh unlike other democratic countries has become the preserve of the executive government (Ahmed, 2013: 181). In reality, the government almost dominates the legislative process as stated in the previous chapters. Since the 5th Sangsad some private members had been showing strong interest in the law-making process. Private Members in the 5th JS were more active in the legislative field than their predecessors or those elected later. A total of 74 bills were submitted to the JS Secretariat during its 22 sessions in the 5th JS. On average nearly 04 bills were submitted at per session. There was only one private member's bill passed in 5th JS. That was submitted by ruling party's woman MP Begum Farida Rahman, women seat-10. The bill was on "The Members of Parliament (Remuneration and Allowances) (Amendment) Bill, 1993". The bill was submitted January 07, 1993.

It was observed that nearly two-thirds of the PMBs submitted in 5th JS deal with constitutional and administrative issues (64.9%). Some important issues were brought from the PMBs. The Constitutional (12th Amendment) Bill of 1991 was also firstly introduced as a PMB. Among other, the important bill initiated by private members is the bill seeking to separate the judiciary from the executive. Another bill moved by opposition specially provided for making it mandatory for the government to consult the CJ before making any appointment to the Judiciary (Ibid: 185-186). However, one thing noted that the important bills in 5th were submitted by the opposition MPs. In more than one instance, it has been noticed that the government introduced bills similar to those moved earlier by the opposition backbenchers (Ibid: 192). Two important cases were to establish introduction of the parliamentary system of government and the bill seeking to establish an independent secretariat for the Parliament firstly came from the opposition backbenchers. When the treasury side found that it would be hard to oppose the passage of these bills, because of cross-bench support from them. Then, the government moved separate bills, which were later enacted into laws. However, even the treasury side was not always favorable. One example can be illustrated here.

“In 5th Sangsad, a BNP’s backbencher, Abdur Rab Chowdhury introduced a bill in the 1992, Winter session failed mainly because of the stiff opposition from the Law Minister. The minister even went to the extent of terming the bill, which proposed for raising the retirement age of the government servants to sixty years from fifty-seven, as “illegal” and “unconstitutional” and demanded that the member withdraw it. But Chowdhury remained defiant, refusing to agree to the Minister’s demand. To resolve the deadlock, the Speaker abruptly adjourned the House. The backbencher, however, agreed to withdraw the bill on the next private members’ day under strong pressure from the party high command (Ahmed, 2013: 192-193).”

This is real scenario of the PMB in Bangladesh’s JS. The treasury not only makes the chance futile to introduce or pass a PMB, but it also makes the way restricted for their own backbenchers. Abdur Rab Chowdhury and Farida Rahman (treasury MPs) tried to set new examples by initiating legislation, but ultimately failed due to the resistance of the ministers as well as other government backbenchers. One noted scholar on parliamentary democracy Nizam Ahmed rightly stated that “to survive in politics, the government backbenchers thus have to toe the line followed by the government” (Ibid, 2013:185).

However, in Britain it appears to be an exception among the parliamentary countries, where most bills moved by private members (in these days) seem to be looked on with favor, if not enthusiasm, by the government (Broomhead, 1956:107). In Bangladesh, in

the most cases, private members remain seriously disadvantaged vis-a-vis the government due to prevailing bossy executive and hidden or sleeping legislative.

Participation of Independent MPs

In the 5th JS election there were three independent MPs elected. But they could not play any significant role in law-making.

Referendum

Since the Twelfth Amendment Bill was in essence a change in the basic structure of the Constitution, changing the mode of governance from presidential to parliamentary form, it touched Clause (1A) of Article 47 of the Constitution. The President, within 7 days of passing the bill, had to refer it to a referendum on the question whether the President should or should not assent to the Bill. Accordingly, a country-wide referendum was conducted by the Election Commission on September 15, 1991 and voters had cast their votes in favour of the Bill and the President assented to the same on September 18, 1991 followed by a public notification on the same day. For the people of Bangladesh, it was indeed a victory, a restoration of people's power and their universal right of franchise for which they had struggled and sacrificed; and finally achieved their freedom from the colonial rule. It was a moment of great achievement.

Despite opposition by many top opposition MPs for not holding the referendum for the 12th Amendment, it was held as the chief of executive wished it. For reestablishing parliamentary government in Bangladesh in the 5th JS, a referendum was held on September 15, 1991 as per Article 142 (1A). The electorates were asked to answer question: "Should or should not the President assent to the Constitution (Twelfth Amendment) Bill, 1991 of the People's Republic of Bangladesh?"

A Summary of Referendum Results of 1991

Table 4.7
The Referendum Results, 1991

Year	1991 Total Number	in percent
Registered voters	62,204,118	-
Votes cast	21,888,437	35.2
Invalid votes	189,998	0.9
Valid votes	21,698,439	99.1
Yes	18,308,377	83.6
No	3,390,062	15.5

Source: Ahmed, 2013: 25

However, the significance of the 12th Amendment was great. Here, all the ruling and opposition parties were united. But, the question of much participation, i.e., the backbenchers' participation was very limited. Even, there was no woman MP in the selection committee for amendment. Though, a few backbencher MPs participated in the amendments and gave suggestions on the bill, these were not considered. So, it was explicitly true that the amendment was also 'output of the top political leader's' wills. So in case of participation there are huge gaps in the process.

The 5th JS is the pioneer of Bangladesh's democratic history. From the very beginning it became the epicenter of all political issues. The 5th JS was the outcome of a huge political consensus of all stakeholders. By the 5th JS the democratization process of Bangladesh moved "one-step forward" (Interview with Nizam Ahmed, March 30, 2017)." He also praised the speaker's and law minister's neutrality in this parliament. This time Parliament Secretariat was established by Parliament Secretariat Law, 1994. This was the milestone for Bangladesh Jatiya Sangsad. First three years of this JS witnessed huge debates and discussions on national issues. But, later, the issue of caretaker government led to change the whole scenario. The end result was violence and one-sided election. However, some upgradations were made in law-making and parliamentary committee system. Here the nature of law-making in the 5th JS is placed in the table below that helps to understand how much MPs participation was ensured during this time in law making process.

Table 4.8
Scrutiny of Bills on the Floor of 5th JS

Status of Bills	5 th Jatiya Sangsad: N = 172
Bills opposed at the first reading	77
Bills passed without any amendment	137
Bills passed with amendments	36
Amendment mover (per bill)	3.4
Amendment passed (per bill)	1.0

Source: Ahmed (2013)

The 12th amendment exhibited a unique political compromise where even ruling side accepted opposition's proposals. In the law-making process, frontbenchers or rank members participated or contributed much than the backbenchers. Women participation in the law-making was simply a 'token'. Much time was invested on deliberation, debate and discussion in bringing this amendment.

Although the 12th amendment led to the abolishment of BAKSAL and brought back the parliamentary system, on the one hand, this amendment made the powers of the prime minister unlimited leading to the chief executive 'dominant and all powerful' (Interviews with A.Q.M. Badruddoza Chowdhury April 17, 2016 and Mizanur Rahman Shelly May 19, 2016). As a result, the executive has become dominant, legislature dormant.

Conclusion

To conclude this chapter, we argue that the 12th amendment has been the result of consensus among the political parties. With this consensus, the country had been relieved of the clutches of prolonged authoritarian and military rule. A new dawn of democratization began with the introduction of parliamentary democracy. In the lawmaking process, leading up to the 12th amendment involved every stages of law-making. All the opposition parties actively became involved in the process of deliberations inclusive of debates and discussion. It may be noted that pre-parliament consensus led to this grand consensus amongst the parties. But the mistrust soon developed amongst the parties when the opposition questioned the free and fair elections under the ruling party. As a result, consensus among the parties fell apart, inviting a new era for democratization marked by uncertainties and chaos.

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Chapter Five

Towards Democratic Consolidation (1996-2001)

Introduction

The present chapter explains the role of Jatiya Sangsad towards the consolidation of democracy realized through the three national elections along with the 13th Amendment to the Bangladesh Constitution. This chapter is divided into two important parts: the first part discussed about the short session of the 6th JS and its proceedings over the 13th Amendment to the Constitution of Bangladesh which introduced the Caretaker Government (CTG) system. Here, it has examined under what circumstances the need for CTG appeared as a form of government in Bangladesh. In what ways did the ruling party respond in this regard? How did the CTG get momentum? What were the constitutional provisions for this system? What were the roles of JS in this case? All these questions have been examined. In addition, some questions were added: How did this amendment help to contribute to the democratic route of Bangladesh? To what extent the amendment process has maintained people's participation by their representatives? Besides, the first part is divided into four sections. The first section discussed the background of the caretaker government. The second section described the 6th JS elections and its consequences. The third section analyzes the process of 13th Amendment to the Constitution of Bangladesh. Finally, it discusses the role of 13th Amendment to the consolidation of democracy.

In the second part, the main discussion of this chapter concentrates on the duration of the 7th JS (July 14, 1996 to July 13, 2001) that earmarked a record in Bangladesh parliamentary history, for the first time it completed the full tenure of five years. And the second part is also divided into four sections. The first section of the second part discussed the election under the first constitutionally formed caretaker government for 7th JS election, and it results in formation of the new government under the leadership of Sheikh Hasina. Then an attempt was made to see how the regime promoted the process of democratization by promulgating laws, rules and procedures. It has also examined the extent of political will worked for the regime for the development of the democratization. And finally, it has analyzed the relationships between the treasury and the opposition, the essential requirement for parliamentary democracy.

Part: A

Background of the 13th Amendment

In the 1990s movement against authoritarian regime of Bangladesh, one of the most important commitments of the three-alliance was that they would hold all the future elections free, fair and neutral (*The Observer*, November 20, 1990:01). Their commitment was also fulfilled through the 5th national JS election under the interim government of Acting President Justice Shahabuddin Ahmed. Even, under the BNP government at least first 15 by-elections held between 1991 and 1992 were satisfactory. And these elections did not produce significant complaints of malpractice and rigging against the election process and results. In the meantime, the ruling party, BNP was defeated in two city corporations' elections in the capital, Dhaka and port city, Chittagong. This seemed to be a demoralizing blow to the ruling BNP. This situation unlocked to change with the February 1993's by-election in Mirpur – Dhaka and the Magura-2, by-election held on March 1994. The last one was too controversial and it was claimed by the defeated and the opposition political parties recurred. The opposition parties including the Jamaat which helped the BNP to form the government and secure absolute majority in the parliament charged that the Magura by-election was rigged and demanded fresh poll. After the Magura by-election, the opposition took a firm stand that they would not participate in any by-election and future general elections under party government and future elections must be held under a non-partisan caretaker government which should take over the administration of the country for a period of 90 days before the election. The opposition parties also alleged that the by-elections had been so rigged that could break the previous record of the autocratic regime. Consequently, the political relationship between the two major parties, the ruling BNP and the opposition AL started to decline that had been built during the democratic transition period not more than three years back. This consequence in 1994-95 led all opposition parties in the 5th JS led by the main opposition AL to begin an intensive movement to organize the next general election under a Non-Party Care-Taker Government (NPCTG). The ruling BNP government argued it was not possible since there was no legal provision in the Constitution of Bangladesh. The opposition proposed that if necessary the Constitution ought to be amended and they would support such an amendment if it were placed before Parliament (Ahmed, 2012: 35).

In the mean time, in February–1994, the Information Minister of 5th JS, Mr. Nazmul Huda commented in parliament session - about the AL as the “Newly converted Muslims”, as

the opposition party demanded a resolution should be passed in the JS condemning for the Hebron massacre issue.¹⁴ The AL along with other opposition parties vigorously responded and demanded the withdrawal of the Information Minister's comments with unconditional apology. But the Information Minister refused to do that immediately. And for that the opposition walked out from the JS. The demand for the NPCTG and boycotting issues were also made a national debate outside the JS. And the opposition decided to continue their boycotting until the Information Minister's withdrawal of his speech and settle the NPCTG issue. The parties continued to form public opinion in favor of their demands, enhanced their struggle and observed various programs to fulfill their goal. The walkout was also reinforced by the demand for a NPCTG and was supported by other political parties in the parliament. Thus, it was creating a severe political crisis. Even, this led to a violent confrontation between the two sides and a situation whereby no political party other than BNP took part in the general election held on February 15, 1996 (Ahmed, 2012: 93). That election was just a farce. Here, it is mentionable that the Jamat-I-Islami Bangladesh first proposed to introduce a provision for NPCTG at the beginning of the 5th JS in their discussion over the 12th amendment. In order to establish their demand for the NPCTG, the three main opposition parties of the 5th JS also brought three similar amendment bills in the House one from the AL, the second from the JP and third from the JI. But from the Treasury all these three bills were ignored and refused. On the other hand, letters were exchanged between the ruling and the opposition for the purpose of holding a discussion at the level of deputy leaders of both sides. The opposition side proposed that on the basis of all the letters written between them, discussions could start in the committee room of the House. That was a bright sign to solve the problem, and the JS had become the mediation place and it seemed that common ground had been identified for discussing the issue of CTG. But these discussions did not produce any results as the government was not agreeable to the core demand of the opposition that there should be a neutral caretaker government (Ahmed, 2012:35-36). So, here it can be mentioned that, as the political will did not work and finally, instead of dialogue, the ruling BNP attempted to put down the opposition movement which led to establish the provision for an interim NPCTG in 1996.

¹⁴ The Hebron is a Southern Subarb of Jerusalem. It is considered a holy place both for the Muslims and the Jews. In a day in February 1994, when the Muslims were praying there in the early morning congregation, a Jewish settler, Baruch Goldstein entered into the mosque and shot the Muslims in the back, killing 29 persons. The incident provoked protest and bitter reactions all over the world.

Political Crisis Inside and Outside of the JS

The last two years of the 5th JS continued without any opposition. During this period laws were made and passed without any debate and scrutiny by the opposition MPs. Democratic transition suffered a setback at this stage. The 6th JS was also of the same case. Even the 13th Amendment was passed without much debate and participation of the opposition. But this amendment had a vital background created by the opposition party's for their collective demand. In this regard, the pressures from inside of JS and the outside groups were discussed. On 28 December 1994; collectively opposition's 147 MPs of AL, JP and JI submitted their resignation letter to the speaker. Finally, they lost their membership from the 5th JS, though some initiatives by the ruling party were taken to bring them back to the House. For instance, before submitting resignation letter; the speaker conveyed a message from the leader of the Jatiya Sangsad about her positive response to the demands of the opposition parties. But the PM's proposal was conditional. That was the government agreed to transfer power to the interim government headed by the President 30 days prior to the election, if the opposition would not resign and abstain from observing strike and blockade program. The opposition parties refused the proposal and Sheikh Hasina, leader of the opposition, said that they could not understand the meaning of the proposal of PM just before their resignation, that the Prime Minister and her cabinet would resign 30 days ahead of the election (Siddiqui, 2013:318). The entire opposition now shared the view that fair election under Prime Minister Khaleda Zia's Government would be impossible. National and international pressures were mounting to resolve the crisis. Thus a new journey of democracy got stalled halfway. At this stage, FBCCI and civil society member stepped in the process to resolve the crisis.

Internal Initiatives and the Civil Society's Proposal

The Federation of Bangladesh Chambers of Commerce and Industry (FBCCI) also took initiative for holding a discussion between the government and the opposition, but they did not succeed in mediating the crisis. In the middle of the political crises, a civil society group of Bangladesh met at the conference room of the Centre for Policy Dialogue (CPD) on October 5, 1995. This think tank groups held extensive discussions on many proposals put forward by different individuals to resolve the political impasse. The civil society meeting approved a proposal drafted by Barrister Syed Ishtiaq Ahmed that was popularly termed as "Istiaq Formula". This civil society group decided that a small team comprising five distinguished citizens, namely, Justice Kamaluddin Hossain, Barrister Syed Ishtiaq

Ahmed, Journalist Faiz Ahmed, Professor Rehman Sobhan, and retired Secretary Fakhruddin Ahmed should communicate with both Prime Minister Khaleda Zia and leader of the opposition Sheikh Hasina and convey to both the concerns of the group and their suggestions to resolve the crisis. This team of five was also branded as 'Group-5' or 'G-5'. By accepting the "Ishtiaq formula" this group as a whole was committed to the principle of neutral caretaker government. They wanted to implement the formula within the parameters of the constitution. At their meeting it was decided that to assist the five above mentioned individuals, Ataus Samad, former BBC reporter and Anisuzzaman of Dhaka University would act on informal basis to liaise with the government and the opposition. The G-5 held their first meeting with the Prime Minister Khaleda Zia on October 9, 1995 at her office. At the very first meeting the "Ishtiaq formula" was presented and it was argued that this formula would meet the requirement of both sides. In spite of repeated requests to accept the proposal of a neutral and non-partisan Prime Minister, Khaleda Zia firmly asserted that she did not believe that any person might be neutral, but personally she was willing to look into the possibility, if names of 5 or 6 persons could be given to her. She was careful to clarify that on behalf of her party, she was not committing anything.

The first meeting of the group with the AL President Sheikh Hasina was held on October 14, 1995 and that meeting was also attended by all the top leaders of the AL. At this meeting it appeared that the AL was rather cautious with regard to initiative of the group. Sheikh Hasina commented that the statement from Khaleda Zia did not indicate that the Prime Minister was willing to depart from her own position. Sheikh Hasina requested the group to find out from Prime Minister, if the principle of neutral caretaker Prime Minister was acceptable to the ruling party. If so, she would be willing to sit to find an acceptable neutral Prime Minister and discuss the modalities and other issues related to holding of free and fair election.

This group met with Prime Minister four times up to November 1995, but there was no solution. Her intention was that the running Prime Minister would be the Head of the Caretaker Government. On the other hand, opposition parties were not ready to go to election under the running Prime Minister. It is an irony that after the debacles of February 15, 1996 election, the caretaker government was formed in April 1996, integrating three names from the proposed list and one of them was Justice Habibur Rahman appointed as

the Chief Adviser of the caretaker government with the consent of BNP and the opposition. If Khaleda Zia had shown prudence, the country could have been spared the turmoil of the election of February 1996.

Commonwealth Mediation

However, some western donor organizations initiated their efforts to solve the political crisis of Bangladesh. In September 1994, the Commonwealth, Chief Secretary-General, Emeka Anyaku sent his special envoy Sir Ninian Stephen to try to work out an agreeable settlement. Sir Ninian met several times to the leaders of the ruling party and the opposition in order to resolve the problem. It was hoped that Sir Ninian's intervention would succeed in achieving a breakthrough in the prevailing atmosphere of confrontation and tension. At last the negotiations did not take place, BNP as its final offer proposed that a ten-member interim government to oversee the election could be formed. It consists of five MPs from each side, from the treasury and the opposition benches under the PM as its head. The opposition rejected this proposal. They argued that the concept of a neutral, non-partisan caretaker government that was their main demand was not met. So it was very clear to Sir Ninian that neither side was willing to compromise on this basic issue. At the end, he left Bangladesh without making any progress in bridging the gap between the two sides. The confrontation between the two sides was gaining momentum. To many observers, the country was heading towards a civil war. Finally, the mission also failed. David N. Meril, Ambassador of America (the USA) in Bangladesh tried to solve the issue of NPCTG. He met the PM twice and also discussed with the opposition leaders before resignation of the opposition MPs from the JS (The Daily Star, April 8, 1995). He also failed to bring any positive outcome. Finding no effective response from the ruling party, the opposition decided to resign en masse from the parliament. The situation of the 147 opposition MPs' en masse resignation from the 5th JS made the political crisis more complicated again in Bangladesh both in inside and outside of the House. The opposition decided to mobilize public opinion by adopting various measures including strikes, rallies and public meeting explaining their demands (Rahman, 2005: 131). All the above mentioned initiatives failed to promote relationship among the government and the oppositions that is why the political arena of Bangladesh turned into confrontation. Consequently, on December 28, 1994, all the 147 opposition MPs belonging to AL, JP and JI resigned en masse from the parliament (Ibid, 2013: 318).

Due to lack of mutual understanding and confidence among the political parties of the country, initiatives and proposals mentioned above taken by national and international groups did not bring any immediate solution. Despite all these initiatives the country failed to avoid the one-sided 6th Parliamentary Election. Consequently, the country faced tremendous political confrontations, conflicts and violence. It was also said in the previous discussion that if the political will does not act positively all attempts to solve the crisis drastically turns into failure. For instance, if the Prime Minister agreed to leave her post in the election time as per the opposition parties' demand and trust upon a neutral Prime Minister selected or elected by political consensus, as they did in the time of Ershad's fall, the situation had been different. Or else, if the opposition parties kept the trust upon the incumbent Prime Minister, the situation might have improved. That Justice Habibur Rahmasn was one of the three nominated persons whose name was proposed by the negotiator groups to be the head of the interim election time government. In addition, if the understanding among the main opposition groups versus government is fragile, the achievements come to too late after much pay.

The 6th Jatiya Sagsad Election and its Consequences

The 5th JS was dissolved on November 24, 1995 before four months of full maturity. The Election Commission started to arrange the 6th JS election and finally the date was fixed on February 15, 1996. A chaotic situation was created in the country on the issue of holding mentioned election. The government was adamant to hold the 6th JS election refusing the opposition's demand for the NPCTG. The EC explained that election must be held by February 21, 1996 to meet the constitutional obligations. The situation was so severe that the BCS Administration Association requested the EC to ensure security of the election officials; otherwise they would not perform the election duties. Even, nine organizations of the teachers also appealed to the CEC in a letter to relieve them from the election activities. Bangladesh *Beter*-Television *Shilpi Sangsad* decided to boycott function from February 14 to 16, 1996 protesting the one-sided appalling election. The PROKRISHI called for ensuring security (The Daily Stat, January- February, 1996). Just few days prior to the poll day, Fair Election Monitoring Alliance (FEMA) issued two strongly worded press releases on the 12th February. One of the press releases stated in this way:

Mounting violence and confrontation between the pro-election and anti-election forces have reached critical proportions. The large number of ordinary citizens has become

captive in the clutches of the contenders and holders of state power. It is unfortunate that the government and opposition political parties have tragically failed to reach a political solution (Ahmed, 1998:123).

However, the opposition parties had been demanding postponement of the 6th JS election since the declaration of election schedule. To come to a positive solution to the crisis produced by the 6th JS election, David N. Merrill, distinguished Ambassador of the USA, met both the main leaders of the two sides. Another team of six Ambassadors/High Commissioners from the USA, Canada, Japan, UK, Italy and Australia to Bangladesh met Khaleda Zia and Sheikh Hasina on January 16, 1996. Leaders of the Awami League also met the President appealing him to bring initiative for postponing the upcoming election. But none of these initiatives was successful to stop the government from holding the election (Siddiqui, 2013: 325-326). Violence and clash took place. On the Election Day, all over the country 15 people were killed in election violence and many polling booths could not be opened, election related officers were not present in a number of centers. Election could not be completed in 85 constituencies. Election could not be held at all in 10 seats due to the resistance by the opposition groups. Notwithstanding, the EC published the results of 205 constituencies on February 20, 1996 through gazette notifications while results of 131 constituencies were postponed before. In the results it had been observed that the BNP candidates were won almost all the seats. BNP got 289, Freedom Party-1 and the Independent candidates 10 seats. Khaleda Zia expressed her satisfaction at the election. The CEC's reaction was also same. The BNP claimed that election was free and fair and the turnout was 50%-55%. On the other hand, as per the British Broadcasting Corporation's (BBC) report that it was nearly 10%, the Voice of America (VOA) estimated the turnover was between 5%-10%. The FEMA reported that the turnover was not more than 10%. According to New York Times voters' turnover was less than 10% (*The Daily Star, The Daily Bhorer Kagoj, The Daily Janakantha, The Ittefaq, The Daily Ajker Kagoj, Bangladesh Observer*, February 16-25, 1996). A researcher collected data on deaths and injurious due to political violence of February 15, 1996 Election, during January to June 1996 and the reported as follows:

Table 5.1
Death and Injuries due to Political Violence from January to June 1996

Period	Number of People Died	Number of People Wounded	Political Identity of the Dead	Other Identity
January 1-15	2	45	JP 1, BNP 1	Youth 1
January 16-31	3	240	AL 1, BNP 1	Student 1, Adolescent 1
February 1-15	17	About 2,000	BNP 7, JI 1, AL 1	Police 2, Ward Commissioner 1, Student 3, Labourer 1
February 16-29	26	1,692	AL 2, BNP 2	Journalist 1, Student 2, Youth 2
March 1-15	47	About 2,300	AL 5, BNP 9, JI 4, JP 1	Student 23, Child 2, Youth 3
March 16-31	23	1,027	AL 7, BNP 1	Student 3, Youth 4, Labourer 3, Child 1
April 1-15	21	944	AL 6, BNP 11	Student 13, Youth 2
April 16-30	3	42	BNP 1	Youth 2
May 1-17	4	161	BNP 2	Youth 2
May 18-June 7	24	568	-	-
Total	170	9,019	AL 23, BNP 35, JP 1, JI 5	Youth 14, Child 4, Student 45, Labourer 4, Journalist 1, Police 2, Ward Commissioner 1.

Source: (Kabir, 1999: 200)

Table 5.1 shows that for the movement of CTG, 170 people were killed within six months. Nevertheless, 140 people had died for the movements against Dictator H. M. Ershad for unseating him during his nine years long tenure. Actually, the 6th JS Election was the outcome of Bangladesh confrontational political culture. It was firmly the effect of mistrust and lack of mutual understanding between the government and the opposition. The fragile will of the top political leader and the relationship between the government and opposition was not concrete that produced the uncertainty in the political arena. As a

result, the democratic process had become troubled let alone the journey towards democratic consolidation.

The Process of the 13th Amendment

The 6th JS election without participation of the opposition pushed the country's political process into impasse situation owing to severe conflict. When the election result was announced, it added fuel to the fire to the opposition movement. All the opposition parties started their country-wide non-cooperation movement and demanded the fall of the government as well as the dissolution of 6th parliament. The total political and economic environment of the country was leading to a complete civil war. In the meantime March 10, 1996, the President invited the leaders of all political parties to discuss their main issues, which were cancellation of the one-sided election, resignation of government and new general election under CTG. Khaleda Zia also became convinced to the formation of the new CTG. Her opinions were communicated to the President.

AL leader and the Dhaka City Corporation Mayor Mohammad Hanif, set up Peoples Dias (*Janatar Mancha*) in front of National Press Club for demanding the above mentioned issues and he declared that the place was open for all. Following this other divisions and *districts* set up same movement *Mancha* for accelerating the opposition's movement to fulfill their demand. Professional groups, intellectuals, journalists, students, workers and general people united under the banner of *Janatar Mancha* to show their harmony with the movement. Later it turned into the central platform of the opposition movement. The PKSP (*Prajatantrer Karmakarta Samannay Parishad*) consisting of 28 cadres of the government also demanded cancellation of the election results to end the violence. Its convener Dr. Mohiuddin Khan Alamgir stood on the *Mancha* to express their solidarity. On 27 March under the leadership of Cabinet Secretary Ayubur Rahman, 35 Secretaries of the government met with the President. They also gave the ultimatum for formation of the CTG (*The Daily Star, The Daily Bhorer Kagoj, The Daily Janakantha, The Ittefaq, The Daily Ajker Kagoj, Bangladesh Observer*, 16- 30 march, 1996). On the other hand, BNP also arranged a programme, namely, (*Gonotrantra Mancha*) Democratic Dias in front of their central office at Naya Palton. March 30 Khaleda Zia addressed from the *Gonotrantra Manch* and stated that "We have come to power in 1991 constitutionally and handed over power to a caretaker government constitutionally. It was indeed a victory of the people. and a victory of democracy. And victory of the BNP" (*The Daily Star*, March 31, 1996).

Finally finding no other alternative way BNP government introduced the Caretaker Government Bill (the 13th Amendment of the Constitution) on March 21, 1996 at the first session of the 6th parliament. Though late, Khaleda Zia showed some political will to overcome the crisis. Moreover, it saved the country from plunging into further chaos and stability. The Bill was passed on 26th March 1996. Then the 6th parliament after 12 days was dissolved on March 30, 1996. Justice Habibur Rahman was appointed as the Chief Adviser of the Caretaker Government (Halim, 2015:458-459). However, women participation in the 13th amendment in the select committee was nil. And, in the plenary session there was no woman MP's participation. But in case of the debate and discussion only two, PM Khaleda Zia and State-minister Jahanara Begum participated. For voting 30 women MPs participated and cast their vote in favor. Out of 30, 27 were from reserve seats and 03 were from elected seats. The salient features of the bill reflected, in general, the main demands of the opposition political parties which were as follows:

- With the dissolution of the parliament a non-party caretaker government should be formed.
- The caretaker government would be accountable to the President.
- The caretaker government will perform the routine work of the government and will be barred from taking any policy decision.
- The Ministry of Defence would be under direct control of the President.
- The head of the caretaker government to be appointed by the President would be called Chief Adviser and President will select other advisers in consultation with the Chief Adviser.
- President will appoint the Chief Adviser from among retired Chief Justices or if not available from retired judges of the Appellate Division of the Supreme Court or failing that President will appoint an eminent person following consultation with the leading political parties.
- The Chief Adviser and other Advisers cannot contest in the election and must not be member of any political party.
- The Chief Adviser will enjoy the rank of PM and the Advisers, those of Minister (Ahmed, 1998: 128).

In order to solve the political crisis, a legal framework for NPCTG became a necessity by which the mode of peaceful transfer of power would be ensured.

The 13th Amendment Bill was introduced in 6th Jatiya Sangsad March 21, 1996. For scrutinizing and examining the Bill, the Sangsad selected 10 members, all from the treasury side. The SC within 1 day submitted the report to Parliament March 25, 1996.

Select Committee for the 13th Amendment

Table 5.2
Select Committee (SC) for 13th Amendment

Name of MPs	Political Party	Position
Barrister Jamiruddin Sircar	BNP	Convener
Barrister Abdus Salam Talukder	BNP	Member
Barrister Rafiqul Islam Miah	BNP	Member
Harun-Al-Rashid	BNP	Member
Abu Yousuf Khalilur Rahman	BNP	Member
M. K. Anowar	BNP	Member
Khundkar Mahbub Uddin Ahmed	BNP	Member
Barrister Ziaur Rahman Khan	BNP	Member
Shafiqur Rahman Kiron	BNP	Member
Abadur Rahman Choudhury	BNP	Member

Source: Bangladesh Jatiya Sangsad's Select Committee Report (in Bengali) 1996: 2

The 13th Amendment of the Constitution

In the sixth JS, elected in February 15, 1996, only one law, the Shangbidan (*Tyaradosh Shansghodhan*) Ain 1996 (*The Constitution Thirteenth Amendment Act 1996*) was passed which amended the Constitution and provided for a Non-Party Care-Taker Government (Ahmed, 2013:94). This Amendment was passed with 268-0 votes on March 26, 1996. It became law on March 28, 1996. The Amendment added a new Chapter (Chapter IIA: Non-Party Caretaker Government) in part IV of the Constitution with 5 new Articles (58A, 58B, 58C, 58D and 58E). It had also amended Articles 61, 99, 123, 147, 152 and the Third Schedule of the Constitution.

Table 5.3
Profile of the Constitution's 13th Amendment Bill, 1996

Indicators	Results	Comment
Source of Bill	Pressure from the opposition political side and Government gave in	Positive outcome for democratization holding at least 3 national elections
Bill introducer	Presented by Barrister Zamiruddin Sircar – Law Justice and Parliamentary Affairs Minister, 6 th JS	Government Initiative
Send to Select Committee (SC)	March 24, 1996 to March 25, 1996	No opposition party in JS
Duration of SC	2 Days	One sided Discussion
Discussion in SC	Spend 1 day 1 sitting	SC Government Dominated
Type of SC	Mixture from Treasury, opposition and other 3 parties	First in the Country's history to establish NPCTG to the Constitution
Debate on Bill	March 21, 24, 25 and 26, 1996	10 hours and 43 minutes debates were held on the Amendment
Number of participants in the debate	47 MPs	An MP from Freedom Party
Referendum	Not Held	Based on the demand of the opposition sides
Vote in favor of Amendment	268 - MPs Cast their vote in favor	All MPs were from the Treasury
Vote against the main Amendment	Oppositions were not part of the 6 th Jatiya Sangsad	Exclusively ruling party initiated and supported Amendment
Present Status	Deleted by 15 th Amendment	No Caretaker Government exists
Type of Bill	Public Bill	Opposition was not part of JS

Source: Researcher.

The specific characteristics of the above mentioned amendment were:

- a) The amendment was passed within a very short duration without much debate and discussion as the political will of the chief executive desired.
- b) The amendment was passed in absence of consensus due to weak relationship between the ruling party and the oppositions. Lack of political commitment and

- democratic values, parochial political culture prevailing in the political system resulted to such amendment initiative.
- c) Misunderstandings and mistrust among the political parties of Bangladesh had accelerated due to this amendment.
 - d) Though the basic structure of the constitution changed by this amendment, the referendum was not given to justify the people's opinion as part of the legal procedure
 - e) Only the ruling party's MPs participated in the lawmaking (amendment) process.
 - f) The opposition parties did not table any bill in the context of CTG in the short lived 6th JS.
 - g) Before this amendment, election-time government (party government) in Bangladesh did not follow rule of law and election rules and procedures to hold free, fair and neutral election.

The qualification, Status of the Advisers and Constitutional Functions of Caretaker Government are outlined (see Appendix 7).

Assessment of the 13th Amendment

In the process of political and constitutional developments of Bangladesh, the 13th Amendment of the constitution was a positive step in the democratic way of the country for several reasons. The basic mode of the formation of government in any democratic state is election. If election is not free, fair and neutral, the formation of a government cannot be said to fulfill the norms and values of democracy and peoples demand. It is said that in democracy all power belong to the people. Hence, if election is not people-oriented and legitimized by the people, it does not get acceptance by regional, national and international observers, and then it turns into a farce. The more the election process will be free, fair and neutral, the more the people will enjoy their voting rights. The right to elect people's representatives meaningfully, the system of CTG was established. An important aspect of the 13th Amendment is that it has paved the way for making the general elections free, fair and neutral. Specially, in holding elections free and fair in election time. There must have freedom from government influence. Often, it is seen that a common trend in the politics of almost all developing countries, is that the party in power makes the blatant misuse of government and political institutions during the election time to get the victory in their favor for forming government again. This manipulation in the election process

creates a block to the development of some important democratic institutions like the Election Commission, voting rights, press, media, political party, etc. Since the 13th Amendment provides interim separate caretaker government and no party government can continue in power during the general election, there remains no scope of manipulation of public purse and properties by the party in power (Halim, 2015: 462).

Is Caretaker Government a Barrier to Democratization in Bangladesh?

The Jatiya Sangsad elections of 1996, 2001 and 2008 were held under this system. Then a debate developed on whether this style should continue or not. In many developed and developing countries caretaker government evolved in different ways. For example, in India the incumbent government acts as the caretaker government. The article 75(5) of the Indian Constitution reads: A Minister who for any period of six consecutive months is not a member of either House of Parliament, shall at the expiration of the period cease to be a Minister (The Constitution of India, 1993: 73). This article permits the ministers to continue discharging their portfolios for an additional period for six months without being the member of the parliament. The duration of the India House of the people (Lok Sabha, Lower House) is five-year tenure. After completions of this time, the government resigns and the incumbent Prime Minister and other Ministers take the charge of the caretaker government. India follows the Westminster Model (Firoj, 2012: 104-105). Even in case of early dissolution of the parliament or government's losing of the confidence of the parliament, the incumbent government continues functioning as the caretaker government. But this government has limited power and status. Traditionally the prime minister and other ministers are not barred from taking part in the election or campaigning for party candidates. But they cannot use the government machineries for their own and party interest (Ibid).

The case of Pakistan that has a constitutionally-devised caretaker government is different. The article 224 of the Pakistan Constitution implies the rules of the caretaker government. The article 224 (1) of the constitution writes:

Provision that on dissolution of an Assembly on completion of its term, the President in his discretion, or, as the case may be, the governor, in his discretion but with the previous approval of the President, shall appoint a caretaker cabinet.

The article 224 (2) of the Constitution reads:

When the National Assembly or a provincial Assembly is dissolved, a general election to the Assembly shall be held within a period of ninety days after dissolution, and the results of the election shall be declared not later than fourteen days after the conclusion of the polls.

On the other hand, the caretaker system in Australia is not a constitutional provision. It was stipulated through conventions. Here the caretaker conventions had developed by different practical experience, constitutional advices and comments created by prime minister and the cabinet. There is an opinion that the first caretaker convention was written in Australia. A letter was written by PM Robert Menzies to his ministers after declaration of elections in 1951. His letter was as follow:

“I should also be glad if you would note that whilst continuing to take whatever action you deem necessary in connection with the ordinary administration of your Department, you should not make decisions on matters of policy or those of a contentious nature without first referring the matter to myself”. Within a decade such letters from the Prime Minister had become an established custom (Ibid: 107). The conventions of the Australia’s caretaker system are applied by discussions and mutual understanding that is the basis of the consolidated democratization progress.

In Bangladesh once CTG was interim and constitutional, then it was abolished through the 15th Amendment to the Constitution. The article 58B (2) of the constitution implies that the caretaker government shall be collectively responsible to the President. Furthermore, as per the article 58E of the Constitution, President is not bound to act in accordance with the advice of the Chief Adviser. In this way, President retains the power to cancel any decision of the CTG and even the caretaker government itself. Thus, President is powerful, but the negative consequence is that if the president is not neutral, the CTG is meaningless. Since the Chief Adviser along with all advisers of the caretaker government is non-political and non-partisan person, and since he exercises his powers only for three months to conduct a general election, no power-aspiration should be from him. For the sake of independent exercise of his function, he should be given the same constitutional powers as the Prime Minister does have (Halim, 2015: 460-61).

The interim caretaker government’s duration is for three months and it has no power to make any new policy. In Bangladesh this system is in place only for holding a free, fair and neutral election. But it has been seen that they had taken some unnecessary steps. The democratic process develops in any country through compromise, mutual understanding

among the political parties, effective and efficient government, people's participation, vibrant running of parliament, and rule of law. As CTG is constitutionally formed government – and not a representative one – it proves controversial in the way of the democratization process. For this reason, parliamentary democracy may be hampered. The case of defence has been vested in the President. During ordinary situations though the supreme command of the defense is vested in the President, he exercises this function only in accordance with the advice of the Prime Minister. But the 13th Amendment is silent about this matter. Thus a willful way to act in an arbitrary manner is retained with the President (Ibid, 2015: 463).

But, the fact of Bangladesh politics is that a free and fair election has been a far cry in the history of Bangladesh since its independence and only the interim government of Justice Sahabuddin Ahmed, after the fall of Ershad regime, has made a historic success in holding a free and fair election and this success had turned the concept of caretaker government into a political reality which has, through the 13th Amendment, been a constitutional reality (Ibid, 2015: 462).

The 13th Amendment of the constitution for CTG is against the principle of institutionalization of democracy for Bangladesh. It stemmed from increasing distrust among the political parties. However, so long as EC is not independent and strong for organizing election, CTG is a reality. In Bangladesh its urgency seems unavoidable given the confrontational political culture between the ruling and the opposition parties.

Part B

The 7th Jatiya Sangsad under Leadership of Sheikh Hasina

After two years of severe political violence, conflicts and confrontations, the 7th Jatiya Sangsad election was held under the first Constitutional Caretaker Government (CTG) of Justice Habibur Rahman on June 12, 1996. By this election Awami League led by Sheikh Hasina came to power. She took oath as Prime Minister on June 23, 1996. This Sangsad was formed under Sheikh Hasina's leadership. This regime is more important than others for various reasons. It stayed in power its full tenure. The 7th Parliament introduced many new rules, procedures, regulations and reforms, and those accelerated the democratic process of Bangladesh. This regime was vibrant with strong opposition of 157 MPs (47.57%) in the Jatiya Sangsad which was the highest position compared to all previous

JSs. Although there was no constitutional amendment during this time, some important acts and reforms took place. Within a short time, two accords were made between the ruling AL and the main opposition BNP. Those were four point's accord signed on January 14, 1997 and another on March 2, 1998, advancing the cause of effective parliament. This is a rare event in the politics of Bangladesh. However, here an analysis is presented about this regime and its new laws, rules, proceedings, contracts, and other important issues that were realized during the time and that was for prime role of JS in this process. These promoted to develop the democratization process of Bangladesh.

Table 5.4
The 7th JS at a Glance

Issue	Action
Election	June 12, 1996
1 st Session	July 14, 1996
Total Sessions	23
Working Days	383
President	Justice Shahabuddin Ahmed
Leader of the House	Sheikh Hasina
Leader of The Opposition	Begum Kkaleda Zia
Speaker	Humayun Rashid Chowdhury and Abdul Hamid
Deputy Speaker	Advocate Abdul Hamid and Professor Ali Ashraf
Constitutional Amendment	No Constitutional Amendment
Total passed laws	191
Ordinance(s)	17
Dissolution	July 13, 2001

Source: Prepared by the Researcher (2015-2016) using *Jatiya Sangsad* sources

The oldest and strongest political party of the country, Bangladesh Awami League under the leadership of Sheikh Hasina, after being in opposition for 21 years, came to power. After the killing of her father, Banghabandhu Sheikh Mujibur Rahman on August 15, 1975 and the four national leaders in Dhaka Central Jail in November 3, 1975, the Awami League (AL) was in a mess. Sheikh Hasina was elected the President of the AL early in 1981 by the Central Council of AL. She kept the party united since that time. Between the period of 1975 and 1980; the party had no acceptable leader to command the rank and file. For example, in the second parliament election held on February 18, 1979, the party secured only 39 seats, whereas in 1973 it had won 293 seats out of the 300, it had contested (Ahmed 2012: 46). Sheikh Hasina struggled and managed to restore the faith

and confidence of millions of the party supporters/members. She traveled all over the country to meet the people and in less than ten years she would have been able to emerge on her own leadership quality as a unique national leader of the country. She was severely criticized for taking part in the third general election held on May 7, 1986 under the martial law of General H. M. Ershad. But, Sheikh Hasina, proved that since 1979, not only the number of seats had almost doubled from 39 to 76 in 1986, but also the popular support of the party had increased considerably (Ibid: 46). However, she said that if the election in 1986 were free and fair, the Awami League would have secured majority of seats in the House. Below the table depicts the election result of 7th JS.

Results of the 7th JS Election

Table 5.5
The 7th JS Election Results of 1996

Party/Independent	Number of Seats Won
Bangladesh Awami League (AL)	146
Bangladesh Nationalist Party (BNP)	116
Jatiya Party (JP)	32
Jamaat-i-Islam Bangladesh (JI)	03
Islami Oikyo Jote (IOJ)	01
Jatiya Samajtantrik Dal (JSD) (ASM Rob)	01
Independent	01
Total	300

Source: Election Commission (1996)

The results presented in the above table showed that in 1996 general election, the AL emerged as the largest party securing 146 seats, while BNP won 116, Jatiya Party 32, Jamaat-e-Islami 3, Islami Oyokka Jote 1, JSD (Rab) 1 and Independent 1. Sheikh Hasina improved the party's popular vote from 25% in 1979 to 39.96% in 1996 and the JS seats from 39 in 1979 to 76 in 1986, 88 in 1991 and 146 in 1996. In the meantime Awami League negotiated with Earshad for forming the government. In exchange of release from the jail, H. M. Earshad gave his full support for Sheikh Hasina to form the government. On June 23, 1996 and at the 47th founding day of the Awami League, Sheikh Hasina took the oath of office of the Prime Minister of Bangladesh for the first time. And her beginning was ice-breaking. She became surprised as all including her own party elders by unanimous decision nominated the former Chief Justice Shahabuddin Ahmed, the Acting President of the first non-party caretaker government in 1991, as the President of the

Republic of Bangladesh. Hasina showed her magnanimity in selecting Justice Shahabuddin Ahmed despite the fact that under his interim government in 1991 the AL had lost the election to BNP (Ahmed, 2012:47). Sheikh Hasina set an example in selecting president a non-political person in order to restore value of the office of the President as a non-partisan neutral institution of the state. This selection for the President increased the image of Sheikh Hasina as the PM both at home and abroad.

Process towards Democratic Consolidation in 7th JS

Sheikh Hasina, set up a broad-based coalition government; which she called a government of national unity and in this system the MPs from the coalition parties got chance into the government. In this process, the PM had taken Anwar Hossain Monju of Jatiyo Party and ASM Abdur Rab of JSD into her government. But she showed no gesture of accommodation or compromise on any issue with her principal opponent – the BNP (Ibid, 2012:48). Besides, AL government led by Sheikh Hasina also took some other brave decisions for some new attachments that seemed to have contributed to promoting the democratic process, i.e., made the Jatiya Sangsad a central place for discussions and debate to ensure the executive's accountability to the House. For instance:

- 1) The AL government within their first 100 days changed the rules of business in a Cabinet meeting on September 25, 1996 to make a minister the executive head of his ministry, which was so long vested in the Secretaries to fit into the system of government accountability to Jatiya Sangsad and not to the President anymore.
- 2) The government of AL had amended the Rules of Procedure (RoP) of Parliament in order to address a long-standing demand removing the ministers from presiding over the parliamentary standing committees and attached to respective ministries enabling the committees to function more freely and efficiently by making the minister himself accountable to the committee along with his ministry. So instead of the minister, these committees were now chaired by a member of the committee decided by the majority members.
- 3) In the 7th JS the AL government also for the first time introduced a “questionnaire hour” for the Prime Minister to answer any question in the Parliament once a week which allowed the members of parliament, particularly the opposition to put to the Prime Minister any question to make her more directly accountable to the parliament and people. This televised live programme generated a great interest particularly amongst the rural population (Ahmed, 2013: 48-49).

- 4) For the first time the bills were mandatorily sent to committee for scrutiny. That promotes the lawmaking process more pro-people and participatory. By this initiative the process of people's participation in lawmaking process through their representatives were promoted in the committee session.

New Achievements of AL Government

Within six months of AL assuming office, it had two achievements. These were acclaimed both at home and abroad. One was, by signing a 30-year treaty with the Indian Prime Minister on December 12, 1996 in New Delhi on sharing of the water of the Ganges River, the PM settled an issue which kept straining the relationship between the two countries for more than three decades. Another equally important achievement, was the Peace Agreement, the AL signed on December 2, 1997 with the Jana Shanghati, the rebel armed organization called Shanti Bahini, represented by its President, Jotirinda Bodhpriya Larma, popularly known as Shantu Larma. This was an attempt to solve a long-standing problem of the tribal population of the Chittagong Hill Tracts who were demanding more freedom to rule their own areas according to their own ethnic culture, tradition and heritage (Ibid, 2013: 49). Although there were severe criticisms of the terms of the Water Treaty with India and the Agreement with Shantu Larma by the opposition led by the BNP, the fact was that in the international context these were considered as significant milestones in conflict resolution. The AL government achieved self-sufficiency in food production raising it to a record 28 million tons. But the opposition was not ready to give any credit to the government, as according to them, the government had nothing to do with the favourable climate or the hard labour of the farmers which helped grain production. On the contrary, they criticized the government for not being able to ensure a fair price to the farmers for their agricultural produces (The Daily Ajker Kagoz, June 23, 2001). Despite serious criticism of their economic performance by the opposition, the Awami League government claimed to have raised the GDP growth rate to 6.4% and kept the inflation rate down to 1.5% (The Daily Star, July 14, 2001). They also claimed that due to their efforts the United Nations had recognized 21st February as the International Mother Language Day. Even conducting the formalities of opening of the 5.6 kilometers long Jamuna Multipurpose Bridge or Bangabandhu Bridge was termed as an Awami League success, etc. are some of the notable achievements claimed by AL.

Failures of the Regime

The major failure of the Awami League government was in the area of law and order situation. The number of murder, rape, and custodial tortures increased because the offenders were not or could not be punished. The few influentials in their party restrained the law enforcing agencies to take the criminals to task. More than 200 sensational murder and rape cases were not tried because of the involvement of the AL leaders and workers in those crimes (Ibid: 50). The eight major cases of bomb explosions occurred during that period remained unresolved, which are, the Udichi cultural function at Jessore, the Ramna Batamul on the Bengali New Year's day, the CPB meeting at Paltan, the church at Baniarchar and even the 276 k.g. bomb planting at Kotalipara, the constituency of the Prime Minister (Ibid: 50).

Awami League's other failures were in the economic sphere: policies which did not generate wealth, excessive borrowing from national banks, fall in the generation of electricity which led to wide-spread load shedding, decline in international business and investment, deliberately allowing the creation of a share market bubble which led to its collapse and large scale loss to many middle-class savers, closure of large number of industries, decline in the value of taka in terms of dollar and widespread corruption at all levels. The government however refuted these allegations (Report of the Transparency International, 2001). In June 2001 during the Awami League government, Bangladesh was listed by Transparency International as the most corrupt state of the world (The Daily Jugantar, June 28, 2001). The Prime Minister rejected the report as a conspiracy to discredit the government before the ensuing general election (The Daily Star, July 14, 2001).

Election manifestos lay down the broad principles a political party would pursue once in government and are treated as a pledge to the nation if voted into power. Not all pledges were met. Nonetheless, the electorate would like to see that the major pledges were kept. The critics of the government would condemn the government for not implementing the manifesto and the government would claim that they had fulfilled all election pledges. Notwithstanding what is said by either side, the hard fact is that once election is over, the manifestos are generally forgotten till the next election, it is true for all parties in the context of Bangladesh.

In the final assessment, people evaluate the performance of the outgoing government based on their electoral manifestos before they take their decision to vote in the next election (The Daily Prothom Alo, July 9, 2001). Nevertheless, despite many failures as well as notable achievements, Sheikh Hasina's government was the first to complete its full tenure of 5 years and did not have to hand over power in the face of mass agitation or in any kind of ignominy as the previous BNP and Ershad governments had to do (The Daily Star, July 14, 2001). Later section is an overview of law-making in the 7th JS.

Public Bills and Private Bills Passed in 7th JS

Table 5.6
Bills Passed in the 7th JS (Public and Private Bills)

Description	Number of bill
No. of bills passed	191
Govt. bills as % of total bills passed	99.5
Ordinance-turned bills as % of total	8.4
New bills as % of total	35.6
Repeal bills as % of total	1.0

Source: Ahmed (2013).

Relationship between the Government and the Oppositions in 7th JS

During the second session of the seventh parliament, the relationship between the government and opposition parties of the parliament deteriorated. On November 10, 1996 as per the decision of their parliamentary party, BNP placed a 10-points demand to the Speaker. The opposition party blamed the government for its failure to maintain the law and order situation. They also alleged that the government failed miserably to keep the price of the essentials within the purchasing power of the common people. The opposition concluded that it was meaningless to participate in the proceedings of the parliament if the 10-point demand was not addressed (Feroz, 2012). To respond to the opposition's demand, the ruling party made a four-point accord between the government and the opposition that was signed on January 14, 1997. They were absent from the House till the prorogation of the second session on September 2, 1996. The firm position of the opposition and the deadlock situation in the parliament, which developed within six months of the formation of the new parliament, and worried the government party. The PM made several calls to the opposition to join the parliament. The Speaker Humayun Rashid Chowdhury took an initiative to resolve the impasse. With the mediation of the Speaker both parties met on a

dialogue in his chamber on January 14. In this dialogue AL and BNP agreed on a four-point accord. The points were:

- The Radio and Television will now present a neutral and objective coverage of Parliament proceedings and two designated whips, from the two parties each, will oversee the matter. When necessary, the Speaker will be apprised of the coverage.
- The Post and Telecommunication Minister, Mohammed Nasim, will consult with the chief whips of both the ruling party and the opposition in taking necessary steps regarding formation of parliamentary committees.
- Immediate steps would be taken to review the cases which were allegedly lodged to harass BNP leaders and workers and regarding such other allegations made by BNP.
- The chief whips of the ruling and the opposition will keep in constant contact with each other regarding the functioning of the Jatiya Sangsad and they will also apprise the Speaker of the developments in that regard (Ibid: 172).

The understanding immediately removed the impasse and helped to create a friendly political environment. Both sides welcomed it. The ruling party minister Mohammed Nasim termed the accord as an agreement of cooperation among friends. The BNP leader, Badruddoza Chowdhury appreciated it and hoped that ‘the government will go by the accord and make the parliament effective’. The Speaker Humayun Rashid Chowdhury in his reaction said, ‘A crisis is over. Today’s outcome is a milestone in giving the country’s parliamentary democracy an institutional shape (The Daily Star, January 15, 1997). But the cordial relationship developed from the accord did not continue for a long time (Ibid: 172).

In the seventh parliament another accord was signed by the ruling AL and the opposition BNP on March 2, 1998. The principal opposition party BNP had been abstaining from the parliament since August 30, 1997 accusing the ruling party of depriving the opposition of their legitimate right to effectively participate in the functioning of the parliament. As the deadlock continued, the Speaker took an initiative to bring back the opposition in the House. With the mediation of the Speaker the rival AL and BNP had four rounds of talks on February 27 through March 1, 1998. Finally, both the parties signed an accord to

remove all misunderstandings and ensure smooth functioning of the parliament (Ibid: 173). The text of the accord was as follows:

1. The 4-point accord signed between the two sides on January 14, 1997 would be effectively implemented. To this end, the following steps will be taken:
 - (a) As raised by the BNP, the cases and allegations of harassment against its leaders and workers would be withdrawn by March 31, 2001 subject to investigation.
 - (b) All 113 MPs of BNP will be accommodated on 35 parliamentary committees. Already-formed other committees will be also re-constituted following discussions with the BNP.
 - (c) Proceedings of the parliament will be broadcast on Radio and Television neutrally and objectively, and all parliament members will be given equal opportunity. It will be ensured that statements made by both the Treasury and the Opposition members during question-answer sessions and Business Advisory Committee members and any scheduled debate will get equal treatment in live broadcasts. The Speaker will take appropriate steps in consultation with the Whips of both sides if any complains in this regard are made.
2. In the next 15 days, a place – either in Panthapath or in Manik Mia Avenue – will be chosen for holding public meetings.

Based on this understanding, the main Opposition BNP will join the on-going session of parliament by March 8 (The Daily Star, March 3, 1998),

After signing the accord, the political deadlock was diffused and BNP joined the parliament on March 8, 1998. All sides expressed their satisfaction on the accord. An AL leader Mohammed Nasim said that he was the happiest person as his efforts were successful (Ibid: 1998). A BNP leader Oli Ahmed held that God was kind and they were happy (The Daily Ittefaq, March 3, 1998). But, as in the previous cases, good times did not last long. On March 19, BNP leaders met the Speaker and complained against ‘gross violation’ (The Daily Star, March 20, 1998) of the accord. From July 1999 to July 2001 BNP boycotted the sessions of the seventh parliament. The accords signed by the parties during the period of successive parliaments could not ensure the smooth functioning of the parliaments and cordial relationship among competing parties. Rather, the accords turned into issues for them to blame each other. The opposition continued to blame the ruling

party and hurled against them charges of non-compliance with their commitments (Ibid: 174).

The 7th JS towards Democratic Consolidation

As mentioned earlier, the seventh parliament was more functional than its previous legislature. The seventh parliament has introduced some new laws, parliamentary procedures, rules and regulations from a democratic standpoint. These appear to be positive developments. The seventh parliament revealed those new rules and regulations, which are rare in the traditional democratic process. Some of these are only similar to Britain. It has introduced Prime Minister's Question Time (PMQT), in the parliamentary permanent committees, where chairman will be from the non-minister MP, the bill will be sent immediately to the concerned committee, if the proposal arose to the JS, the government radio and television will cast parliamentary debate and discussion, and so on. Until 1996, bills were rarely sent to committees (Ahmed, 2013). A minister in charge of a bill used to propose after the first reading that it be immediately taken up for consideration. But now bills are routinely sent to the concerned standing committees for scrutiny except money bills that cannot be referred to any committee. The laws were made as the record of the seventh parliament. More than twenty - four percent of the total laws were passed by this parliament.

The Seventh JS remained an exception in yet another respect. In the 7th JS out of 191 bills 170 bills were sent to permanent committee/scrutiny committee/special committee for scrutiny and consideration (Akbar, 2008: 9). More amendments per bill were moved in this parliament than in others – the number was 43.3 per bill. As said before, since the seventh JS bills are sent to committees for scrutiny, and although there was considerable delay in the formation of committees in the seventh JS, Prime Minister Sheikh Hasina proposed the formation of a special committee to scrutinize bills moved in the House until the standing committees on ministries were formed. The House agreed to PM's proposal. As a result, almost all bills introduced in the seventh JS were scrutinized by the committees. Committees in the Seventh and nine JSs amended two- thirds of bills referred to them (Ibid: 134).

Conclusion

After a two-year spiral of political violences, conflicts and confrontations for the Caretaker Government, the 7th Jatiya Sangsad election was held under the first Constitutional CTG, under leadership of Justice Habibur Rahman on June 12, 1996. Sheikh Hasina formed a new government after 21 years. Summing up this chapter, I would like to argue that the 7th JS introduced many new rules, procedures, regulations and reforms, and those accelerated the democratic process of Bangladesh toward consolidation. Structural barriers within the parliament for MPs participation were eased than before. The role of select or special committee has added a dimension for deliberation on the bill. This regime was vibrant with strong opposition of 157 MPs (47.57%) in the JS which was the highest position compared to all JSs in the parliamentary history of Bangladesh. The opposition in the 7th JS did not allow the ruling party to bring any amendment to the Constitution whimsically. It appears from the functioning of the 7th JS that there had been several attempts of the dialogues between the ruling and the opposition to solve the crises inside the parliament between the two sides with success in sight. One noticeable fact is that the executive was made accountable to the JS by introducing PMQT, non cabinet member was made head of the parliamentary committee, introducing mandatorily sending the bill to the committee at first in the case of public bill, the debate and discussion of JS telecasts and broadcasts in the media, etc. These devices showed the glimmer of hopes towards democratic consolidation in Bangladesh. The regime formed by the 7th JS elections in the political history of Bangladesh had been unique in the sense that it handed over power smoothly ever to the next government.

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Chapter Six

Seeds of Discontent in Democratization (2001-2006)

Introduction

The 8th Jatiya Sangsad of the second regime of BNP government led by Khaleda Zia (2001-2006) had been a crucial period to explain Bangladesh's political development for various reasons. Though the regime took over the state power through the smooth transfer of power from the Caretaker Government of Justice Latifur Rahman, it sowed seeds of political instability in the country. In addition, the 2/3 majority seats in the parliament obtained by the ruling BNP, enabled the ruling alliance to amend the Constitution. By dint of this power, the 14th Amendment to the Constitution added further fuel to discontent in the democratization process of Bangladesh resulting in confrontational politics. This chapter is divided into four sections. The first section discusses about the 8th JS election with an analysis of results. The second section discusses the role of the 8th JS and the contribution of those achievements to forward the country towards the democratization process. This chapter covers the period of the 8th JS (October 28, 2001 to October 27, 2006). The third section of this chapter discusses about the most important and crucial topic of the regime, i.e. the 14th Amendment to the Bangladesh Constitution. Here, it analyses the background of the process of this amendment and highlights the effects of the amendment. Nevertheless, at this juncture, it attempts to scrutinize what were the results of the said amendment and how it was challenged by the two main political alliances of Bangladesh inside and the outside of the Jatiya Sangsad. The final section of this chapter looks into why the regime led to the political crisis in the country.

The 8th Jatiya Sangsad Election

After completing the full tenure of the AL government led by Sheikh Hasina, the 8th JS election was held on October 01, 2001 under the second constitutional caretaker government led by Justice Latifur Rahman. This 8th Jatiya Sangsad passed its full tenure of five years for the second time in the parliamentary democratic history of Bangladesh. In the following table results of the 8th JS election has been mentioned.

Table: 6.1
The 8th JS Election Results of 2001

SL No.	Name of Party	Number of Seats
1	Bangladesh Awami League (AL)	62
2	Bangladesh Nationalist Party (BNP)	193
3	Jatiya Party (JP)	--
4	Jatiya Islami Oyokka Front (JIOF)*	14
5	Islami Okkya Jote (IOJ)	2
6	Jamaat-i-Islami Bangladesh (JIB)	17
7	Bangladesh Jatiya Party (BJP) (N)	4
8	Krishak Sramik Janata League (KSJL)	1
9	Jatiya Party (Monju)	1
10	Independent	06
	Total Seats	299

*Jatiya Islami Okkya front led by H M Ershad

Source: Election Commission, Report on 8th JS election, 2001

From the above results of the 8th JS, it is revealed, that out of 300 seats the four – party alliance got 216 seats. Among the 4-party alliance, individual party got seats such as Bangladesh Nationalist Party (BNP) - 193, Jamat-I-Islami Bangladesh (JIB) - 17, Bangladesh Jatiya Party (BJP) [N] - 4, Islami Oikkyo Jote (IOJ) - 2. On the other hand, immediate past ruling Bangladesh Awami League got only - 62 seats. Ershad led Jatiya Islami Oyokka Front (JIOF) - 14, Kader Siddiqui led Krishak Sramik Janata League (KSJL) - 1, Jatiya Party led by Anowar Hossain Monju - 1 and the Independent candidates won 6 seats.

Analysis of the 8th JS Election Results

The results in table (6.1) indicated that the four-party alliance got two-thirds majority in the 8th JS. A large number of eligible voters exercised their franchise in the 8th JS election which is about 78% (The Daily Star, October 04, 2001). Though 52 political parties participated in the 8th JS election, only 08 parties had ensured their representativon in the House. The four-party alliance together got about 47 % of the total popular votes cast, but in case of seat they got 72% of seats. That means they got two-thirds majority in parliament which fulfilled the requirement to the Constitutional Amendment. This scope was neither in 5th, nor in 7th JS since the restoration of parliamentary democracy in 1991. However, the chance of two-thirds majority in JS in 8th Parliament may have changed the ruling alliance's political motive regarding the 14th Amendment to the Constitution of

Bangladesh. That further created the discontent in political atmosphere in the country. The main opposition AL got only 62 seats, by 54 seats less than that of the immediate past JS where they formed the government. Though, the party secured 40.24% of the total votes cast which was 3% improvement than previous parliamentary elections of 1996. One of the important characteristics is nearly two dozen ministers, state ministers and some other leaders with the rank and status of ministers belonging to the AL was defeated in that election.

BNP leader Begum Khaleda Zia and AL leader Sheikh Hasina won five and four constituencies respectively. Although foreign and local election observers reported that the elections were free and fair, the election was commended by monitors as one of the fairest and finest elections, so far had Bangladesh (Ahmed, 2012:66). Yet, Bangladesh Awami League claimed that election results were manipulated in favor of the four-party alliance and government agencies did against them who were involved in the election process. The table below (table 6.2) a brief of 8th JS.

Table 6.2
The 8th JS at a Glance

Issue	Action
Election date	October 01, 2001
1 st Session	October 28, 2001
Total Session	23
Working Day	373
President	President Professor Dr. A. Q. M. Bodrudozza Chowdhury and Professor Dr. Iaz Uddin Ahmed
Leader of the House	Begum Khaleda Zia
Leader of the Opposition	Sheikh Hasina
Speaker	Barrister Muhammad Jamiruddin Sircar
Deputy-Speaker	Akhtar Hamid Siddiqi
Amendment	01 (14 th Amendment)
Total Passed Laws	185 (Public Law – 184 & Private Law – 01)
Ordinance	12
Dissolution	October 27, 2006

Source: Researcher using Jatiya Sangsad sources.

BNP-led Four-Party Alliance Government

Begum Khaleda Zia took her oath as Prime Minister from President Justice Shahabuddin Ahmed, October 10, 2001 for the third time in her political career. She formed a sixty-

member council of cabinet. That was the largest cabinet in the country's history. Among the council of ministers, 27 were cabinet ministers, 28 state ministers, and 4 deputy ministers (The Daily Star, October 11, 2001). She also appointed a few advisors. Though it was an alliance government, only two JIB MPs got place in Khaleda's cabinet. BNP MP Jamiruddin Sircar and Akther Hamid Siddiqui were elected Speaker and Deputy - Speaker respectively on October 28, 2001 (The Daily Star, October 29, 2001). On 12 November 2001, a prominent BNP leader and founder Secretary General Professor Dr. A. Q. M. Badruddoza Chowdhury was elected President (Daily Star, November 13, 2001). Four party alliance took oath as members of parliament (MPs) immediately after the result of the election. But AL refused initially to take oath. Two weeks later, AL MPs took oath. But AL MPs boycotted the inaugural session of the 8th JS. The BNP government; October 27, 2006 handed over power to a constitutional caretaker government after completion of its full tenure. However, the power handover was not at all nonviolent, as it was confronting strained relationship with the opposition alliances that was discussed in the later section of this chapter.

BNP-led Government's Achievements

The BNP government claimed that they did many works for the development of the country that promoted democratization. They established Anti-Corruption Commission (ACC) in 2004 to reduce malpractices and corruptions in the public sphere. They appointed 80,000 unemployed youths. The government established and separated the primary and mass education ministry from the education ministry, granting improved stipend for students, arranging free education for girls up to 12th classes and undertaking steps to prevent unfair means in public examinations, and taking welfare measures for teachers and elderly individuals, and several steps for child development. The government had banned the use of polythene shopping bags to improve the environment. Increasing health facilities conducting drive against food adulteration and subsidy for agricultural development boosting exports were also ensured (Halim, 2015:505).

With the 2/3 majority in the parliament, alliance started thinking monopoly in the policy making authority by avoiding the prevailing opposition political parties' demands inside and outside the Parliament. Consequently, the 8th JS witnessed the weak opposition since the reintroduction of the parliamentary democratic system in 1991. That has created systematic and continued attempts to weaken the JS. As a result, symptoms of a weak JS

and party rancour increased. There were frequent boycotts of the parliament by the major opposition party, severe quorum crisis and loss of workdays, ineffective committee system and control of the parliament by the executive (Khan, 2014: 94). And above all, the 14th Amendment of the constitution occupied most of the time, but that also deepened political crisis further. The main opposition, AL of the 8th JS claimed that the speaker Jamiruddin Sircar (of the 8th JS) failed to maintain a balance; and as a result they refrained from attending the sessions, citing the reason that the speaker was openly biased in favor of the treasury bench and the opposition was not given the floor to speak on important issues, let alone raise some important bills those could promote the country's democratic process (Halim, 2015: 504).

The committee system in the 8th JS had become fragile: only 5 committees were constituted in 2001. It was formed in two phases. In the first three years, the opposition MPs did not join in the committees, because of their insignificant representation in those committees. In fact, the opposition MPs was included in committee in late September 2004 after three years of government's fulfillment of tenure. Party-wise strength in the committees formed were: BNP 65.31%, AL 19.80%, JIB 5.92%, JP 4.69%, BJP (N) 1.43%, IOJ 1.02%, other parties 0.81% and independents 1.02%. The statistics reveals that the BNP-led alliance controlled 73.68% of all committee posts and prominent non-minister legislators belonging to BNP headed all the committees and no opposition legislator was allowed to head any of the committees. In this JS, most of the committees were not able to work independently and failed to properly scrutinize the actions of the executive (Ibid, 2014:95). On the other hand, from the time of inception, the 8th JS had witnessed quorum crisis severely. It was unexpected that though the four-party alliance had two-thirds majority in the JS, even the necessary number of MPs did not attend the JS proceedings on time in many sessions. The 8th JS had to adjourn several times due to quorum crisis. The circumstances had turned so crucial that Khaleda Zia had warned MPs personally. The PM warned her ruling party MPs in a meeting of the BNP Parliamentary Party (BNPPP) that many MPs would not get nomination to contest the next parliamentary elections if they continuously abstained from attending JS sessions (The Daily Star, May 13, 2005). This incident indicated the poor participation and performance of MPs in their main duties of discussion and debate in the law-making process.

The 8th JS and its Law-making Process

If we again observe the situation in the law-making arena and political influence in the law-making process of 8th JS, we are likely to find that 185 bills had been passed by the 8th JS, of which 184 were government bills introduced in the JS by the related or concerned ministers. Section – wise division of 8th JS passed 184 government laws is as follows: executive – 06 laws, regulatory – 62 laws, service oriented welfare – 10 laws, developmental – 21 laws, promotional – 25 laws, advisory – 57 laws and others 03 laws (Ahmed, 2013: 130). The rate of success of the government bills stands at 100% for fulfilling the government demand and political requirement for various purposes. It is noted that no public laws passed exclusively contributed to promoting the country's democratization journey, rather some laws contributed to making said process weaker. In case of scrutiny of these passed laws on floor scrutiny after committee deliberation, laws opposed at the first reading number 83, laws passed without any amendment 144, laws passed with amendment – 41, amendment mover (per law 7.8) and amendment passed (per law 1.1) (Ibid, 2013:133). There is also noted fact that among these government bills passed as many as 63 became laws without any scrutiny by relevant committees (Khan, 2014: 96).

In contrast, merely 01 private member's bill had been passed in the 8th JS. Here, it is cited that an MP of the present JS of JP- Ershad, Ghulam Muhammad Quader avowed that the executive was not accountable to the JS and this turned into eventually to replacement of the democratic character by an authoritarian system (The Daily Star, February 27, 2004). In the 8th JS, the role of the MPs in contributing to the law-making process was critically diluted. In this way dependency of MPs on the government had immensely increased. For example, the law ministry during the 8th JS issued an instruction to all the ruling BNP's MPs directing them to seek prior permission either from Prime Minister's Office (PMO) or the party parliamentary wing before placing any bill in the JS (The Daily Star, March 14, 2005). Such instruction completely controls the freedom of an MP to his party leaders' political will, that weaken the initiative of private bill as well as a good law which can promote the country's democratic path. As a result, without positive and effective political will the country's democratization is not possible in any way. And this is an unprecedented act even in the parliamentary history of Bangladesh and even many MPs of BNP publicly talked about resigning from the JS rather than accepting this type of humiliation from the ruling party (Khan, 2014:96).

The 8th JS and Reforms

In the 8th JS, the BNP government between 2001 and 2006 enacted 185 laws of which 35 were related to reforms. These reforms were important for various reasons. The reforms helped to promote the democratization process of the country by amending, creating and modifying the old laws or enacting a new one or supporting the vulnerable groups of the society by innovative character related with human development and human rights. Some important reforms are mentioned here - Codification of Labour Law, “Srama Ain 2006” (Bangladesh Labour Act), Discipline in Land Registration and Ownership, Bangladesh Bank (Amendment) Act 2003 (Gazette Notification, 2003) and the Bangladesh Bank’s (Nationalization) (Amendment) Act in 2003 (Ibid: 2003), enacted Money Laundering Pratirodh Ain (Ibid, 2002) (*Anti-Money Laundering Act 2003*), the Micro-credit Regulatory Authority Act in 2006 (Ibid, 2006); Janma-0-Mrittu Nibandhan Ain 2004, (The Birth and Death Registration Act) was enacted with an amendment in 2006. *Dhumpun & Tamakjat Drabba Babohar (Niantran) Ain 2005* (or the “Smoking and Tobacco use control) Act banned smoking in all public places and advertisements in print and electronic media were stopped. Gram Adalat Ain 2006 (Village Court Act) was enacted, and as measures for Protection of Consumer Interests two commissions were set up to carry out this function. Awami League government enacted ‘the Bangladesh Telijogajog Ain 2001’ (*Telecommunication Act*) was slightly amended by the BNP government in 2006 Bangladesh Telecommunication Regulation Commission (BTRC) and the commission set up for energy sector was mandated as the *Bangladesh Energy Regulatory Commission (BERC)* as per act of 2003. For integration of Madrasah students into mainstream, the *Islamic University (Amendment) Act* and the *Madrasah Education (Amendment) Act* were enacted in October 2006. Trade Union Rights in Export Processing Zones were protected, and to prevent corruption one of the major reforms was the creation of an independent Commission, namely, Anti-Corruption Commission (ACC) by the Anti-Corruption Act 2004.

The 14th Amendment Bill to the Constitution

As mentioned above, the BNP - led alliance got a landslide victory in election with more than two-thirds of the entire seats and this exclusive chance brought before the alliance the ability to amend the Constitution. However, a number of national factors also came before the ruling party for consideration more seriously. Beside this, the reserved seats for women in JS completed its duration as per the constitutional provision of the 10th

Amendment. On the other hand, the then Chief Justice of Bangladesh, Justice Mahmudul Amin Chowdhury met with PM and in a letter he recommended that the retirement age of the Judges of the Supreme Court (SC) should be upgraded from 65 to 68. The government examined the issue and realized that within 04 in 2004 years 25 Judges out of 72 of SC would complete their age limit of job. Out of the 25 retiree Judges, 06 from the Appellate Division and 19 from the High Court Division was going to complete their age limit. The situation had been brewing to give rise to a severe crisis in the judicial arena. Considering this pressure and Law minister's speech on the amendment in JS, the government agreed to consider the increase of the retirement age of judges. Other important issues of national interest for various reasons were: forbidding any kind of hartal; prohibiting student politics as affiliated bodies of political parties; trade union organizations not to function as affiliated bodies of the political parties; abolition of the existing Supreme Judicial Council and returning the power to impeach Judges of the Supreme Court to the Parliament as it was in the original Constitution of 1972, and declaring the name of Shaikh Mujibur Rahman as the Father of the Nation and Ziaur Rahman as the national leader and thereby completely resolving this thorny issue; as well as display of the portrait of national leaders (Ahmed, 2013: 159-161). In contrast, the above mentioned issues were highly political and sensitive in nature. By changing these topics through the amendment by the BNP-led government with two-thirds majority in parliament, they could not work with a consensus with the major opposition parties inside and outside of the JS. In the following section it will be discussed in details about the 14th Amendment, its rationale and how the amendment maintained its procedure by the participation of people's representatives.

Towards the 14th Amendment

In the 8th JS, only one Constitutional Amendment had been attempted by the government, namely 'Shangbidan (*Choturdoh Shansghodhan*) Ain 2004' or "the Constitution's Fourteenth Amendment Act - 2004." On March 15, 2004, the 14th Amendment Bill was finally approved by the Cabinet. This bill was introduced in the House in two phases. In the first phase on March 17, 2004; the bill was proposed by Law Minister in the 8th JS, at its 11th Session along with 06 amendments. And the bill was sent to the Standing Committee of Law, Justice and Parliamentary Affairs in the same day as per the *Jatiya Sangsad* Rules and Procedure, especially, Article – 211 for scrutiny. At that time the bill was in Permanent Committee (PC) from March 17 to April 25, 2004 for discussion. In this stage, the first proposed bill was withdrawn on April 26, 2004. And, again, the same bill

was raised in the House on April 28, 2004 with 03 amendments and was sent to the Permanent Committee on same day for the second time. However; bill was raised in two phases with 09 amendments to the 14th Amendment Bill. The bill was passed on May 16, 2004 which amended the Constitution and ensured 45 reserved seats for women, upgraded retirement age limit of the SC Judges, Chairman and Members of the Public Service Commission (PSC) and the Auditor – General as well as a new insertion of Article 4A, etc. This Amendment was passed with 226-01 votes on May 16, 2004 and became law as President assented and bill was gazetted on May 17, 2004, and stood as Act 14 of 2004. The Amendment added a new insertion of article 4A and amended Articles 65, 96, 129, 139, 148 and the Fourth Schedule to the Constitution.

The seed of political controversy was sown on May 16, 2004 when the 4-party BNP-led alliance government had amended the constitution to extend the retirement age for judges to 67 years from 65. This was viewed by the opposition parties as a conspiracy to appoint retired chief justice as the chief of the caretaker government before the 9th parliamentary election. This Chief Justice was Justice K. M. Hasan who was quite well known as a BNP loyalist. From then on, AL kept on voicing that it would not accept retired Chief Justice K. M. Hasan as the Chief of the caretaker government. Instead of responding to any of the objections of AL, the BNP-led alliance government's unilateral actions in connection with a controversial voter list, appointment of CEC and other election commissioners, deepened the animosity between the rival political parties. When the alliance government handed over power October 27, 2006, it was almost settled that BNP loyalist CJ KM Hasan would be CA, and the President Iajuddin Ahmed has already been chosen by BNP. The secretariat and other government agencies had already been politicised. The Election Commission along with the electoral roll has been manipulated that there was certainty for the BNP getting elected in the 9th parliamentary election to be held January 2007. There was a very tense political atmosphere throughout the country. Amidst such situation KM Hasan declared that he was not willing to become the Chief of Caretaker Government (Ibid: 512-513). Table below is aa summary of profile of the 14th Amendment to the Constitution.

Table 6.3
Profile of the Constitution's 14th Amendment Bill, 2004

Indicators	Result	Comment
Source of bill	Government initiated bill	Negative outcome on the way to democratic consolidation of the country, especially for Article – 96.
Bill introducer	Presented by Barrister Moudud Ahmed – Law Justice and Parliamentary Affairs Minister, 8 th JS on March 17, 2004 and second time 28 April 2004.	Governmental initiative
Send for Scrutiny	Parliamentary Standing Committee of Law, Justice and Parliamentary Affairs	Most of the Permanent Committee members participated in and two MPs from JP (Ershad) and chief of KSJL
Duration of Parliamentary Standing Committee (PSC) on Law, Justice and Parliamentary Affairs	Two phases: March 17, 2004 to April 25, 2004 & April 28, 2004 to May 16, 2004	One way discussion, only two MPs met with Standing Committee for their opinion
Discussion in SC	Spend 59 days with 3 sittings	SC added 3 additional amendments in the 2 nd Phase and removed an amendment on local Government (Article-59)
Type of Scrutiny Committee	Ruling party dominated Permanent Standing Committee	Two MPs from the opposition side attended in SC level (Kader Siddique & G. M. Qader)
Debate on bill	Very little debate only an opposition MP, namely, Kader Siddiqi took part taking special permission of Speaker	Did not touch much debate and discussion was held in SC & JS
Number of participants in the debate	14 MPs	An MP from opposition
Referendum	Not held	An MP, namely, Tajul Islam raised the necessity

		to take public opinion, but did not happen
Vote in favor of Amendment	226 - Treasury MPs Cast their votes in favor	All MPs were from the Treasury & only 01 vote was cast not in favor
Vote against the Amendment	Oppositions were not present in Session	Only one vote not cast in favor of Amendment by Kader Siddiqui from opposition
Present status	Most of the provisions was made redundant by 15 th Amendment	Effective until 15 th Amendment
Type of bill	Public bill	Opposition had very little part of the Amendment process.

Source: Researcher.

Features of 14th Amendment

From the above Table 6.3, it is observed that there were some specific characteristics of the 14th Amendment which are given in the following.

- a) The 14th Amendment to the Constitution was introduced twice, scrutinized in Standing Committee, passed and came into effect in the 11th session of 8th JS, within 2 months times from March 15 to May 16, 2004. As a result, the amendment was passed within a very short duration without much debates and discussions from the opposition parties and MPs inside and outside the JS.
- b) The 14th Amendment was not the result of consensus between the treasury and the opposition parties which is required in parliamentary system. As it was entirely government initiated bill and the parochial political cultures immensely prevailed in this amendment.
- c) Respect to others opinion is the central part of democracy and this was absent in some clauses in this amendment. Oppositions' opinions were not respected in some particular articles particularly in Article 4A and amendment of the Fourth Schedule.
- d) For such an important amendment there was no big scale opinion taking from the people of the country and though, the basic structure of the constitution has changed by this amendment, the referendum was not given to justify the people's opinion as the legal procedure prevails still in the constitution.

- e) Only the ruling party's MPs participated in scrutiny in the Standing Committee except two MPs from other parties. Among these two only an MP was present at the time of the bill passing and participated in debate and discussion.
- f) Though this amendment included one of the important clauses, that was the women's reserved seat. It was noticed that no woman MP or non – MP women participation was allowed or happened in the scrutiny committee. In this sense, it was a big lapse of the amendment.

Table below (6.4) is about formation Scrutiny Committee.

Scrutiny Committee of 14th Amendment

Table 6.4
Scrutiny Committee of 14th Amendment

Sl. No.	Name of Parliament Members	Position	Party
1.	Khundkar Mahbub Uddin Ahmed	Chairman	BNP
2.	Barrister Moudud Ahmed	Member	BNP
3.	Khundkar Delowar Hossain	Member	BNP
4.	Advocate Harun-or-Rashid	Member	BNP
5.	Barrister Ziaur Rahman	Member	BNP
6.	Md. Mozzamel Haq	Member	BNP

Source: Reports on 14th Amendment in the 8th JS

After the 14th Amendment Bill was introduced in the JS, then, it was sent to Parliamentary Standing Committee for scrutiniying. The bill was not sent to any select or special committee. Though, the bill was important for many reasons, it was not sent to seek for public opinion like the option of referendum that prevails in the legal framework. Public opinion was not sought properly. Only committee level discussion and decision directed by top political or the top leaders preceded the bill to turn it into Law. From the opposition side's discussion and debate, participation over the bill was seen very limited. As it was a particular bill, individual opinion from the backbencher of the treasury side except voting in favor of the amendment was not taken due to existing non-requirement of the legal framework or proper system. The committee members came from the treasury side, so it is said that the bill was government motivated and government desired outcome would prevail. However, as per the Speaker's speech on the report submitted by scrutiny committee the following MPs sought for the bill to be sent for public reaction, namely,

Honorable MP Mr. Banga Bir Kader Siddiqui, Mr. Ghulam Muhammed Quader, Sri Suranjit Sen Gupta, Mr. Hafiz Uddin Ahmed, Alhaj Advocate Md. Rahmat Ali, Mr. Md. Shamsur Rahman Sharif, Mr. Panchanan Biswas, Alhaj Md. Tajul Islam Choudhury, Mr. Md. Golam Habib (Dulal), Mr. Shajahan Khan, Dr. T. I. Fazle Rabbi Choudhury, Mr. Md. Moshir Rahman Ranga, Mr. Mohammad Ali Sarkar, Begum Roushan Ershad Mr, A, KH, M, Jahangir Hossain, and Mr. Md. Faruk Khan. Above mentioned 16 MPs from the opposition side raised their demands, but in the final stage when they had been asked to participate in discussion, 13 MPs remained absent and rest 03 MPs were present, but they did not participate in. On the other hand, 14 MPs from the opposition side demanded the bill to be sent to Selection Committee. Honorable MP Mr. Banga Bir Kader Siddiqui, Mr. Ghulam Muhammed Quader, Mr. Hafiz Uddin Ahmed, Mr. Md. Shamsur Rahman Sharif, Mr. Panchanan Biswas, Alhaj Md. Tajul Islam Choudhury, Mr. Md. Golam Habib (Dulal), Mr. Shajahan Khan, Dr. T. I. Fazle Rabbi Choudhury, Mr. Md. Moshir Rahman Ranga, Mr. Mohammad Ali Sarkar, Begum Roushan Ershad, Mr. A, KH, M, Jahangir Hossain, and Mr. Md. Faruk Khan, but it was not sent to SC, the bill was sent to the treasury - controlled permanent standing committee. As a result, participation of the opposition MPs was very limited. In the following section it would be analyzed how much people's participation was ensured in the process of the bill.

Participation in the Proceedings of the 14th Amendment

The 14th Amendment Bill 2004 was introduced at first phase in the 11th session of the 8th JS by the then Law Minister, Barrister Moudud Ahmed on March 17, 2004 with 06 amendments. The bill was sent to the scrutiny committee as per the Jatiya Sangsad's Rules of Procedure - 246. In this stage the bill was in the Parliamentary Standing Committee for 41 days from March 17 to April 25, 2004. Khundkar Mahbub Uddin, Chairman, Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs wrote two letters to leader of the opposition of the 8th JS at the date of March 21, 2004 and April 05, 2004 to invite her with her party's 2 MPs to give their opinion about the Amendment Bill. But, from the main opposition they did not attend in this time or sent any representative to discuss the issue. Between, this time this bill was withdrawn on April 26, 2004. And on April 28, 2004, the bill was reintroduced with added 3 additional amendments in the JS. For the second time, the bill was sent to the committee. In this stage, the scrutiny committee again invited all opposition leaders and MPs to express their opinion to the committee about the bill. In the second phase, the Standing Committee also wrote two

times to the leader of the opposition inviting her and her selected MPs to give their opinion before the committee at the date of May 02, 2004 and May 09, 2004. That means in two phases the opposition leader was invited four times by the permanent committee. But at all stages they did not respond to the committee letters. The scrutiny committee held 03 sittings respectively on 02-05-2004, 09-05-2004 and 11-05-2004. Among these sittings, the committee members, Barrister Moudud Ahmed, constituency-273, Noakhali-05, Khondakar Delowar Hossain, constituency-172, Manikgonj-01, Advocate Harun-or-Rashid, constituency-244- B.Baria-3, Barrister Ziaur Rahman Khan, constituency-193-Dhaka-13 and Md. Mozammel Haque, constituency-056, Sirajgonj-05 were present and scrutinized the Bill carefully (Parliamentary Report on the 14th Amendment). The scrutiny committee not only invited the main opposition leader of the JS, but also Begum Rowshan Ershad with her MP Mr. Ghulam Muhammed Quader, Mr. Anowar Hossain Monju, Banga Bir Qader Siddiqi, and Mr. M. M. Shaheen. None but Banga Bir Kader Siddiqi of KSJP and Ghulam Muhammed Quader of JP (Ershad) participated in the scrutiny committee and gave their opinion on the Bill. That means only 08 MPs, of them 06 from treasury and 02 from opposition side participated in the committee level. On the other hand, only Kader Siddiqi participated at the time of law passing and gave speech on the amendment and cast his vote against the amendment. Later in this chapter, percentage wise participation in this law making process was discussed. Table (6.5) below is a reflection on of opposition MPs amendments on the 14th Amendment Bill.

Table 6.5
Opposition MPs Amendments on 14th Amendment Bill

Sl. No.	Name of Parliament Members	Clause-wise amendment	Number of amendments
1.	Banga Bir Kader Siddiqi	Clause 2:1, Clause 3:1, Clause 5:1, Clause 8:1, Clause 9:4.	Total 8 amendments
2.	Mr. Ghulam Muhammed Quader	Clause 2:1, Clause 3:1, Clause 5:1, Clause 8:1, Clause 9:1.	Total 5 amendments
3.	Mr. Hafiz Uddin Ahmed	Clause 3:1, Clause 6:1,	Total 3 amendments

		Clause 9:1.	
4.	Sri Suranjit Sengupta	Clause 2:1, Clause 3:2, Clause 5:1, Clause 8:1, Clause 9:3.	Total 8 amendments
5.	Alhaj Advocate Md. Rahmat Ali	Clause 2:1.	Total 1 amendment
6.	Mr. Md. Shamsur Rahman Sharif	Clause 3:2, Clause 6:1, Clause 8:2, Clause 9:1.	Total 6 amendments
7.	Mr. Panchanan Biswas	Clause 2:1, Clause 3:1, Clause 5:1, Clause 8:1, Clause 9:1.	Total 5 amendments
8.	Mr. Md. Golam Habib	Clause 3:1, Clause 6:1, Clause 9:2.	Total 4 amendments
9.	Mr. Shajahan Khan	Clause 2:2, Clause 3:1, Clause 5:1, Clause 7:1, Clause 9:1.	Total 6 amendments
10.	Dr. T. I. Fazle Rabbi Choudhury	Clause 3:1, Clause 6:1, Clause 9:1.	Total 3 amendments
11.	Mr. Md. Moshir Rahman Ranga	Clause 6:1, Clause 9:1.	Total 2 amendments
12.	Mr. Mohammad Ali Sarkar	Clause 5:1, Clause 9:1.	Total 2 amendments
13.	Begum Raushan Ershad	Clause 9:1.	Total 1 amendment
14.	Mr. A. KH. M. Jahangir Hossain	Clause 2:1, Clause 3:2, Clause 5:1, Clause 6:1, Clause 7:1, Clause 8:1, Clause 9:3.	Total 10 amendments
15.	Mr. Md. Faruk Khan	Clause 2:1, Clause 3:2,	Total 7 amendments

		Clause 5:1, Clause 8:1, Clause 9:2.	
16.	Mr. M. M. Shaheen	Clause 2:1, Clause 6:1, Clause 8:2, Clause 9:3.	Total 7 amendments

Source: Speaker's Speech on 14th Amendment in *Jatiya Sangsad* – May 16, 2004

Participation by MPs in Amendment

From the above table 6.5 it is evident that 16 opposition MPs brought 78 amendments on the eight clauses of the 14th amendment. Among them only two opposition MPs met with scrutiny committee. Out of 16, 12 MPs brought amendments, neither of them attended in the discussion. However, Golam Muhammad Qader met with scrutiny committee, but he was not present and did not participate in the parliamentary session during the passing time of amendment. Banga Bir Qader Siddiqui also brought 08 amendments and he attended in the scrutiny committee as well as he was present and gave statements during the parliamentary session. The amendments brought by the opposition MPs were not considered properly. From among these 16 MPs, three MPs – Alhaj Mohammad Tajul Islam, Moshiur Rahman Ranga and Mr. Mohammad Ali Sarkar were present in Jatiya Sangsad at the time of discussion of the 14th Amendment Bill, but they did not participate in the discussion on the amendment.

Table below (6.6) is a summary of change-wise amendments by opposition MPs on 14th Amendment.

Table 6:6
Clause-wise Amendments by Opposition MPs

Sl No	Name of MP	Clause Number							Total amendments
		Clause 2	Clause 3	Clause 5	Clause 6	Clause 7	Clause 8	Clause 9	
1	Mr. Suranjit Sengupta	1	2	1	-	-	1	3	08
2	Mr. Ghulam Mohammed Quader	1	1	1	-	-	1	1	05
3	Adv. Mohammad Rahmat Ali	1	-	-	-	-	-	-	01
4	Banga Bir Kader Siddiqui	1	1	1	-	-	1	4	08
5	Mr. M. M. Shaheen	1	-	-	1	-	2	3	07
6	Mr. Panchanon Biswas	1	1	1	-	-	1	1	05
7	Mr. A. K. M. Jahangir Hossain	1	2	1	1	1	1	3	10
8	Mr. Md. Golam Habib (Dulal)	-	1	-	1	-	-	2	04
9	Mr. Md. Shamsur Rahman Sharif	-	2	-	1	-	2	1	06
10	Dr. T. I. M. Fazle Rabbi Choudhury	-	1	-	1	-	1	-	03
11	Mr. Hafiz Uddin Ahmed	-	1	-	1	-	-	1	03
12	Mr. Md. Moshir Rahman Ranga	-	-	-	1	-	-	1	02
13	Mr. Mohammad Ali Sarkar	-	-	1	-	-	-	1	02
14	Begum Rowshan Ershad	-	-	-	-	-	-	1	01
15	Mr. Shajahan Khan	2	1	1	-	1	-	1	06
16	Mr. Faruk Khan	1	2	1	-	-	1	2	07
Number of amendments		10	15	08	07	02	11	25	78
Number of MPs participated		09	11	08	07	02	09	14	-

Source: Speakers Report in JS on 14th Amendment, May 16, 2004.

Scrutinizing the clause-wise amendments brought by MPs on 14th Amendment, table - 6.6 indicates that, opposition 16 MPs brought 78 amendments on all 07 clauses: 02, 03, 05, 06, 07, 08, and 09. One thing noted that veteran MPs brought amendments on the clauses of the 14th Amendment. The highest numbers of amendments were 10 brought by MP Mr. A. K. M. Jahangir Hossin (Potuakhali-03). Single amendment brought by Begum Rowshan Ershad MP and Mr. Advocate Rahmat Ali MP. Two MPs, Mr. Banga Bir Qader Siquiqui and Mr. Suranjit Sen Gupta both brought 08 amendments, respectively. The highest number of amendments 25 was brought on clause 9 by almost all 14 MPs, out of 16 MPs who brought amendment on clause-wise. The lowest number of amendments, 02, was brought by 02 MPs on clause 07. On the other hand, rest 05 clauses attracted 51 amendments; clause 02 attracted 10 amendments by 08 MPs, clause 03 carried 15 amendments by 11 MPs, clause 05 carried 08 amendments by 08 MPs, clause 06 carried 07 amendments by 07 MPs and clause 08 carried 11 amendments by 09 MPs respectively (Speaker's Report on 14th Amendment at May 16, 2004).

Relations between the Treasury and the Opposition

Law Minister stated in JS, during the time of discussion on the 14th Amendment, the Permanent Standing Committee invited, Leader of the Opposition through letters four times to attend with her two nominated MPs in committee meeting, to discuss and give feedback as well as give their reaction about the amendment, but her party did not respond. So it is clearly observed that Treasury and Opposition of the JS of Bangladesh had not agreed with vital issues of the country's politics, particularly on such an important issue of constitutional amendment in 8th JS. Only Banga Bir Kader Siddiqui and Golam Mohammad Kader attended the permanent committee discussion. And only Banga Bir Kader Siddiqui had attended in the discussion on the amendment at the final stage. On the other hand, it was observed that only the parliamentary committee and law minister participated in the proceedings. No backbencher even of the ruling party attended or participated in the process of debate and discussion and gave their opinions. Here, it was also observed that the expression of political will about this amendment was one-sided. According to law minister's speech on the amendment, he claimed that schedule four of the constitution should not be a case of so importance to amend. Article 59 about the local government was first brought to amend at the wish of Chief Executive. Later it was removed from the amendment. It was important to think that the main opposition party in House brought some amendments during their regime, especially about reserve seats for

women. This amendment included seven articles and one schedule. Among these, three articles were very sensitive and important. These are articles 65, 96 and 48. There were three meetings held from May 02, 2014 to May 11, 2004.

Discussion on Subject-Matters of 14th Amendment

The details of the amendment were enclosed at the end of the thesis in appendix 09 (see appendix-09). However; here some important clauses are narrated shortly to understand the inner meaning and theme of the amendment. Insertion of Article 4A in the Constitution: after article 4, the following new article shall be inserted: “4A. Portrait: (1) Portrait of the President shall be preserved and displayed at the offices of the President, Prime Minister and Speaker, and all embassies and missions of Bangladesh abroad. (2) In addition to clause (1), Portrait, of only the Prime Minister, shall be preserved and displayed at the offices of the President and the Speaker, and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government educational institutions, embassies and missions of Bangladesh abroad.” It was politically an important and touchy issue.

The Law Minister wrote in his book that “such matters are hardly the issue of constitutional intervention in other countries, but in Bangladesh the strange nature of politics between the BNP and the Awami League has made it a constitutional matter”(Ahmed, 2012:167). The immediate past Awami League government enacted a law during their last time in 2001 making it mandatory to exhibit the portrait of Banghabandhu Sheikh Mujibur Rahman as the Father of the Nation in all government and public offices and violation of this law was made punishable under the law. Then one of the first laws repealed by BNP government in early 2002 was the Father of the Nation’s Portrait Preservation and Exhibition (Repeal) Act (the *Gazette* Notification, March 23, 2003). Here, one thing is mentionable that the portrait of political leader to be hung everywhere from ministries to all government units, indicates that political will is the source of all power in Bangladesh instead of general will of the public. Amendment of article 65 of the Constitution: In the Constitution, in article 65 for clause (3), the following clause (3) shall be substituted, namely: “There shall be reserved forty five seats exclusively for women members and they will be elected by the aforesaid members in accordance with law on the basis of procedure of proportional representation in the Parliament through single transferable vote. This clause was two big alliances election

manifesto. But the difference was number of seats. AL demanded 100 seats. Other parties' demand was 60 seats. In the previous parliaments, 1st JS's reserve seat was 5% of total seats or 15 seats and from 2nd Parliament to 7th Parliament it was 10 % of total seats or 30 seats. By the 14th Amendment the reserved seat was increased to 15% of total seats, that means 30 was enhanced to 45 seats. Later, by the 15th Amendment the reserved seat was increased from 45 to 50 seats. In this clause one thing is acutely observed that before 8th JS as well as 14th Amendment, all reserve seats were taken by the majority party of the House, after the amendment it was distributed by proportional representation, that is, as per the representation in House, the seats will be obtained by the parties and that is to be continued. In this proportional distribution of reserved seats, the opposition's representation in the JS has increased, that made for the treasury side to maintain the proper balance in the JS.

Amendment of article 96 of the Constitution: In the Constitution, in clause (1) of article 96, for the word "sixty-Five", the word "sixty-seven" shall be substituted. Amendment of article 129 of the Constitution: In the Constitution, in article 129, for clause (1), the following clause shall be substituted, namely: "(1) The Auditor-General shall, subject to the provisions of the article, hold office for five years from the date on which he entered upon his office, or until he attains the age of sixty-five years, whichever is earlier." Amendment of article 139 of the Constitution: In the Constitution, in clause (1) of article 139, for the word "sixty-two", the word "sixty-five" shall be substituted. Article 96, Article 129 and Article 139, these three articles were not in first phase of the 14th Amendment. Increasing the service age of the Officials of any Republic anywhere is a general issue, but in Bangladesh the confrontational politics proved that this issue made the whole political process disrupted resulting in turning into political violence, uncertainty in the election system that had to pay a loss for the politicians of the country for two years. Especially increasing the retirement age of Judges including CTG was the vital point for the opposition alliances to raise their demand. However, the ultimate result was very sensitive and crucial that ended in the unelected individual's running the political system without public mandate.

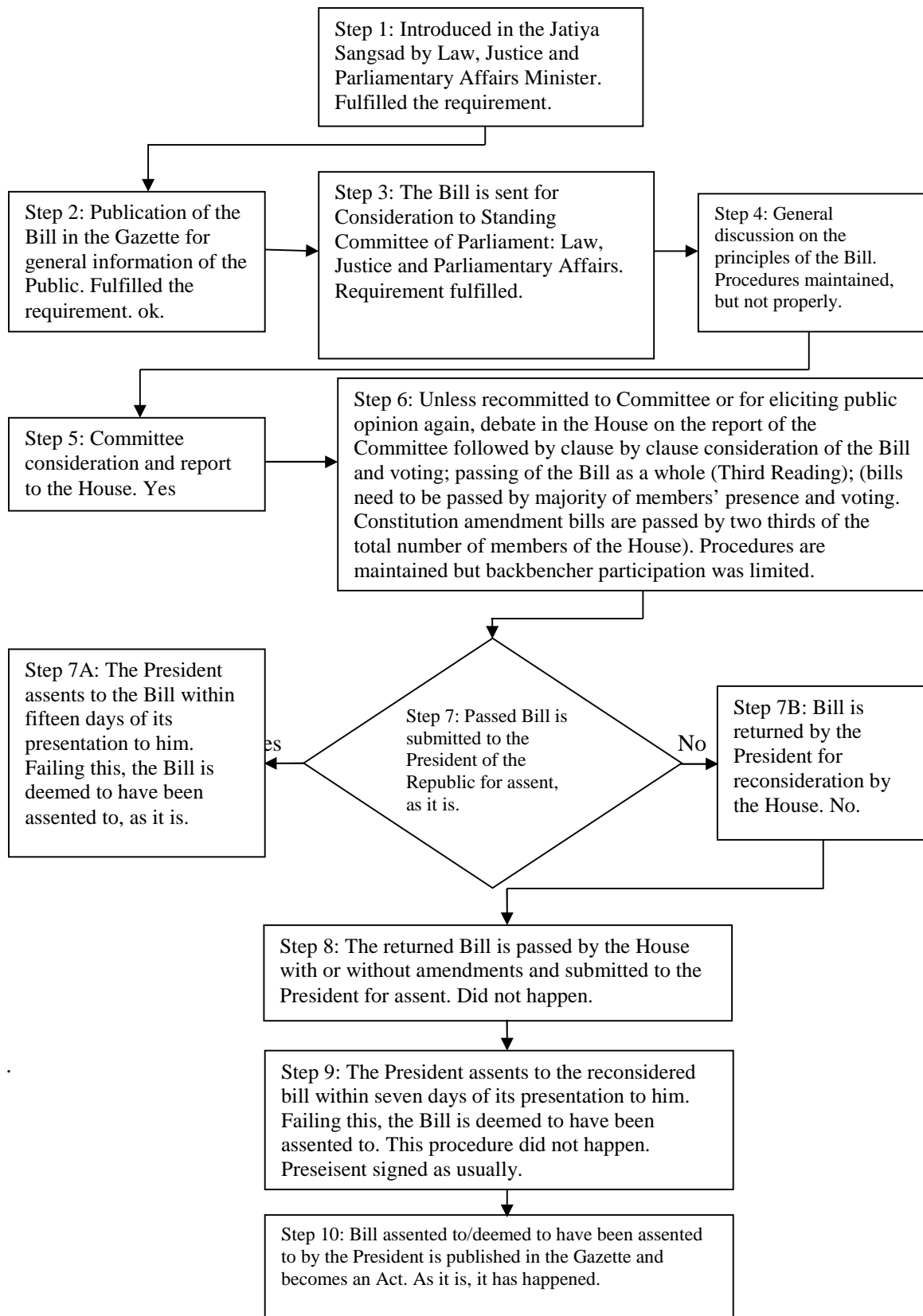
Amendment of article 148 of the Constitution: In the Constitution, in article 148, after clause (2), the following new clause shall be inserted, namely: "(2A) If, within three days next after publication through official Gazette of the result of a general election of

members of Parliament under clause (3) of article 123, the person specified under the Constitution of the purpose or such other person designated by that person for the purpose, is unable to, or does not, administer oath to the newly elected members of Parliament, on any account, the Chief Election Commissioner shall administer such oath within three days next thereafter, as if, he is the person specified under the Constitution for the purpose,” (GPRB, 2011: 148) that means, if the speaker fails to administer oath of office to elected MPs within three days of the publication of the election results in the gazette, then the chief election commissioner would do the same within next three days and this is a clear instance of the executive’s attempt to downgrade the status of the speaker who is supposedly the guardian of the House and, thereby, adversely affecting the image of the legislature in the public eye (Khan, 2014: 46).

The figure below is a geaphical overview of 14th Amendment procedure.

The 14th Amendment and its Procedural Route

Figure 6.1
Process of bringing 14th Amendment in JS



Source: Chart from Parliament website.

Here it is observed that in Bangladesh participation in law-making by representatives and general people is very limited and it is mainly controlled by bureaucrats. The MPs participate in committee and committee stage in the second reading, they also participate in the open session and deliberate on the bill; finally they complete their participation through voting in favor or against the bill. In case of the 14th Amendment it was absolutely government initiated public law. After introducing the bill it was sent to permanent Parliamentary Standing Committee of Law, Justice and Parliamentary Affairs. Here it can be observed that the committee members were mainly from treasury side. Only two opposition MPs attended the committee meeting. Though, 16 opposition MPs brought amendment on various clauses, only one MP participated at the end stage with special consideration of the Speaker and he cast his vote against the amendment. So due to absence during the report proposed by committee to the House their amendments were not discussed. Again, 16 MPs proposed the bill needed to take public opinion and 14 MPs especially from the opposition side sought for sending the bill to a selection committee, but these procedures were not maintained by which people participation could be maintained.

On the other hand, provision of referendum was not enforced for such an important amendment. Consequently, the amendment turned into one-sided and government controlled one. Last but not least, as this amendment was government controlled without national or opposition consensus, ruling backbenchers had not much participated in the amendment – they only supported the political will, i.e., cast vote in favor of amendment and they completed their representation only by giving vote in favor. Much argument or debate or discussion was not seen over the amendment even from the ruling MPs, as they were trapped by Article 70, under which they could not cross the floor. Hence, if we consider about the backbencher's representation of both sides treasury and opposition, their opinion, argument, amendment, proposal, alternative proposal, evidence, etc. should be considered, and that was not done in this amendment. At the same time the number of backbencher is more than 80% to 90% in the context of *Bangladesh Jatiya Sangsad* and their opinion bears significance. That is further conveying the message that most of the representatives do not represent due to legal framework and other circumstances, like lack of experienced and expert law-makers. As a result, the JS is converted into only approving body in the hands of top political will in the time of law-making. The MPs only play their

role on particular law either casting vote in favor or being absent from the house or at best walking out from the House as per their top political will or decision or desire.

However, another important feature of this amendment was that the law-making process or procedure have been maintained as per constitutional provision or rules and procedures of JS or innovative tradition by dint of two-thirds majority seats, but people's direct participation (referendum, meeting with committee by their invitation, individual opinion through media or ICT system, drafting the bill, etc.), or indirect participation through their representative was not honoured. If we consider the votes of the 8th JS results, the ruling BNP achieved 40.97% vote with 193 seats and main opposition AL got 40.13% of total vote with 62 seats, that means the supporter of the two main parties are almost same, but result is far distant and this scenario has been evident since 1991. Hence, opposition's absence in the process of law-making marks a serious flaw in the process of democratization in Bangladesh. The amendment without consensus of the opposition on a vital issue means half-hearted attempts of democratization. The amendment passed as per the top political will, there was no chance for backbenchers to participate properly due to legal bar to express his/her opinion and finally, opposition's opinion or support was not seen, as a result, the consequence of this amendment posed a big threat to the country's democratization process. Here remains risk of future repeal, when opposition will be in power, and that happened.

Conclusion

From the above discussion, we may conclude that in the process of bringing 14th Amendment to the Constitution, it is only the ruling BNP-led 4-party alliance controlled the whole procedure. The Alliance managed to control this due to their 2/3 majority in the JS fulfilling the requirements for constitutional amendment. The technical majority did not convert into inclusive political will. Nevertheless, the main opposition with 62 seats in the JS was not in a precarious position to give their input into the law-making process. They were invited to join the deliberation in the special committee for this Amendment. They were absent, although they gave their amendments on the bill. The role of the opposition seems to have shown half-hearted political will in regard to this amendment. The main opposition abstained from voting. Just as in the Select Committee on the 12th amendment, so the Committee on the 14th Amendment did not include a single woman.

By the 14th Amendment, the increase of age limit of judges from 65 to 67 antagonized the main AL. It claimed that it was their ill motive to make chief of CTG from their own man, KM Hasan was a BNP loyalist as assumed by them. It was not seen that any prerogative initiative from the government side was taken to solve the crisis to reach the opposition alliance about their right or wrong demand. As the government did not solve the crisis by showing political prudence, this issue between ruling and opposition alliance started challenging politics and enhanced turmoil and arrogant political activities. Later, the political crisis became acute and as a result, the non-elected military-backed caretaker government came into power and ran the country for two years. On the whole, the 8th JS failed to make significant impact on the process of democratic transition.

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Chapter Seven

Renewal of Democracy (2009-2013)

Introduction

The 9th Jatiya Sangsad (2009–2013) led the democratic political process to start afresh which demands intensive scrutiny for various reasons. Because, the new democratic government took power through the 9th Jatiya Sangsad Elections from military-backed caretaker government led by Fakhruddin Ahmed lasting for two years (2007–2008). Before and after the Sheikh Hasina's second regime there had been many incidents in the political arena of Bangladesh which were exceptional compared with other elected regimes, opposition's presence in the JS was nominal, 15th amendment procedure to the constitution was unique. These incidents blocked the democratization process and created confusions in the political sphere. Khan (2014:103) mentions that the 9th parliamentary election was inevitable to restore democracy in Bangladesh. In another sense, it was a renewal of democracy from an unelected government. After two years of an army-backed caretaker government up to the end of 2008, the Bangladesh Awami League (AL) alone got a massive win with 232 seats in the 9th JS and the AL-led alliance obtained 262 out of 300 seats. The landslide victory helped the alliance to bring the 15th Amendment to the Constitution and since then the political life of Bangladesh gave way to confusion, instability, one-sided politics, parliament sessions held without opposition, domination of the majority, etc. Confrontational politics had been visible between the ruling and the opposition alliance inside and outside the House undermined its functions, and so on.

This chapter is divided into four main sections. In the first section, discussion is carried out about the 9th JS election under the military-backed caretaker government and explored the impact of governance under this regime. In the second section, the main part of this chapter, discussion continued covering the period of the 9th JS (January 25, 2009 to November 20, 2013). One success is passing of the full term of five years of the Sangsad led by Prime Minister Sheikh Hasina for the second time. This section also looks into the role of the JS in democratization process of the country through participation of the people by their representatives in the process of law-making function of the parliament. The third section of this chapter pays attention to the pros and cons of the 15th Amendment to the

Bangladesh Constitution. In this stage, it investigates the background of the process and the most significant and vital issue of the regime of this amendment, and highlights the process and the most activities and effectiveness of the special committee formed for the amendment. Conversely, at this point, it has attempted to examine what were the results of the said amendment as per the special committee suggestion? How did the House bring the amendments by MPs? What were the responses to the ruling alliance to the Court verdict? And finally how the ruling side was challenged by the opposition political parties' demand? At the end of this section it also looks into under what circumstances the January 05, election held? The final section of this chapter reviews the way the renewal process behaved in the uncertain political environment and the country witnessed the strongest political alliance staying outside the parliament.

Part: A

Rule without Jatiya Sangsad: The Fakhruddin's Interregnum (2007-2008)

The political environment soured and political disorder again escalated after 10 years in Bangladesh, following the exit of BNP-led four-party alliance government at the end of 2006. This section discusses about how the army-backed caretaker government ran the country in absence of Jatiya Sangsad. Though, there is no existence of JS, but some important political reforms took place and its focus was futuristic, advocating the need for reforming additional institutions and political culture in order to make current reforms sustainable and effective for democracy in Bangladesh. The 5th parliamentary election was free and fair, where to reintroduce an acceptable democratic model was attempted. In case of the institutionalization of democratic practices in Bangladesh, the country had been facing serious barriers since 1991. These barriers included the subordinate status of the JS, repressed under the dominant executive, lack of democratic practices within major political parties, domination of major political parties by big leaders, perpetuation of personality cult, perpetuation of dynastic leadership, lack of mutual trust among top leaders of major political parties, opportunistic nature of politicians and adherence to winners take all attitude (Khan and Islam, 2012). Anxiety in the two major political parties began to surface. The political arena of the country had become turbulent. The BNP wanted Justice K. M. Hasan as the head of the next caretaker government. But the main opposition party AL led-alliance vigorously opposed the increase of retirement age of justices through 14th amendment, as it would constitutionally allow Justice K. M. Hasan to take the office of the chief adviser of the caretaker government, as they found Justice

Hasan to be a BNP loyalist. In the meantime, the duration of the 8th parliament came to an end on 27th October, 2006. In this situation of widespread political violence, Justice Hasan expressed his unwillingness to accept the post of CA on October 27, 2006. This did not improve the situation. On the other hand, the AI-led alliance was ready to accept as CA the person who retired before Hasan as chief justice. The BNP-led alliance objected to his appointment (Ahmed, 2011). This conflict caused the pathetic occurrence of 28th October, 2006.

Reforming the Politics and Political Parties under Fakhruddin Ahmed's Regime

The NPCTG of 2007-2008 of Fakhruddin Ahmed not only initiated policy-making, but also tried to reform politics and political parties. In the name of reforming politics and political parties the CTG tried to bring some awareness in Bangladesh politics by arresting political leaders from both the main political parties. The emergency CTG arrested two main leaders, Sheikh Hasina and Begum Khaleda Zia on charges of corruption and misuse of power. As a result, it developed a sense of deep distrust among people in the leadership issue (Islam, 2011). The Chief Adviser also used his initial speech to make clear that his government planned to launch a serious campaign against corruption. He announced that tough new actions would be initiated to curb corruption, including the restructuring of the ACC. He mentioned that the law enforcement agencies had already begun new operations against “godfathers, known criminals, terrorists, extortionists and anti-social elements” (The Daily Star, 2007). An important strategy adopted by the government to ‘weaken’ the main parties was to create dissent or split within them by encouraging what it called the ‘democratization of parties’ (Ahmed, 2010).

The role of this government was to bring the country on the rails by punishing corrupt individuals and preventing future corruption and introducing reforms to put democracy on solid footings, so that honest and competent politician can compete in elections. (Rahman, 2008: 06). In his first address to the nation, the Chief Advisor (CA) declared, “the main task is to hold a free and fair, peaceful and neutral election with participation of all parties in accordance with the constitution and people’s aspirations... (Government needs) to create a congenial atmosphere for holding transparent, peaceful, and truly democratic elections.... .The nation does not want to backslide once again and fall back into political instability and intolerable situationWe want to banish muscle power and illegal money from the elections” (The Daily Star, January 21, 2007).

The Chief Advisor announced “our endeavour will continue to set up a solid foundation for democracy and good governance and create condition free from corruption and muscle power, so our future journey along the path of building a progressive and democratic society is not impeded.” The objective of his government was set not only to hold a free, fair and peaceful election before the end of 2008, but also to build a sustainable democracy. Raising the possibility that elections may be held even before December 2008, he declared, “our final goal is to make democracy sustainable forever as democracy is the best way for people’s emancipation and progress” (The Daily Star, September 10, 2007). Echoing a similar sentiment, the Army Chief maintained that the country has been destroyed in the last 35 years. It is like a derailed train and “we need a heavy crane to put the train back on the track – and the strength of the people is the crane. Once you put the train on the track, it will move smoothly.” He cautioned that such an opportunity will not come time and again and urged all “to co-operate with this government, so we can steer the nation forward” (Ibid: February 9, 2007). The role of this caretaker government can be defined in three broad, but interrelated areas, namely: (i) holding free and fair election; (ii) building democracy on more solid foundations; and (iii) providing a model of good governance (Rahman, 2008).

A few sources indicating support for the emergency as well as the Caretaker Government may be noted. A news item “civil society hails new Chief Advisor, but fears fresh problems” appeared (The Daily Star, January 12, 2007). An editorial captioned, “Opportunity for a New Beginning” appeared (The Daily Star, January 13, 2007), where it noted, “a way out was being desperately sought and it came in the form of emergency.” It also expresses “our optimism on the appointment ... of Mr. Fakhruddin Ahmed as the Chief Advisor ...” In an article titled, “Have the people lost confidence in politics and constitution,” a former member of Parliament, G. M. Quader wrote, “naturally they [referring to people in general] do not find it difficult to welcome the interim government ... working to provide them the right to make their choice of representative in a free and fair way,” (The Daily Star, January 19, 2007). A columnist, Muhammad Zamir wrote under caption – “Turning a New Leaf” – “we have stepped back from abyss and have an opportunity for a new beginning ... everyone concerned must understand that we have been given another chance. Let us for a change, rise above acrimony and participate in a constructive engagement,” *The Daily Star*, January 19, 2007. An editorial (The Daily Star on January 30, 2007) by Mohammad Badrul Ahsan under the caption – “Bangladesh

rising” – wrote glowingly about the activities of CTG. Several roundtables were organised in Dhaka in which opinion-makers from different sectors participated and took a positive approach towards the emergency and the new CTG. They include: *Prothom Alo* Roundtable on “The State of the country: State of Emergency and the Imperatives” held on January 20, 2007; and *The Daily Star* Roundtable on “Challenges before the Caretaker Government” held on January 27, 2007. In the *Economist*, February 8, 2007 a long article on Bangladesh appeared under the caption – “Everybody, but the politicians are happy” (Ibid). Most people felt it was a real blessing and a golden opportunity for the country to recover and reform itself to protect itself from such future threats.

Core Reforms

Several measures that the government and the Election Commission have introduced and some are currently under discussion include:

- selecting neutral and unbiased election commissioners;
- voters’ registration with photo ID;
- finalizing election rules;
- finalizing registration, finance and internal organization of political parties;
- The Election Commission has undertaken a massive project for registering all voters in Bangladesh by asking them to report to registration centres near their home where their pictures had been taken and voter ID issued.
- Restriction was imposed on candidate to contest in more than one constituency. Restricting one candidate from contesting in not more than three constituencies, need to be reviewed, as it runs contrary to principles under single member constituency.
- Ceiling on election expenses was imposed. Another provision was the limit of election expenses at 5 lakhs.
- Three other proposals: a) Requiring three years membership for a party nominee to contest election, b) signatures of at least one percent of constituents for an independent candidate, c) requiring 33% female representation on party committees.
- The Election Commission also prepared some draft rules for registration, finance, internal organization, and working of political parties. These rules are now being discussed with political parties. It is now agreed that no political party would be

recognized and be allowed to participate in election at any level unless it is legally registered.

- Initiatives enrich democracy inside the party.
- Three key initiatives that this government has undertaken to eliminate all perverse influences and establish democracy on a solid footing are separation of judiciary from the executive, fight against corruption, and the establishment of a national constitutional council to select judges and key officials of all commissions.
- Abolition of politics by students, teachers and workers. The Election Commission made a proposal to the Government for amending the existing regulations to prohibit the political parties in allowing student politics.

However, during the military-backed non-party caretaker government (2007-2008), a total of 122 Ordinances were promulgated. Out of these Ordinances, a couple of Ordinances were approved by the 9th parliament. No Ordinance can be approved without the parliament (TIB report on Parliament Watch 2009: 20-22).

Part: B

The 9th Jatiya Sangsad Elections

The 9th Jatiya Sangsad elections were finally held on December 29, 2008 after nearly two years later of routine election firstly dated on 22nd January, 2007, under the ordinary caretaker government led by Fakhruddin Ahmed. Opposition leader of the 9th JS, Begum Khaleda Zia stated in the 1st session of 9th JS over President's Speech that as per the Article 123(3) of the Constitution, the President was bound to arrange the 9th JS elections on January, but he cancelled the elections and he himself violated the Constitution and deprived the nation from their voting rights for two years (Report of Parliament Watch on 9th JS, January 2009 – November 2013, March 18, 2014: 60). However, all main political parties of Bangladesh participated in this election. The 9th JS also passed its full tenure of five years under the leadership of Sheikh Hasina for the second time of AL in power and third time of the parliamentary democratic history of Bangladesh. In table 7.1, the results of the 9th JS are shown.

Data of the 9th Sangsad Election

Table 7.1
The 9th JS Election Results of 2008

Party Name	Constituencies contested	Seats won	Percent of vote
Awami League (AL)	264	232	48.04%
Bangladesh Nationalist Party (BNP)	260	30	32.50%
Jatiya Party (JP)	49	25	7.04%
Jatiya Samajtantrik Dal (Inu)	7	03	0.72%
Jamaat-i-Islam (JI)	39	02	4.70%
Bangladesh Workers' Party (WP)	5	02	0.37%
Jatiya Party (Naziur)	12	01	0.26%
Liberal Democratic Party (LDP)	18	01	0.27%
Independent Candidates	151	04	2.94%
Others	762	0	2.60%
"No" Vote	-	-	0.55%
Total	1567	300	100%

Source: Election Commission 2009; Khan, 2014: 108.

Analysis of the Results of 9th JS Election

From the above table, it appears that AL gained 232 seats out of 264 seats which was 170 seats more than previous one 62 in 8th JS (8th JS) and it stood in percentage about 77% of the total seats with 48.04 % of total popular vote cast. The analysts observed that behind the AL's landslide victory was the support from the young generation. On the other hand, though BNP won only 30 seats, it received 32.5% of the popular votes and the party had 193 seats in 8th JS, which was 163 seats more than that in 9th JS. Thus, the ruling AL increased 170 seats and opposition BNP lost 163 seats in 9th JS. In this way, discussion on law making process in the 9th JS the opposition was almost non-existent, because the opposition side was too fragile to make or put their arguments; except staying walkout or refraining them from the House (JS) and the ruling side was so strong to make the top political will or person's will established in all spheres of the country's political decision making. So the relations between the treasury and the opposition in 9th JS was not such as to respect the opposition to promote the democratic process. The JP got almost the same number of seats 25 seats, more than in previous 8th JS, but it received over 7% of the votes. JSD – (Inu) got 3 seats with 0.72% votes cast. The JI got only 02 seats against its 17

seats with 02 cabinet posts in 8th JS, but achieved 4.7% of the popular votes that was more than four times compared with two socialist-leftist parties; JSD-(Inu) and WP, who ensured 05 representatives in this parliament. Bangladesh WP got 2 seats with 0.37% votes of total vote cast. LDP got 01 seat with 0.27% votes and BJP (Naziur) also got 01 seat with 0.26% votes. Individual independent candidates won 04 seats with 2.94% vote out of total cast vote. In case of alliance, the AL-led alliance got the 88% seats which was the strongest alliance government in the House since restoration of parliamentary democracy in 1991 and the opposition or four party alliance led by BNP got only 11% seats, which was a very weak opposition and a backbencher position in JS since 1991 and other political parties got 01%. Directly elected male MPs was more than 93% (280) and female MPs about 7% (20), but if it is calculated with reserve seats for women, it stood 80% for male and 20% (70) for female MPs out of total 350 MPs (Fazal, 2009). It was also noted that for the first time in Bangladesh election system, “No Vote” casting was introduced and 0.55% vote cast out of total vote cast against the candidates (UNDP Report, 2010).

Table - 7.1 presented that the 9th JS elections also produced the two-third majority in the House by the grand alliance led by Bangladesh Awami League in comparison with its previous 8th JS where the Four-Party Alliance had the same position. This victory of the Grand alliance helped to bring the 15th Amendment. Though the difference between two major parties in case of popular vote cast was 15.8% (48.04% : 32.5%), but it stood as a huge gap in term of seat that was more than 200 (232: 30) seats (Firoj, 2014: 171). Such imbalance between the two major political rivals made the 9th parliament one party dominant and that impacted on all the parliamentary activities of the 9th JS, later discussed in the next section of this chapter. The immediate ruling alliance BNP led four parties was completely surprised by the landside victory of AL and even, the AL did not expect such a landslide victory in the 9th parliamentary elections (Khan, 2014:103). In the 9th JS, like the 8th JS, only 08 parties ensured their representative in the House. The difference was that the JSD-(Inu), WP and newly formed LDP did not have any representation in 8th JS and IOJ, KSJL and JP– (Monju) did not send or failed to send their representative in the 9th JS. The 04 top political parties of Bangladesh, the AL, BNP, JP - (Ershad) and JI ensured their representation in four main JSs (5th, 7th 8th and 9th), more or less in all elections under the all four CTGs. However, local, national and international observers and forecasters opined that the election was free, fair, and neutral and was held in peaceful environment with very

few violences and unrests. But the losing BNP led alliance did not accept the results, such as in our political culture, losing side always rejects the election results. In 2008, all except two of the 16 women candidates nominated by the AL won the elections, while 3 of the 12, BNP nominated women candidates passed the tsunami test (Ahmed, 2013: 88). The table below is a summary of performance of 9th JS.

Table 7.2
The 9th JS at a Glance

Issue	Date/Action
Election	December 29, 2008
1 st Session	January 25, 2009
Total Sessions	19
Working days	418
President	Professor Dr. Iaz Uddin Ahmed, Zillur Rahman and Advocate Abdul Hamid
Leader of the House	Sheikh Hasina
Leader of the opposition	Begum Khaleda Zia
Speaker	Advocate Abdul Hamid, Col. Rted. Shawkat Ali (Acting) and Dr. Shirin Sharmin Chowdhury
Deputy-speaker	Col. Rted. Shawkat Ali
Amendment	01 (15 th Amendment)
Total passed Laws	271 (Public Laws – 268 and Private Laws – 03)
Ordinance	29 passed as law out of 122
Dissolution	January 8, 2014

Source: Researcher (2015) using JS sources.

The starting of the 9th JS was democratic mode and for the first time the opposition joined the first session of the JS. For the first time in recent history of JS, in the first day of the first session, all parliamentary committees were formed and chairmen of three committees were made from the opposition parties. The AL election manifesto was full of commitment for change and to form effective and functional parliament, if once elected. The party declared in their manifesto that they would open before public the wealth statement and income sources every year of the PM, ministers, MPs and their family members. Their commitments also included establishment of Human Rights Commission and Ombudsman, increase reserve seats for women at 33%, introduce transparent and regular election system, ensure accountability of the government and ensure the

independence of the statutory institutions. In addition, commitment included freedom for MPs for expressing their different opinion in decision making process and enrich the positive political culture of the country (AL, Election Manifesto 2008: Para 5.3 and 5.4). Now, it may be observed, how much commitment was demonstrated in their parliamentary functions, decision making as well as law making process as per the party's commitment to fulfill the democratic criterion in their parliamentary functions through participation and representation. Table below is a summary of profession MPs of the 9th JS.

Table 7.3
Profession of MPs of the 9th JS

Categories	Number	Percentage of Profession
Business person	188	63%
Lawyer	42	14%
Retired Civil Servant	13	4%
Doctor	13	4%
Retired Defense Officer	11	4%
Politician	10	3%
Others	14	5%
Total	299	100%

Source: NDI, 2009: 5.

The 9th JS and Democratization

From the above occupational profile of MPs in 9th JS it can be firmly said that Bangladesh Jatiya Sangsad is dominated by the business class. Out of 300 MPs, 188 are business owners. In percentage terms, it stands about 63%. Party – wise business as a profession was AL 56%, BNP 73%, JP 52% and other parties 57% according to the candidate's declaration (TIB Report, 2014: 21). Politics as a profession is only 3% which is lowest among all professional classes, such as, lawyer 14%, retired bureaucrat 5%, retired defense officer 4%, and doctor 4%. As an agriculture profession, 8 MPs and others 14 MPs (NDI, MPs Directory, 9th JS, 2009) get in. The businessmen class is increasing in JSs gradually and lawyers is decreasing as in the first JS businessmen class was only 17.5% and lawyer was 31%. Business elite-led parliaments always represent their own interest. That was visible in different parliamentary committees that are related to their business area. In this way, the business-politics nexus has grown, without much regard to accountability, transparency and the rule of law in the country. As the business-owners are busy, they could not attend the JS sessions timely and regularly, resulting in a common

cause of quorum crisis. As a result, the JS of Bangladesh is not productive as a central political institution for debate, discussion and deliberation for making vital policies for the people of the country. Lack of experience and shortage of real politicians hinder the law-making process. Lack of proper law-making process also hurts political solidarity. The following Table 7.4 narrates that in the 9th JS, it is witnessing that 55% or 163 MPs were new-comer or is at first term in their profile and rest 45 % or 136 MPs were more than one term, but expert and experienced MPs to the House is few in all the JS, not only in the 9th JS. The domination of business groups appears to be more entrenched now than in the past. Available evidence shows that the percentage of businessmen and industrialist increase from 4% in 1954 to 13% in 1973, and to 34% in 1979. The percentage increased to more than 60% in 2008. Three out of five members of the 9th JS are businessmen (Ibid: 88).

Table 7.4
Parliamentary Experience of 9th JS MPs

Categories	Number	Percentage of Experience
1 st Term	163	55%
More than One Term	136	45%
Total	299	100%

Source: NDI, 2009: 7.

In the 9th JS, of 300 MPs, 163 MPs are new. In percentage term, it stands at 55%. Among them very few MPs are experienced like being elected more than one term. It is a precondition for democratic process that MPs experienced as law-makers could take democratization ahead. Given this context, the 15th Amendment to the constitution was made to restore to the 1972 constitution. A strong parliament needs experienced and competent MPs. From the above table, one can see that most of the MPs of Bangladesh are new and inexperienced. Though it indicates a sign of new leadership, it blocks parliamentary procedure and the law-making process due to lack of their parliamentary experience. However, out of elected 300 MPs, 71.4% have educational qualification graduate or above and 7% are SSC passed or below. It is noted that there is no required educational qualifications in Bangladesh for an MP candidacy (Prothom Alo, December 27, 2008). That is an immense lacking of MPs to participate in law-making process in this JS. Table below is a summary of the functions of 9th JS.

Functions of the 9th JS

Table 7.5
Opposition's Presence in the 9th JS's Working Days and Laws Passed

Session	Start-End	Total Days	Working Days	Presence/ Absence of Opposition Party	Law passed	Total Used Time (Hour)	Used Time per law
1 st Session	25.01.09-07.04.09	92	39	Present 23 Day	32	13h.07m	24m.59s
2 nd Session	04.06.09-09.07.09	36	25	Absent	23	4h.09m	11m.22s
3 rd Session	07.09.09-05.11.09	60	22	Absent	11	4h.59m	27m.18s
4 th Session	04.01.10-05.04.10	92	39	Present 21 Day	23	13h.55m	36m.30s
5 th Session	02.06.10-22.07.10	51	33	Present 1 Day	24	7h.38m	19m.01s
6 th Session	02.09.10-06.10.10	35	11	Absent	13	4h.55m	23m.09s
7 th Session	05.12.10-09.12.10	5	5	Absent	4	0h.47m	12m.15s
8 th Session	25.01.11-24.03.11	58	33	Present 4 Day	6	1h.51m	18m.30s
9 th Session	22.05.11-07.07.11	46	30	Absent	8	6h.58m	52m.25s
10 th Session	18.08.11-25.08.11	8	4	Absent	2	0h.47m	23m.30s
11 th Session	20.10.11-30.11.11	41	13	Absent	7	2h.15m	19m.28s
12 th Session	25.01.12-29.03.12	63	34	Present 3 Day	15	6h.32m	26m.13s
13 th Session	27.05.12-08.07.12	43	29	Absent	15	7h.29m	30m.33s
14 th Session	04.09.12-19.09.12	16	10	Absent	13	4h.09m	19m.15s
15 th Session	14.11.12-29.11.12	16	10	Absent	6	2h.47m	28m.23s
16 th Session	27.01.13-06.03.13	39	25	Absent	13	4h.43m	22m.17s
17 th Session	21.04.13-30.04.13	8	8	Absent	7	3h.16m	28m.00s
18 th Session	03.06.13-16.07.13	44	24	Present 24 Day	12	10h.31m	52m.58s
19 th Session	12.09.13-20.11.13	69	24	Absent	37	8h.55m	14m.46s
Total			418	76	271	109h.44m	

Note: h = hour, m = minute and s = second, 24m.59s = 24 minutes 59 seconds

Source: Researcher (2016) using TIB Report March 2014: 28-30 and Firoj, 2014: 178.

The 9th JS had a total 418 working days with its 19 sessions. On an average in Bangladesh per year it was 84 days and it was 140 days in the UK (2012 – 2013), and 73 days in India in 2011. Of these 19 sessions total used time was 1,331 hours 54 minutes. At every session 3 hours 11 minutes time was used in the UK's House of Commons, it was about 08 hours and 0 minute in India that was on an average about 06 hours. The main opposition was present in terms of days only 76 working days, out of total 418 working days. The leader of the 9th JS was present 336 days, of the total working days (80.38%) and the leader of the opposition of 9th JS was present only 10 working days, 2.39% of total working days. The relationships between the ruling and the opposition were neither friendly, nor cooperative and competitive in the parliamentary functions. By this time 271 laws had been enacted. As a result, for every law the parliament spent only 12 minutes which

signifies that these 271 laws were not passed democratically after sufficient deliberation, debate and discussion (The Daily Star, March 19, 2014). The functions of the 9th Jatiya Sangsad were not so sufficient and functional as compared to other parliamentary democratic countries. Out of 19 sessions, the main opposition was merely present only at 06 sessions and refrained from 13 sessions. The highest number of opposition members was present at the 1st and 18th sessions, 23 days and 24 days respectively and only for one day at the 5th session. The absence of opposition for long time actually made the JS undemocratic, and unethical as the opposition represents their respective constituency. So if the opposition does not attend or the ruling side does not try to compromise with the opposition to bring them to the House, the people's representation becomes meaningless, as the opposition also represents about 40% of voters of the 9th JS. In the 13 sessions of the 9th JS where the opposition was absent totally while 159 laws were enacted, that means these laws were made without oppose or much representative mode. As the public law brought by government initiative, is not opposed by the ruling MPs, because of the absence of the floor crossing rule, so they only performed their duties supporting in voice vote. On the other hand, these general laws can be enacted if the quorum is fulfilled; the number of quorum of Bangladesh JS is only 60 MPs that means 17.5 % (in case of 350 MPs) or 20% (in case of 300 MPs), and can allow the Bill to turn into the Law. As a result, the law making process of Bangladesh is not properly participatory. Law is made in the JS by maximum support from the ruling side without any oppose. The quorum crisis problem was a common scenario of Bangladesh JS, as the representatives were not much attentive or qualified for their main function of law-making, rather they were busy with outside functions or oversee their own business, instead of overseeing or participation or representation in the law-making process of the JS. The 9th JS has also witnessed spending TK. 104 crores on quorum crisis in the legislature. Throughout the whole regime of 5 years, the total working hours of parliament was 1,332, out of which 222 hours were spoiled (Proceedings of 9th JS and TIB report on 9th JS January 2009 – November 2013) .

The following table is a reflection of MPs participation in the 9th JS.

Table 7.6
MPs Participation in 9th JS Activities

Activities	Total Participated MPs	Ruling MPs	Main Opposition MPs	Others Opposition and Independent MPs
PM's Question and Answer	111	103	7	1
Minister's Question and Answer	284	255	28	1
Decision Proposal (Rule 131)	107	100	6	1
General Discussion (Rule 146, 147)	96	93	2	1
Public Importance and Attention Notice Discussion (Rule 71)	126	117	8	1
Public Importance and Attention Discussion over Notice (Rule 71A)	271	245	25	1
Public Importance Short Discussion (Rule 68)	14	14	-	-
Law Making Process	57	30	25	2
Budget Discussion	318	282	33	3
Unnoticed Discussion	119	103	14	2
Discussion over Honorable President's Speech	299	265	31	3

Note: Two MPs (Natore 4 and Netrokona 4) did not participate in any parliamentary activities

Source: Prepared by on the basis of parliament watch on 9th Sangsad, 2014: 12, TIB and Sangsad sources, researcher

From the above table # 7.6 of the representatives' participation in the 9th JS's activities, many important observations are brought out, in law-making process and executive's accountability through asking questions to her. It was observed that most of the MPs participated in budget discussion and in the President's speech, respectively by 318 and 299 MPs. An inner observation is that in the law-making process only 57 MPs participated, of them 30 MPs were from ruling party, 25 MPs from main opposition and rest 02 MPs from other opposition and independent group. Here it is observable that the MPs were to some extent less attentive to participate in the law-making process. For that this function was completely controlled by unelected bureaucracy. In the words of Suronjit Sengupta:

“Law making is a clerical work in the world and the parliament only approves their works. Law drafting is not only work of an MP, he could join the process in another way in the

committee level and in the second reading and voting in favor or against the Bill (Interview with Suronjit Sengupta, April 28, 2016, Dhaka).”

So, though the law-making is one of the main functions of the parliament, it is limited in scope. On the other hand, the opposition could not participate in the process inside the parliament because of the ruling side’s uncompromising, aggressive and negative attitude and the opposition’s intransigence regarding its political stand.

Important Dimensions of the 9th JS

In the 9th JS there had been many positive and negative features visible. During the time of Sheikh Hasina government, the trend of ‘dominant executive and dormant legislature’ continued. Leader of the House and Chief of the AL Sheikh Hasina herself had remained as the head of the party, head of the government, and head of the parliamentary party. Not only that the PM also had appointed 06 advisors which were unconstitutional, totally unelected, but enjoy the status of a cabinet minister. The AL had its 15-page ‘Charter for Change’ as its election manifesto, declaring a commitment to bring positive changes in the political culture of Bangladesh, and, in the mean time, after constituting the government, the AL started taking various decisions in JS and outside unilaterally and without any participation of the opposition (Halim, 2015: 537).

There were no steps taken by the government to bring back the opposition into JS for practicing and developing participatory democracy, such as, the same party did in the 7th JS. In the 9th Jatiya Sangsad the AL government did not bring about changes to the institutionalization of democracy as per their commitment in their election manifesto declared earlier. This JS was vulnerable than others since 1991 in the manifestation of its democratic dimensions. One of the most important reasons was the limited presence of the opposition with 30 seats. The strongest ruling alliance and fragile opposition made the legislature neither representative, nor participatory for national debate and discussion, let alone the law-making function. Along with the boycott of the parliament by the opposition breaking all the previous records, unparliamentarily debate and discussion, praise of top former political leaders and on the contrary, intentional criticism and vile language sometime made the House session ineffective. The opposition was absent throughout its almost full tenure of this JS. It is considered the most important centre for ensuring democracy through debates and discussions between the treasury and the backbencher. If the opposition does not play or fails to play proper role in JS, it cannot be said that

parliament is a representative body. Only ruling party can never ensure effective parliament. The opposition acts in legislature as a fulltime watchdog. Though several times, ruling partymen tried to bring the opposition to the JS, they failed. It has become a culture in Bangladesh that the opposition of Bangladesh always presses their demand from outside of the parliament. The treasury also does not show parliamentary behavior towards opposition.

One of the most important roles of 9th parliament is that it formed 48 permanent standing committees in the first day of the first session. Among these parliamentary standing committees, 42 committees' heads/chairmen were elected from ruling AL, the rest six heads/chairmen were elected from other four parties – BNP two, JP two, JSD and WP one each (NDI, June 2009). BNP as an opposition party wanted to have proportional representation in all committees. But the government party refused the offer and, as a result, BNP did not participate in the committee formation. The committee members did oversight functions of the various ministries. The performance of the committee was not satisfactory. For example, if a real estate business-related MP works in the Committee of the public works, he always tries to promote his business rather than serve public interest.

The 15th Amendment Bill to the Constitution

The Awami League-led grand alliance got a landslide victory in the 9th parliamentary election. Almost all the political parties of grand alliance declared in their manifesto that if they were elected, they would go back to the 1972's main constitution. Especially, the left-oriented political parties declared that without backing the main constitution, the political system of Bangladesh could not be free from military and bureaucracy's trap. The Leader of the 9th JS proposed a Special Committee (SC) for the Constitution Amendment and it was formed with 15 members. After working 11 months, the SC submitted its report to the House with 51 suggestions. The House accepted the report and sent for further action. The Cabinet accepted the recommendations of the Special Committee on June 20, 2011. These recommendations were tabled in the Parliament as the 15th Amendment Bill 2011, on 25th June, 2011. The parliament sent the bill to the Standing Committee on Law, Justice and Parliamentary Affairs on the same day to report back to the JS in two weeks after scrutiny. Although two weeks time was allowed, the Committee spent only 04 days to complete its report and on June 29, it placed its report in the JS recommending a total of 55 changes to the Constitution. In the following day, June 30, 2011, the 15th Amendment Bill was passed

within five days after being tabled in Parliament. Such unnecessary haste in passing the bill was received by many with confusion and uncertainty about the intention of the government move. In a reaction to this drastic fundamental changes, Kamal Hossain, Chairman of the 1972 Constitution drafting Committee, termed this amendment a worst-ever alteration in the history of Bangladesh, and also urged the people to stand united to forge a “People’s Commission” (banglanews24.com, July 24, 2011).

Background of the 15th Amendment Bill

Most importantly, the treasury alliance was determined to do such an amendment, they were saying for the last couple of years, if they got chance they would go back to the original constitution, not only that they committed many issues of this amendment, but also the alliance got the chance tremendously and they did it as to their commitment. It is mentionable that by declaring the two periods of military rule unconstitutional and void, and then declaring the provisions of Caretaker Government unconstitutional, the Supreme Court has played significant role in facilitating the change in the Constitution by its verdict on cancelation of 5th, 7th and 13th Amendment to the Constitution of Bangladesh. Following this, many subsequently felt that the momentum was high for secularization and democratization of the Constitution (The Daily Star, May 25, 2011). Expectation was high among liberalists and communists who even wrote that we could soon be going back to secularism through some needed changes in constitution (Ahsan, Syed Badrul, The Daily Star, February 23, 2011). Islam (2012) stated that with these changes, the stage was set for democracy to bloom, but none is there to avail the opportunity. Three specific judicial developments helped the 9th JS in support of bringing Constitutional changes: (i) Judgment of the 5th amendment case upholding the invalidation of the 5th Amendment of the Constitution (which legitimized the 1975 coup and subsequent military rule by General Ziaur Rahman **until** the election of the second parliament) (Halim, 2013); (ii) Judgment of 7th Amendment Case upholding the invalidation of the 7th Amendment of the Constitution (which had legitimized the 1982 coup), thus invalidating General H. M. Ershad’s decrees under martial law (Ibid, 2013); and (iii) the Judgment of 13th Amendment Case declaring the provision of caretaker government, an instrument of free and fair election, void (Halim, 2013).

The Process of bringing 15th Amendment

In the 9th Parliament, only one Constitutional Amendment had amended merely by the treasury initiated the name (Shangbidhan Panchadash Shongshodon Ain 2011- The Constitution's 15th Amendment Act 2011). The 15th Amendment Bill was absolutely approved by the Cabinet on June 20, 2011. In the same day, the Bill was sent to the parliamentary committee on law, justice and parliamentary affairs for scrutinizing the bill for two weeks. But, the scrutiny committee within four days- without any amendments and additions to the bill-submitted the bill with four schedules and recommendations in 55 clauses to the parliament, June 29, 2011. After five days, without calling any special session, the bill was passed in the budget session on June 30, 2011. The bill was passed absolutely under the guidance of the ruling party. The table below summarizes the profiles of 15th Amendment.

Table 7.7
Profile of the Constitution's 15th Amendment Bill, 2011

Steps	Functions/Activities	Remarks
Source of Bill	Government initiated bill	Article – 58 was abolished from the constitution
Bill introducer	Presented by Barrister Shafiq Ahmed-Law, Justice and Parliamentary Affairs Minister, 9 th JS on 25 th June, 2011	The minister was not elected by people, but technocrat minister, and Government Initiative
Discussion in Special Committee (SC) on 15 th Amendment Bill	July 21, 2010 to June 08, 2011	Spend 10 months 13 days with 27 sittings and met with civil society members, experts, judges, Senior Advocates, politicians, intellectuals, etc.
Send for Scrutiny	Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs	Participation of most Permanent Committee members, and also most of the members of SC
Duration of Parliamentary Standing Committee (SC) on Law, Justice and Parliamentary Affairs	June 25, 2011 to June 29, 2011. Two sittings 26.06.2011 and 28.06.2011 for a few hours.	Time was given for two weeks, but committee submitted reports within 04 days
Type of Scrutiny Committee	Firstly Special Committee	As per SC

	with (21.07.2010 – 08.06.2011) 15 members and secondly Scrutiny Committee on Law, Justice and Parliamentary Affairs	recommendations, the Bill was sent to Permanent Standing Committee and in this stage very short time was spent
Debate on bill	Very little debate, only an independent MP, Fazlul Azim took part; he also demanded taking public opinion and walkout while the law was being passed.	It did not involve much debate, and discussion was held in SC & JS with only 4 minutes for discussion
Number of participants in the debate	09 MPs brought 68 amendments (changes)	Mixed. 3 MPs from ruling AL and 3 JSD-(Inu), 2 MPs from WP and one Independent MP
Referendum	Not held	Rather the Article was removed
Vote in favor of Amendment	291 - Treasury (Grand Alliance) MPs cast their vote in favor	All MPs were from the treasury & their Grand Alliance
Vote against the Amendment	Oppositions were not present in Session	Only 01 vote was cast against the Amendment, of an Independent MP, namely, Fazlul Azim.
Present Status	Effective	Effective and vibrant
Type of Bill	Public bill	Opposition and independent played little in this Amendment.

Source: Researcher (2016) using *Jatiya Sangsad* sources of Special Committee Report, Parliamentary debate and discussion, PM and Speaker's Speech on 15th Amendment.

Features of the 15th Amendment

From the above Table 7.7, it is observed that there were some specific characteristics of the 15th Amendment and those were given in the following sections.

- The 15th Amendment to the Constitution was initiated by the Prime Minister-proposed amendment. For that on July 21, 2010, the *Jatiya Sangsad* formed a 15 member Special Committee for constructing the amendment. After introducing the report in the House of the 15th Amendment by the SC, it was too fast to pass the amendment. As a result, the amendment was passed within a very short duration without participation of the opposition parties and much debate and discussion

from the own party's MPs inside and outside of JS, though an independent MP participated with his 23 amendments and he requested some important changes should be restored. All the amendments brought by 09 MPs including him were rejected by law minister in the first step and then by the JS's voting system.

- The 15th Amendment was not the result of consensus between opposition and ruling alliance which was required in parliamentary system. As it was entirely government initiated bill and the parochial political cultures immensely prevailed in this amendment, later that turned into turmoil in the political environment of the country. And the country witnessed the one-sided amendment.

The 15th amendment was passed in very short time. It was a matter of undemocratic trend, that have taken on merely five days from the scrutiny to bill passing. In spite, two weeks had been given by the committee for the scrutiny. For an important amendment there was no big scale opinion taken from the people of the country and though, the basic structure of the constitution was changed by this amendment, the referendum was not given to justify the people's opinion as the legal procedure rather the provision was abolished.

- Only the ruling alliance's MPs were included in the special committee. Among them majority were also the members of Permanent Standing Committee on Law, Justice and Parliamentary Affairs. This reveals that Special Committee for preparing the report and Scrutiny Committee to verify the reports, etc., all roles are played by either AL or its alliance MPs. Among these two committee members 12 was out of 15 from AL and rest three from its alliances, JP (Ershad), WP, JSD (Inu). The same also in case of Permanent Standing Committee that out of 9, 7 MPs were of ruling AL. Those who were not involved in any committee they met with SC with their party leader. Only an independent MP was present in the time of the bill passing and took participation in debate and discussion, but his suggested amendments were not accepted.
- Though in this amendment many of the important clauses were related to ethnic group, women seat, religion, citizenship, EC, etc. it were not noticed in the involvement procedure of the particular class or group. In this sense, it was a big lapse of the amendment. However, who gave their suggestions and recommendations also did not consider in clause, especially, some sensitive issue of fundamental rights and public related importance.

- The 15th Amendment Bill was absolutely government guided bill for the first time in the Bangladesh history. Mrs. Amina Ahmed, Mr. Kamal Ahmed Majumdar and Mr. Saber Hossin Chowdhury, three MPs from treasury side, brought 07 amendments on the 15th Amendment bill. All of their amendments brought on the Bill were rejected, and they finally cast their vote in favor of the amendment as they were bound to do that as per the legal framework. Table below provides the party-orientation of members of Special Committee on 15th Amendment.

Special Committee Formation on 15th Amendment

Table 7.8
Special Committee on 15th Amendment

Sl. No.	Name of MPs	Position	Name of Party
1	Syeda Sajeda Chowdhury	Chairperson	Awami League
2	Mr. Suranjit Sengupta	Co-Chairperson	Awami League
3	Mr. Amir Hossain Amu	Member	Awami League
4	Mr. Md. Abdur Razzak	Member	Awami League
5	Mr. Tofail Ahmed	Member	Awami League
6	Sheikh Fazlul Karim Selim	Member	Awami League
7	Alhaz Advocate Md. Rahamat Ali	Member	Awami League
8	Mr. Syed Ashraful Islam	Member	Awami League
9	Mr. Md. Fazle Rabbi Miah	Member	Awami League
10	Mr. Rashed Khan Menon	Member	Workers Party
11	Mr. Abdul Matin Khosru	Member	Awami League
12	Mr. Hasanul Haq Inu	Member	Jatiya Samajtantrik Dal
13	Mr. Anisul Islam Mahmud	Member	Jatiya Party
14	Mr. Mohammad Hasan Mahmud	Member	Awami League
15	Begum Shirin Sharmin Chaudhury	Member	Awami League

Source: Special Committee report on 15th Amendment June 08, 2011

Role of the Special Committee in the 15th Amendment

Prime Minister Sheikh Hasina in parliament on July 21, 2010 proposed a special committee for the 15th Constitutional amendment. As per her wish the parliament formed a 15 member's special committee, headed by Syeda Sajeda Chowdhury, Deputy Leader of the Parliament and Suranjit Sengupta, Co-Chairman of the Committee and Chairman, Permanent Standing Committee, Law, Justice and Parliamentary Affairs. Of the 15 member's special committee, 12 members were from veteran and experienced Awami League MPs and one each from Jatiya Party, Workers Party and Jatiya Samajtantrik Dal

(Inu). Mr. Amir Hossain Amu, Mr. Md. Abdur Razzak, Mr. Tofail Ahmed, Sheikh Fazlul Karim Selim, Alhaz Advocate Md. Rahamat Ali, Mr. Syed Ashraful Islam, Mr. Md. Fazle Rabbi Miah, Mr. Rashed Khan Menon, Mr. Abdul Matin Khosru, Mr. Hasanul Haq Inu, Mr. Anisul Islam Mahmud, Mr. Mohammad Hasan Mahmud and Begum Shirin Sharmin Chaudhury were AL MPs. There was no member from main opposition BNP. Though the ruling alliance claimed that they wanted name from the opposition party, but opposition party did not send any name. The BNP was given only a 24-hour period in which to come up with the names of its representatives. More importantly, in such a serious constitutional matter, it was incumbent upon the Leader of the JS to personally approach the Leader of the Opposition either verbally or through a formal letter (Halim, 2012). In this case, no such procedure was followed or courtesy shown. Question was raised with regard to the judicious selection of its chairperson and other members of the committee. The chairperson of the committee should have been someone fully cognizant of legal realities and armed with constitutional expertise (The Daily Star, Ibid). The special committee spent about 11 months with 27 sittings. They met former three Chief Justices, eleven senior advocates and constitutional experts, 18 prominent intellectuals, 18 newspaper editors, leaders of the different political parties and leaders of the Sector-Commander's Forum. The Commanders' submitted written recommendations to the committee. Most of the experts and intellectual citizens recommended that the main opposition political party leaders should participate in the amendment. They also argued for keeping the caretaker government system and against Islam as the state religion. But, avoiding their arguments and recommendations the special committee submitted their report to the parliament (Jugantor, July 1, 2011). But the report did not say anything about the substance of these expert opinions and whether opinions of all these experts were considered or not. Besides, opinions from political parties, a group of experts and professionals were taken. It is contended that the committee finalized its report without incorporating all recommendations given to them or explaining the reasons for exclusion which suggested that the amendments were essentially based on partisan thought and articulated a divisive line of politics (The Daily Jugantor, July 01, 2011). Though, the Prime Minister said that they would follow the expert opinion to the amendment, however, the special committee did not take any opinion from the general people. The following section discussed seven categories of views called on and given their opinion with the special committee.

Firstly, the special committee for 15th Amendment invited five former Chief Justices for their opinion to amend the constitution. Out of five, three former Chief Justices met with the special committee. Justice Kamal Uddin Hossain and Justice Muhammad Habibur Rahman did not meet with special committee and Justice Mostofa Kamal, Justice Md. Fazlul Karim and Justice Md. Tafazzal Islam met with the special committee (see Appendix, 11: A). From the list who met with the SC, it is also indicated that pro-government and their minded individuals did not miss the sitting (see Appendix, 11: B). On the other hand pro-opposition and their minded individuals did not meet with the SC.

Secondly, the special committee for 15th Amendment invited 13 eminent citizens of the country who were mostly of law profession. Out of 13, 10 prominent law and constitutional experts met with the special committee. T. H. Khan, Barrister Rokon Uddin Mahmud and Barrister Rabeya Bhuiyan did not meet with the committee. Justice Sayed Amirul Islam, Dr. Kamal Hossain, Barrister Amirul Islam, Mr. Mahbube Alam, Barrister Rafiq-Ul Haque, Mr. Mahmudul Islam, Mr. Azmalul Hossain QC, Mr. Toufiq Newaz, Dr. M. Jahir and Sheikh Fazle Noor Taposh met with the committee and gave their recommendations. One thing noted that the pro-BNP lawyers and experts did not meet with the special committee.

Thirdly, the special committee invited nine main political parties of the country. Out of 9, 3 parties' leaders did not come and deliver their recommendations before the committee. The main opposition party, BNP and its alliances Bangladesh Jatiya Party (BJP) and Liberal Democratic Party (LDP) were also invited, but they did not come to meet with special committee. The ruling Awami League and most of its alliances met with the committee. From Awami League including its President, Prime Minister Sheikh Hasina and 13 others Senior Ministers, MPs, Presidium Members, Advisors, Prime Minister's Advisors and Joint Secretary met with the committee. The Jatiya Party, big alliance to the government came with its Chairman and 8 other senior leaders including General Secretary, MPs, Presidium Members and former Ministers; Jatiya Samajtantrik Dal (JSD) came with its Secretary General, MPs and senior leaders. The Workers Party sent 3 senior leaders and MPs with its Secretary General. It is noted that the Chief of Workers Party and JSD, also member of the special committee formed for the 15th Amendment. Democratic Party of Bangladesh came with its President and General Secretary and other four senior

leaders. Bangladesh National Awami Party (NAP) leaders came with its Secretary General and Organizing Secretary and other two senior leaders (see Appendix, 11: C).

Participation of the Civil Society and Eminent Citizens

The Special Committee invited 26 eminent citizens of the country. Among them, there were civil society members, academics, writers and poets, columnists, economists, feminists, former advisors of the caretaker government, researchers and prominent journalists. Out of 26, 18 distinguished citizens met with special committee. Dr. Anisuzzaman, Professor Muzaffar Ahmad, Mr. Iqbal Sobhan Choudhury, Begum Selina Hossain, Professor Emajuddin Ahmed, Professor M. Maniruzzaman Mia, Dr. Ajoy Roy, Mahfuzullah did not meet with the committee. And Prof. Kabir Chowdhury, Mr. Rehman Sobhan, Dr. Anisuzzaman, Prof. Dr. A A M S Arefin Siddique, Sayed Shamsul Haque, Mr. A B M Musa, Prof. Rafiqul Islam, Sayed Abul Maksud, Mr. Zillur Rahman Siddique, Professor Asif Nazrul, Mr. Shariar Kabir, Mr. Muntasir Mamun, Dr. Mizanur Rahman, Adv. Sultana Kamal, Dr. Davopriyo Bhattacharya, Akbar Ali Khan, Mr. M. Hafizuddin Khan and Mr. A S M Shahjahan met with the special committee (see Appendix, 11: D). It is observed that most of the BNP leaders were invited, but they did not attend the committee and pro-Awami League stalwarts met with the committee.

Fifthly, the special committee for 15th Amendment invited 25 of the top Editors of Dailies of the country. Out of 25 editors invited by special committee, 7 editors are Anwar Hossain of Daily Ittifaq, Mohammad Rafiqul Amin Daily Destiny, Syed Hossain Choudhury of Daily Jai Jai Din, Mahbubul Alam of the Independent, Altamash Kabir of Daily Sangbad, Rezwan Siddiqui of Daily Din Kal and A. K. M. Belayet Hossain of Daily Vorer Dak did not come. On the other hand, Professor Dr. Syed Anwar Husain of the Daily Sun, Alamgir Mohiuddin of the Daily Naya Diganta, Motiur Rahman of the Prothom-Alo, Atiqullah Khan Masud of the Daily Janokantha, Naimul Islam Khan of the Daily Amader Shomoy, Mahmudur Rahman of Daily Amar Desh, Abed Khan of Daily Kaler Kantha, Riazuddin Ahmed of the News Today, Shahajahan Sarder of Bangladesh Protidin, Shamol Dattya of Daily Vorer Kagoj, A. M. M. Bahauddin of Daily Inqilab, Mahfuz Anam of the Daily Star, Salma Islam of Daily Jugantor, Motiur Rahman Choudhury of Daily Manabjamin, Golam Sarwar of Daily Samakal, Nurul Kabir of Daily New Age, A. H. M. Moazzem Hossain of the Financial Express, Mizanur Rahman Mizan of Daily Khabor met with the special committee (see Appendix, 11: E).

And, finally the special committee invited members of the sectors commanders' forum for their opinion. From the sector commanders Air-vice Marshal (Retd.) A. K. Khandokar, Major General K. M. Safiullah, Lt. Col. Abu Osman Chowdhury (Retd.), Lt. General M. Harun-Or-Rashid, Mr. Sayed Rezaul Hayet, Col. (Dr.) Shamsul Alam (Rted.), Mr. Md. Nurul Alam, Mr. Anawarul Alam and Mr. M. Hamid met with the committee and gave their opinion.

Though the special committee passed 11 months with its high-profile members and met with different classes and groups; and finally, no recommendations from the intellectuals' opinion were taken. Even from the backbenchers; the Grand Alliance did not participate without casting vote in favor of the amendment. This is the first instance of civil society's participation in the public hearing on constitutional amendment (see Appendices, 11: F). Table below provides a summary of MPs amendments to the 15th Amendment Bill.

Table 7.9
MPs' Amendment on 15th Amendment Bill

SI No.	Name of the Parliament Member	Clause-wise Amendment	Number of Amendments
1	Mr. Rashed Khan Menon (Workers Party of Bangladesh)	Clause 2:1, Clause 4:1, Clause 6:1, Clause 14:1, Clause 15:2, Clause 16:1	Total 7 Amendments
2	Mr. Hasanul Haq Inu (Jatiya Samajtantrik Dal)	Clause 2:1, Clause 4:1, Clause 6:1, Clause 14:1, Clause 16:1	Total 5 Amendments
3	Shah Jikrul Ahmed (Jatiya Samajtantrik Dal)	Clause 2:1, Clause 4:1, Clause 6:1, Clause 14:1, Clause 16:1	Total 5 Amendments
4	Mrs. Amina Ahmed (Awami League, Women Seat 23)	Clause 2:1, Clause 4:1, Clause 6:1, Clause 16:1	Total 4 Amendments
5	Mr. Fazle Hossain Badsha (Workers Party of Bangladesh)	Clause 2:1, Clause 4:1, Clause 6:1,	Total 4 Amendments

		Clause 16:1	
6	Mr. Kamal Ahmed Majumder (Awami League)	Clause 2:1	Total 1 Amendment
7	Mr. Mayeen Uddin Khan Badal (Jatiya Samajtantrik Dal)	Clause 2:1, Clause 3:1, Clause 4:1, Clause 5:1, Clause 6:1, Clause 7:1, Clause 16:1, Clause 21:1, Clause 23:1, Clause 27:1, Clause 31:1, Clause 42:1, Clause 44:1, Clause 51:1	Total 14 Amendments
8	Mohammad Fazlul Azim (Independent)	Clause 2:1, Clause 3:1, Clause 4:2, Clause 6:1, Clause 7:1, Clause 9:2, Clause 11:1, Clause 12:1, Clause 17:1, Clause 20:1, Clause 21:1, Clause 22:1, Clause 24:1, Clause 25:1, Clause 26:1, Clause 31:3, Clause 42:1, Clause 47:1, Clause 48:1	Total 23 Amendments
9	Mr. Saber Hossain Chowdhury (Awami League)	Clause 12:2	Total 2 Amendments

Source: Speaker's speech on 15th Amendment

Participation by MPs in Amendments

From the above table 7.9, it is evident that 9 MPs brought 65 amendments on the 27 clauses of the 15th Amendment. And these 9 MPs participated in the debate, discussion

and proceedings in the House during the time when the Bill was placed for passing.

Clause-wise:

Rashed Khan Menon brought 07 amendments. He had been given only 06 minutes for his proposal by the speaker. He brought amendment on religion and Bengalee nationality related issues. He wanted firstly abolishment of Clause: 2 of the Bill that was “Bismillahir Rahmanir Rahim”. He sought for back to 1972’s Constitution. He also brought and said about state religion as Islam and told, the status should be abolished and about CHT. However, Menon was a member of Special Committee and finally though all amendments brought by Menon were rejected through the “Yes and No” vote of the J. He cast his vote in favor of the amendment. It is the politics of Bangladesh.

Mr. Hasanul Haq Inu brought 05 amendments. He was also member of the 15 members’ special committee constituted for the 15th Amendment. He said that as a member of the Special Committee he did not agree with some issues though he brought amendment. He sought in his speech back to the 1972’s Constitution. He said that “Sangsad is the epicenter of politics”. So he wanted to make clear his opinion and views before the MPs and appealed to the speaker to consider his amendment, but, all were rejected by parliament vote. He brought amendment on Clause: 2, 4, and 6 (2), which are to abolish Bismillahir Rahmair Rahim, to reinstate Bangalee or Bangladeshi Nationality. In his speech he acknowledged his party was a partner of Grand Alliance and would oblige of any decision on his amendment which were rejected and he also casted his vote in favor of the 15th Amendment.

Shah Jikrul Ahmed brought only 05 amendments. He also brought amendments on the same issues as to his party leader Inu on religion and nationality related issues those were not exceptional; though his amendments were rejected; he cast his vote in favor of the amendment. He talked 03 minutes on his amendments. He also sought for to be written; “Allah is Almighty”; and “Islam is the majority persons’ religion of the Republic.”

Mrs. Amina Ahmed brought 04 amendments. She talked for 03 minutes. She also brought almost the same issues of religion and nationality. She was an Awami League MP and brought amendments on government initiated bill; it was also exceptional case of this amendment and the politics in Bangladesh. Three ruling AL’s MPs brought amendments which were not seen before. No amendment brought by MP Amina Ahmed was considered; rather all were rejected as the system of Sangsad procedure through voting.

Mr. Fazle Hossain Badsha an MP of Bangladesh WP, brought 04 amendments in the same way as his party chief Menon brought amendment about religion and nationality. If we would look into their clause and speech, one could say that these amendments were party agenda more than personal view. He talked on his amendment within 3.5 minutes.

Mr. Kamal Ahmed Majumder brought 01 amendment; but he was exceptional as he thanked PM for not changing the Clause: 2; that means **Bismillahir Rahmanir Rahim** existing at the top of the constitution of Bangladesh and he proposed that after its meaning, there should be added words like, “**Allah is Almighty**”.

Mr. Mayeen Uddin Khan Badal brought 14 amendments. Honorable MP Mayeen Uddin Khan Badal in his amendment speech, firmly said,

“Mr. Speaker today is a historic day. And almost the die is cast.” He acknowledged that they were the responsible as per his Sangsad speech, “We are in the same boat brother.” What he meant by his statement, he may want to say whatever amendment they brought did not matter the amendment was going to be passed. In his 10 minutes speech at the beginning, he expressed not only his unhappiness in his language, but also many of his fellow MPs did not express their mind’s secret language for various reasons, one reason may be Article-70 and another may be the backbenchers’ loyalty in front of the top political leader; for the backbenchers for lack of many reasons, these also put a bar on the way to democratization process of the country.

So, their role was limited to do changing, amending or adding anything from the bill. What the top political personality will desire that will be happened. As ruling MP Kamal Ahmed Majumdar thanked PM for keeping “Bismillahir Rahmanir Rahim”; but, PM was not part of the Special Committee or Scrutiny Committee; here she expressed her opinion also as AL chief. So it was clearly indicated that such kind of big Amendment only possible, if the top political personality desired that happened, whatever the Bismillah be to exist or to be abolished, acknowledge state religion or not, keeping of CTG or abolish, etc. all depends on the top political personality’s decision; not on consensus between the ruling party and the nation, the opposition parties or even member of alliance or internal backbenchers opinion. However, from the part of Grand alliance, Mr. Moyeen Uddin Khan Badal, MP of WP of Bangladesh, brought the highest number of amendments, 14 clauses; he also intended/expressed intention on amendment of religion, nationality, minority, security, and ethnic group related clauses.

Mohammad Fazlul Azim, only one Independent MP of the 9th JS, brought 23 amendments. He was only MP who cast his vote against the amendment and walked out from the JS before the time of Law Minister's speech over the report of 15th Amendment for not extending time for more arguments he might deliver. Though, he brought the highest number of amendments on the 15th Amendment, he expressed much emphasis on not to abolish the CTG and he upheld its consequences; and after all those happened. He said in his speech during the passing time of 15th Amendment, the nation is divided along the issue of CTG and sought for taking the public opinion through referendum in this regard. According to him, the new change of words and philosophy like the utopian thought are not adjustable with our political culture and system.

He said to Mr. Speaker

“At most of the amendments brought by the 15th Amendment are solved cases. The change of preamble and fundamental principles of the constitution, citizenship and amendment of the nationalism were not necessary. He also added in his speech. For “push up into power by force”, i.e., Martial-Law, we the politicians are entirely responsible and, the Sangsad that we witnessed many martial-laws and unconstitutional government from the time of Pakistan period to last “one eleven”. He cited in Sangsad “We witnessed Martial-Law of Ayub Khan, Martial Law of Yahya Khan of Pakistan Period, who we are doing politics from that time. What we observed in the beginning of Bangladesh, taking over power by Khandakar Mustaq in 1975 and other unconstitutional governments and military rulers, all these happened before us because of the conflicting relationship among the political parties and politicians. Another reason was the politicians' failure to reach political consensus on matters of national issues. He told the Sangsad “We need obviously political consensus more than the amendment. There are many laws already we have, but these are “theoretical concept” and by these laws, we did not get benefit and those will not help us, rather we need along with people political consensus. Two major parties' decision is the main decision.”

The MP indicated people's participation is needed for political emancipation and ensuring accountable government.

Mr. Saber Hossain Chowdhury brought 02 amendments. But he did not present his first amendment on citizenship, he presented on Clause 12, on protection and improvement of environment and bio-diversity. He brought amendments, added with this Clause, like hill-related protection etc. But unlike all clause-wise amendments, his amendment was not accepted, but he cast his vote in favor of the amendment. However, the amendments brought by the ruling party's MPs, two parties' MPs of Grand Alliance and an independent MP, were not considered in the amendment.

From among these 09 MPs, three of AL MPs brought amendments of their party initiated bill that is absolutely exceptional, though there has been a legal bar as party's MPs may not go against their party. They brought 07 amendments on 06 separate clauses of 02, 04, 06, 12 and 16. Yet, it was their party initiated bill and they also participated with their amendments, but finally, they voted in favor of the 15th Amendment, in spite of their amendments were not effective or actionable. JSD-(Inu)'s 3 MPs, namely, Hasanul Haq Inu, Shah Jikrul Ahmed and Mayeen Uddin Khan Badal brought 24 amendments on clauses 02, 03, 04, 05, 06, 07, 14, 16, 21, 23, 27, 31, 42, 44, 47 and 51, but all of these amendments were rejected by Sangsad. And independent MPs brought 23 amendments on 19 clauses. The table below is a summary of clause-wise amendments on 15th Amendment.

Table 7.10

Clause-wise Amendments by MPs on 15th Amendment

Sl. No.	Clause Number	Name of MPs									Total amendments	Participated Number of MPs
		Mr. Rashed Khan Menon	Mr. Hasanul Haq Inu	Shah Jikrul Ahmed	Mrs. Amina Ahmed	Mr. Fazle Hossain Badsha	Mr. Kamal Ahmed Majumder	Mr. Mayeen Uddin Khan Badal	Mohammad Fazlul Azim	Mr. Saber Hossain Chowdhury		
1.	Clause 2	1	1	1	1	1	1	1	1	-	08	08
2.	Clause 3	-	-	-	-	-	-	1	1	-	02	02
3.	Clause 4	1	1	1	1	1	-	1	2	-	08	07
4.	Clause 5	-	-	-	-	-	-	1	-	-	01	01
5.	Clause 6	1	1	1	1	1	-	1	1	-	07	07
6.	Clause 7	-	-	-	-	-	-	1	1	-	02	02
7.	Clause 9	-	-	-	-	-	-	-	2	-	02	01
8.	Clause 11	-	-	-	-	-	-	-	1	-	01	01
9.	Clause 12	-	-	-	-	-	-	-	1	2	03	02
10.	Clause 14	1	1	1	-	-	-	-	-	-	03	03
11.	Clause 15	2	-	-	-	-	-	-	-	-	02	01
12.	Clause 16	1	1	1	1	1	-	1	-	-	06	06
13.	Clause 17	-	-	-	-	-	-	-	1	-	01	01
14.	Clause 20	-	-	-	-	-	-	-	1	-	01	01
15.	Clause 21	-	-	-	-	-	-	1	1	-	02	02
16.	Clause 22	-	-	-	-	-	-	-	1	-	01	01
17.	Clause 23	-	-	-	-	-	-	1	-	-	01	01
18.	Clause 24	-	-	-	-	-	-	-	1	-	01	01
19.	Clause 25	-	-	-	-	-	-	-	1	-	01	01
20.	Clause 26	-	-	-	-	-	-	-	1	-	01	01
21.	Clause 27	-	-	-	-	-	-	1	-	-	01	01
22.	Clause 31	-	-	-	-	-	-	1	3	-	04	02
23.	Clause 42	-	-	-	-	-	-	1	1	-	02	02
24.	Clause 44	-	-	-	-	-	-	1	-	-	01	01
25.	Clause 47	-	-	-	-	-	-	-	1	-	01	01
26.	Clause 48	-	-	-	-	-	-	-	1	-	01	01
27.	Clause 51	-	-	-	-	-	-	1	-	-	01	01
	Number of amendments of MPs	07	05	05	04	04	01	14	23	02	65	59

Source: Speaker's report in JS on 15th Amendment, June 30, 2011, Prepared by the researcher

The MPs Participation in Amendments

Scrutinizing the clause-wise amendment brought by MPs on 15th Amendment in table - 7.10 indicated that, 9 MPs brought 65 amendments on 27 Clauses: 02, 03, 04, 05, 06, 07, 09, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 31, 42, 44, 47, 48 and 51; and the

rest 24 clauses did not come under any amendment or participation of MPs. Out of 51 clauses or recommendations suggested by Special Committee for the 15th Amendment and another additional 04 Schedules added by Permanent Parliamentary Standing Committee (PPSC)/Scrutiny Committee of Law, Justice and Parliamentary Affairs, only 27 clauses came under amendment participated by 09 MPs. Amendment brought on clause-wise was 01 to 08 per clause. One thing was noted that many veteran MPs from AL did not bring any amendment on any clause considered for the 15th Amendment. Table 7.10 presents that the highest numbers of amendments were 23 brought by an independent MP, Mohammad Fazlul Azim (Noakhali-06) on 19 clauses. Single amendment brought by AL MP Kamal Ahmed Majumdar was on Clause 02. A prominent MP, Mr. Mayeen Uddin Khan Badal brought 14 amendments on 14 clauses. The chief of WP and JSD-(Inu) brought 07 and 05 amendments on 06 and 05 clauses respectively. The highest numbers of participation's of 08 MPs was on clause – 02 and 04, by almost all 08 MPs out of 09 MPs, who brought amendment on clause – wise, except AL MP, Mr. Saber Hossain Chowdhury. The second highest was 07 MPs, participated on clause 06 out of 09 MPs. 06 MPs participated on clause 16 by bringing amendment on it. The lowest number of amendment only 01 brought on 15 clauses participated by 08 MPs individually. On average, 02 MPs participated on clause 06 and only 03 MPs participated on 01 Clause. Only 04 amendments brought on clause 31 by 02 MPs participated (Speaker's Reports in 9th JS on 15th Amendment at June 02, 2011).

The Participation of MPs in the Second Reading

This study examines how the MPs play their role in the law- making process. Now in this, section, it will be examined how much time 09 MPs spent in their discussion on the time of amendment passing. Of the total 345 MPs, only 292 MPs participated in the voting system of the amendment and only 9 MPs brought 65 amendments on 27 clauses. Time allotted for these 9 MPs for their 65 amendments on 27 clauses is another issue to be examined, by the table below.

Table 7.11
Time Spent by MPs on 15th Amendment Bill

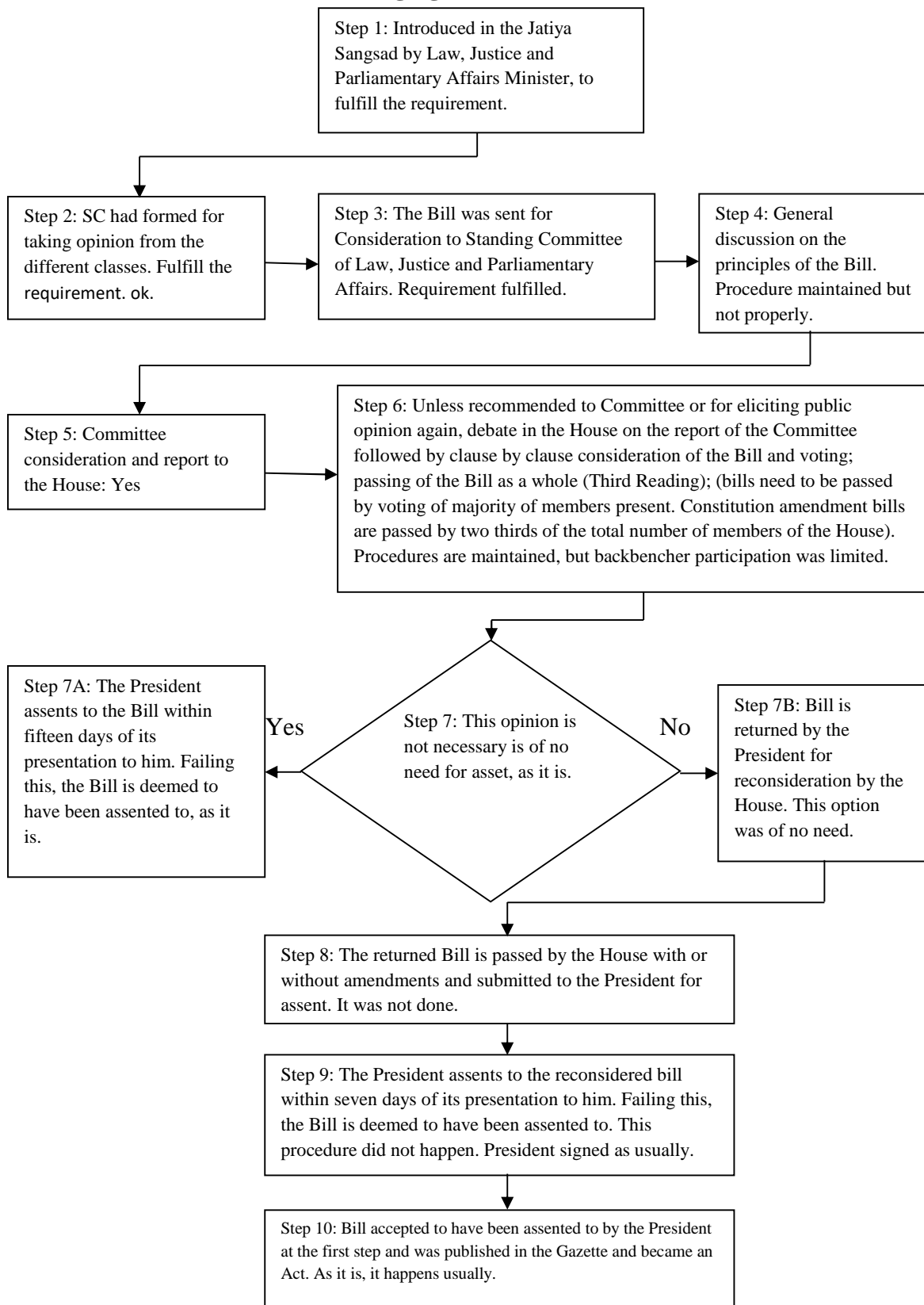
Sl. No.	Name of the Participated MPs and their Party	Given time by Speaker for Discussion on their amendments			Per MP Total Time in Minute (m)
		1 st , Allowed Time	2 nd , Time Increased	3 rd , Time Increased	
1.	Mr. Rashed Khan Menon (Workers Party of Bangladesh)	4.00 m	1.00 m	1.00 m	6.00 m
2.	Mr. Hasanul Haq Inu (Jatiya Samajtantrik Dal)	4.00 m	2.00 m	-	6.00 m
3.	Shah Jikrul Ahmed (Jatiya Samajtantrik Dal)	3.00 m	-	-	3.00 m
4.	Mrs. Amina Ahmed (AL, Women Seat 23)	2.00 m	1.00 m	-	3.00 m
5.	Mr. Fazle Hossain Badsha (Workers Party of Bangladesh)	3.00 m	0.50 m	-	3.50 m
6.	Mr. Kamal Ahmed Majumder (AL)	1.50 m	-	-	1.50 m
7.	Mr. Mayeen Uddin Khan Badal (Jatiya Samajtantrik Dal)	7.00 m	1.00 m	1.00 m + 1.00 m	10.00 m
8.	Mohammad Fazlul Azim (Independent)	10.00 m	1.00 m	-	11.00 m
9.	Mr. Saber Hossain Chowdhury (AL)	2.00 m	1.00 m	-	3.00 m
Total Time	09 MPs				47 Minutes

Source: Speaker's given time on the Bill of the Constitution (15th Amendment Bill), 2011, dated: 30/06/2011.

One positive aspect of the 15th Amendment was that the MPs who brought amendments on the 15th Amendment, they participated in the process, i.e., in the debate, discussion, and voting in favor or against when the Bill was passing. From the above table 7.11, it is observable that 9 MPs were given only 47 minutes for discussion on their 65 amendments on 27 clauses, on average an MP was given the time only 5 minutes and 22 seconds. And if it is considered on per clause, it stands a bit more than 43 seconds time for discussion over each amendment; they brought on this Constitutional Amendment (43.38 seconds per Clause). For such a significant amendment this amount of time for debate and discussion on the clauses was very limited.

The figure below (7.1) is graphical presentation of 15th Amendment Process.

Figure 7.1
Process of bringing 15th Amendment in JS



Source: Bangladesh Law Ministry Website.

The 15th Amendment seems to be politically motivated. The Prime Minister proposed special committee of 15 members; all members were from the Grand Alliance. Though the special committee with their 27 sittings, met with law and constitutional experts, civil society members, politicians, former chief justices, distinguished citizens and sector commanders forum, but their report was made with the direction of the top executive, i.e., the special committee did not take any suggestions and recommendations from their sittings. So, it was clearly indicated that the amendment was outcome of the political desire. The special feature of this amendment was that for the first time 3 ruling MPs and 5 their alliance MPs brought amendments. According to the daily's report, the committee changed their recommendations and activities after they met with the Prime Minister on May 30, 2011. Many changes were brought in this amendment, which are already solved cases. According to civil society members and experts on the constitution and law, many unnecessary amendments, changes, insertions, inclusions and abolitions were brought, which created the political environment unstable.

In the 15th amendment after the committee presented their report to the house, it was sent to scrutiny committee for two weeks, but the scrutiny committee submitted its report without any correction, rather included 4 new Schedules. Within 5 days, the law was passed by the parliament. This was indicated that the law-making process was not pro-people and participatory. Though one of the participant MPs demanded for referendum as a measurement of public opinion and other MPs demanded many changes in this amendment, all these demands were rejected by the law minister. Being asked by the speaker, whether he had taken any amendment or change brought by the honorable MPs, the Minister replied that there was no need for any change. The law was passed unchanged as proposed by the special committee and approved by the scrutiny committee. Even there was no special session, special day or time for this amendment in the budget session in which the law was passed.

Relations between Treasury and Opposition on 15th Amendment

Immediately after the 15th Amendment was proposed, the Prime Minister, in the 9th JS wanted names from the main opposition party to include in the Special Committee for 15th Amendment, and, even after formation of the committee, they were invited through the letter. Leader of the Opposition and her selected top leaders attended in special committee meeting to discuss as well as give their feedback and reaction about the amendment, but

the main opposition party was neither included in special committee, nor invited to attend the committee sittings. As discussed before, the special committee was constituted by 04 representative parties of the 9th Parliament and those were the alliance of the Grand Alliance. No opposition or independent MP was included in the special committee. So, it was clear that the special committee was one-sided. Without the opposition parties' participation in any stage, the amendment was passed quickly. Such an important amendment which amended one-third of the constitution had been done without any kind of response from the opposition alliance. Though the special committee invited 09 registered political parties from the Sangsad or out of Sangsad, only 06 attended with the special committee sittings, the rest three are: BNP, Bangladesh Jatiya Party (BJP –Monju) and LDP, who did not respond to the appeal of selection committee.

The 15th Amendment and Democratization

The 9th Jatiya Sangsad was the witness of many changes in the country. In the 9th Jatiya Sangsad, in spite of Article 70, many ruling party's MPs participated in the important decision making. The 9th parliament introduced digital display, for that the MPs could easily know daily agenda. Introducing the new system of automatic time measurement, there had been reduced criticisms against other parties' leaders, unnecessary talks and praise of own party leaders. For the first time, chief of parliamentary standing committee was taken from the opposition party. Moreover average attendance was satisfactory compared to previous Jatiya Sangsads.

On the other hand, the laws were made swiftly. In the law-making process participation was poor, even for the women MPs. There was no vital issue for discussion in the parliament, though the constitutional obligation prevails. One thing noted that in Bangladesh JS, Minister was member of the concerned permanent standing committee which is absolute violation of the parliamentary rules and procedure 188(2). Though, the political commitment was before the 9th parliament election that the deputy speaker would be appointed from the opposition party which was not implemented. Another political commitment was that the ruling MPs and leaders would disclose their wealth statement, which was also not seen. Walkout, poor participation of MPs in the law- making process, quorum crises, vile language, criticism of the opposition, praise of the top political leaders of their own parties were the common features of the 9th parliament. So, in a sense, the role of parliament in democratization was not optimal.

Public Perception of 15th Amendment

The 15th Amendment brought fundamental changes in the Constitution and made many Articles unchangeable for future. But the government did not take any mandate from the people of Bangladesh. Commitment to or intention of such major changes was neither in their 2008 Election Manifesto, nor was any referendum held prior to the Amendment initiated. Kamal Hossain, a jurist and one of the framers of the country's first Constitution, said at a roundtable discussion organized by Sushashoner Jonno Nagorik (SUJON) at the Jatiya Press Club, "the 15th Amendment was made hurriedly for their (Awami League) own interest. It can't be accepted. Did they (government) seek people's mandate to do this? Did the country's 16 crore people vote them knowing about the Amendment?" Kamal Hossain added that the 15th Amendment contradicted the spirit of the Constitution (interviewed with Hossain, April 27, 2016).

The amendment seems to have reflected the will of the chief executive. Thus, the legitimacy of the 15th Amendment is highly questionable." He blamed the 15th Amendment of the Constitution for the creation of the country's ongoing unrest and political deadlock (SUJON, Ibid). The committee's initiative was positive, but such initiatives had turned out to be "eyewash" in the past. Mr. Hossain also said that – all stakeholders gave their opinions to the parliamentary committee on the 15th amendment to the constitution made in 2011, but those suggestions were not considered. He added "We will give proposal, but I don't know whether those would be taken into consideration" (The Daily Star, January 30, 2017: 02). The bill was passed with huge margin of 291 to 1 votes. It was signed by the President on 3rd July, 2011. The bill with so many fundamental changes in the Constitution was passed in parliament ignoring protests by the main opposition, other political parties and various civil society organizations. The process of passing amendment was made through two occasions of division votes. 291 MPs voted in favour of the bill and only 1 MP voted against the bill (Halim, 2012). This development had put the nation in deep crisis and derailed democracy in Bangladesh (The Daily Prothom Alo, July 12, 2011). Article 7B amended by the 15th Amendment, makes about one- third of our Constitution (more than 50 Articles) unchangeable. This means even if a future Parliament wants to fortify the Constitution and strengthen people's fundamental rights, it cannot do so as the 15th Amendment made all the provisions stated in the fundamental rights and fundamental state principles unchangeable. It is argued by many that the Constitution, in certain respects, has become unworkable. Can a Parliament bind

future Parliaments? Is the 9th Parliament the last and final Parliament? These are the fundamental and legitimate questions (Nazir Ahmed is an UK-based legal expert, analyst, writer and author, e-mail: ahmedlaw2002@yahoo.co.uk). However, according to Islam, “No Parliament can bind the successor Parliament.” The report has 23 paragraphs in its background. 3rd and 9th paragraph place emphasis on the killing of Sheikh Mujib and unconstitutional takeover by military dictators and the resultant effects on politics, but it do not say anything on the 4th amendment, its background and effects on Bangladesh politics. Paragraph 4 of the report states that the Amendment of the Constitution was necessary because of recent judgment by the Supreme Court on declaring Constitution Amendment illegal and unconstitutional (This contention by committee Chairperson is not tenable. By judicial declaration or judgment the Constitution becomes automatically amended on the day of the judgment and no formal amendment by the parliament is needed (Halim, 2012:69). Para 11 of the report speaks of judgment on 13th Amendment declaring CTG unconstitutional and as such amendment of the Constitution was necessary (Ibid, 70). Paragraph 11 of the report seems critical on one-eleven incidents and the caretaker government system. It states that caretaker government system is against the concept of democracy although important in the political context of Bangladesh (Ibid). On 30th May, 2011, the Committee met with the Prime Minister resulting in abolishing the caretaker system. The only reason cited by the ruling party for this ‘surprise’ reversal is the Supreme Court’s judgment of early May, 2011, which declared the caretaker system unconstitutional, although the same judgment permitted the government to hold the next two elections under a caretaker government. This report was placed before the parliament on June 8, 2011. Placing the report Sajeda Chowdhury stated that although the CTG system is a reality in the country’s political context, it is certainly against democracy and the Committee was recommending for abolition of CTG in line with the judgment of the apex court (The Daily Star, June 9, 2011).

Third reading

Voting: A total of 291 MPs from the ruling alliance cast their vote in favor of the 15th Amendment Bill, while one independent MP cast his vote against the bill. The opposition BNP boycotted the parliament from the voting. Confrontational relationship between the AL and BNP contributed to the withdrawal of BNP. Two-third majority in the parliament and the compulsion for voting as per Article-70 have shown this absolute voting pattern of the ruling figure.

Private Members' Bill: Only three private member bills were passed in 9th JS. Compared to a total of 268 public bills, this is a negligible amount.

Women's Participation: Two women were members of Special Committee and two participated in the plenary session. They took part in the deliberation involving debate and discussion.

Independent MPs Participation

Grand Alliance MPs voted in favor of the amendment. Only an independent MP, Fazlul Azim cast his vote against the amendment. It may be mentioned that in the 9th JS, 04 independent MPs were elected later 03 MPs joined the ruling party. Fazlul Azim from Noakhali-6, then remained only independent vocal MP in the House and he participated in many law-making process.

Mr. Mohammad Fazlul Azim attended all the stages in the deliberation of the JS. Regarding the amendment, he brought 23 amendments, only 7 of his amendments were considered, even when he delivered at the Second Reading stage, only 10 minutes were allowed for his amendments, and only one additional minute was permitted him for his speech; so by this short time he could not propose all his amendments.

Independent MP, Fazlulul Azim, while delivering his speech said that before this 9th JS many governments got two-thirds majority seats and amended the constitution, and those amendments, they could not save, and “those amendments were not sustainable. Subsequent governments came to power by those amendment”, Mr. Speaker and that happened in this House. He brought amendments and said about “Bismillahir Rahmanir Rahim” and state religion, but again and again he backed the main discussion on CTG issue, and his concern was about the abolishment of the CTG. He said in Sangsad that Mr. Speaker, “the CTG issue is not an issue only, but a very sensitive issue, too”. So, his request to the government through the parliament was at least to keep stop the amendment of CTG issue brought by his fellow MPs. He proposed that this issue be discussed next after the consultation with the opposition and all others political parties. He demanded for referendum for amending this sensitive issue. In his 11-minute presentation, he firmly stated, “who of my fellow MPs do not support here and not agree with me at this time.” They also said in this way what he was saying at the lobby and other places. They may not tell's here. By this statement, it was cleared that though the treasury and its Grand Alliance

all MPs voted in favor or they are bound to do that for the 15th Amendment, they all were not supportive of all issues of the amendment, especially to abolish CTG, religion based issues, etc. At his final stage speech, he mentioned about the CEC appointment, he cited that the CEC himself told that this was not right. He ended his speech appealing to the democratic government to refrain from the amendment and withdraw the bill. And, however, he said that, at any way he could not support the amendment from his side. Finally, his suggestions were brushed aside.

Conclusion

From the above discussion, we may conclude that the 9th parliaments paved the way for a democratic transition from the ‘military-backed’ caretaker government (2007-2008). The new government brought 15th amendment to the Constitution which included massive changes in the constitution with the intention of restoring 1972 Constitution. These changes have signaled confused journey towards democratization: on the one hand, legal restrictions on the military-take over may have soothing impact in the future; the keeping of religion Islam as the state religion cast a further shadow, on the other. Arguably, going back to the 1972 constitution may be seen either as national interest or party interest. One can fairly accuse the amendment tinged with partisan bias as this amendment abolished the CTG, even though the members of the special committee unanimously suggested the provision for CTG stay as it is. In the process of this amendment, the ruling AL-led alliance single-handedly brought this amendment with their 2/3 majority in the parliament. Though the opposition BNP was invited to join, it did not do so. It is to be noted that the lone independent member in the parliament participated in the debate. He also cast his vote against the amendment. It may be argued that the voting showed exclusive dominance of the ruling alliance. The 15th amendment establishes the fact if the ruling party wants, it can amend the constitution without the cooperation of the opposition.

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Chapter Eight

Overview, Comparison, Findings and Analyses

Introduction

In this penultimate chapter, I have made an overview of all the chapters and a summary of all facts. Then a comparative discussion has been made covering the 5th to the 9th Sangsads which subsequently brought five amendments to the Bangladesh Constitution (11th to the 15th amendments). Having carried out a comparative analysis, the findings of the study are presented in light of the adopted analytical framework (See chapter-2). Before I begin the final discussion, I repeat the central question of this research for the convenience of understanding. The central research question of this study is: To what extent has the parliament or JS of Bangladesh contributed to the democratization process through MPs participation in the law-making process? Three hypotheses were set for the research in the introductory chapter, which are as follows with observation of the research:

1. Although the parliament is supposed to play a central role on law-making through participation of the people's representatives, in practice, it has hardly been done so in Bangladesh.
2. Will of the political leaders (party chief and/or the chief executive) has significantly dominated the law-making in the parliament or Jatiya Sangsad.
3. Instead of cooperative and competitive relationship between the ruling and the opposition parties, confrontational relationship exists and has resulted in most cases the 'one-party' dominant participation in the parliament or Jatiya Sangsad.

Overview

The **chapter one** has argued that the role of the JS in the democratization in Bangladesh remains unexplored. So, this research is one of the pioneer studies in Bangladesh. Using primarily qualitative data, the study mainly focuses on law-making in the JS and participation therein by the people's representatives. The study covers the time-frame from 1991 to 2013, considered the era of 'representative democracy' (Riaz, 2013:1), except two years of Fakhruddin-led CTG, over five parliaments including very short-lived one, the 6th JS and five amendments passed through different JSs, in the path of the democratic

journey of Bangladesh. The main argument of the thesis is: Participation of MPs in the law-making of JS in Bangladesh has remained token in the law-making process.

Effective law-making in parliament invariably depends on the participation of the people's representatives in the law-making process. MPs as representatives of the people participate in this process through debates/ discussion/ deliberation. In the ultimate analysis, the successful law-making in the parliament is contingent upon the functioning of the factors in varying degrees: Will of the political leaders and relations between the ruling and the opposition parties. However, the importance of a proper legal framework cannot be underestimated in the context of Bangladesh.

The **second chapter** deals with developing a theoretical framework. In democratization, making of new laws have formative impact on the transition towards democratic consolidation. Effective law-making in parliament invariably depends on the participation of the people's representatives in the law-making process. In the ultimate analysis, the successful law-making in the parliament is contingent upon the factors as stated above.

The discussion on **chapter three** reveals that Bangladesh, after independence, faced two important steps towards democratization and marked the stage for development of democracy. The 1972 Constitution founded the formal-legal basis of democratization. Later on, the new democratic government had been able to manage its legitimacy through holding election in 1973. Besides these two landmark developments in favour of strengthening democracy, the practice remained unsteady and unsustainable. Military intervention, lack of will of the political leaders, the absence of strong and vibrant opposition, too much dominance of the executive in parliamentary functions and inadequate practice of legal framework have greatly undermined the participation of the MPs in the law-making process of the Bangladesh parliament. Although there were visible practice of discussion and debate, little time was invested in such practices. On the whole, the executive dominance in the garb of civil-military power has dominated the parliamentary practices throughout the period for one and a half decades, from 1975 to 1991. Finally, it may be said that the consolidated expression of will for democracy by the political leaders and the masses as opposed to the military rule opened a new vista for democratic transition since 1991.

In chapter four analyses reveal that the 12th amendment has been the results of consensus amongst the political parties. With this consensus, the country had relieved from the grip of prolonged authoritarian and / or military rule. A new phase of democratization began with the introduction of parliamentary democracy in 1991. The 12th amendment involved every stages of law-making. All the opposition parties actively involved in the process of deliberations inclusive of debates and discussion. It may be noted that pre-parliament consensus led to this grand consensus amongst the parties. But the mistrust soon developed amongst the parties when the opposition questioned the free and fair elections under the ruling party. As a result, consensus amongst the parties fell by the wayside.

The chapter five focuses on 5th Jatiya Sangsad elections in 1991 under an interim caretaker government and the liberal democratic process started and gained the confidence of electoral system among the people of Bangladesh. In this regime the opposition parties in the JS began to create pressure on the government for the issue of caretaker government under which the future parliament elections would be held. The ruling BNP government did not pay heed timely to the demand of the oppositions due to lack of political prudence and understanding between the ruling and the oppositions. It is pertinent to mention here that in a third world county like Bangladesh; where democracy is not strong and accountable, the ruling parties always try to prolong their regime by any means and they could use government offices for their individual gains. It is remarkable in Bangladesh that the ruling party seems to think that participation of the opposition parties is not necessary and without the opposition in JS it is easy to pass a law that is very catastrophic for MPs participation in lawmaking process. In the context of this circumstance one-sided February 15 election (1996) was held in the face of immense political violence. Thus, the installation of the system for holding national elections under caretaker government by the 6th JS was an important Bangladeshi invention. The system of NPCTG also increased the credibility of the National Jatiya Sangsad Elections. It helped to minimize malpractice and manipulation in national elections. After two years of grave political violence, conflicts and confrontations for the Caretaker Government, the 7th Jatiya Sangsad election was held under the first Constitutional CTG under leadership of Justice Habibur Rahman on June 12, 1996 and the Awami League led by Sheikh Hasina came to power after 21 years. This period of rule is more important than others for various reasons. It passed its full tenure of 5 years which was the first of this kind in the history of Bangladesh. The 7th JS introduced many new rules, procedures, regulations and reforms, and those accelerated the

democratic process of Bangladesh toward consolidation. This regime was vibrant with strong opposition of 157 MPs (47.57%) in the JS which was the highest position compared to all JSs in the parliamentary history of Bangladesh. Even, the opposition seemed not entirely hostile to the ruling party, in this JS. This situation made the ruling party cooperative with the opposition and the opposition was vocal in the parliament in raising their proposal and demand. Some important acts, reforms, rules and procedures took place in this regime and those contributed to promote parliamentary democracy as well as strong parliament, i.e., the executive was made accountable to the JS by introducing Prime Minister's Question Time (PMQT), non-cabinet MP as the head of the parliamentary committee, mandatorily sending the bill to the committee at first in the case of public bill, telecasts of the debate and discussion of JS and broadcasts in the media, etc. These institutional devices were newly invented for promoting the democratization process of Bangladesh toward democratic consolidation. This was the only regime in the political history of Bangladesh that the power handover took place smoothly.

Chapter six considers the process of bringing 14th Amendment to the Constitution, where only the ruling BNP-led 4-party alliance controlled the whole procedure. The Alliance managed to control this due to their two-third majority in the JS fulfilling the requirements for constitutional amendment. The technical majority did not convert into inclusive political will. Nevertheless, the main opposition with 62 seats in the JS was not in a precarious position to give their input into the law-making process. They were invited to join the deliberation in the Parliamentary Standing committee for this Amendment. They were absent, although they gave their amendments on the bill. The opposition seems to have shown half-hearted political will in regard to this amendment. The main opposition abstained from voting. Just as in the Select Committee on the 12th amendment, so the Committee on the 14th Amendment did not include a single woman representative.

By the 14th Amendment, the increase of age limit of judges from 65 to 67 antagonized the main opposition, AL. It claimed that it was their ill motive to make chief of CTG from their own man, namely, KM Hasan who was seemed a BNP loyalist. It was not seen that any prerogative initiative from the government side was taken to solve the crisis to reach the opposition alliance about their right or wrong demand. As the government did not solve the crisis by showing political prudence, however, this issue between the ruling and the opposition alliance led to political chaos and instability. Later on, the political crisis

became acute and as a result, the non-elected military-backed caretaker government came into power and reigned the country for two years. On the whole, the 8th JS failed to make significant impact on the process of democratic transition.

Chapter seven discussed that the 9th parliament paved the way for a democratic transition from the ‘military-backed’ caretaker government of 2007-2008. The new government brought 15th amendment to the Constitution which included massive changes in the constitution with the intention of restoring 1972 Constitution. These changes have signaled confused journey towards democratization, on the one hand, and legal restrictions on the military take-over might have soothing impact in the future; the keeping of ‘Islam as the state religion’ cast a further shadow, on the other. Arguably, going back to the 1972 constitution may be seen to represent either national interest or party interest. One can fairly accuse the amendment tinged with partisan bias, as this amendment abolished the CTG, even though the members of the special committee unanimously suggested the provision for CTG stay as it is. In the process of this amendment, the ruling AL-led alliance brought this amendment with their two-third majority in the parliament. Though the opposition BNP was invited to join in the process for amendment, it did not do so. It is to be noted that the lone independent member in the parliament participated in the debate. He also cast his vote against the amendment. It may be argued that the voting showed exclusive dominance of the ruling alliance. The 15th amendment establishes the fact, if one party wants, it can amend the constitution without the cooperation of the opposition.

From the overview of the above seven chapters, it may be concluded that parliament or the JS has occupied a conspicuous place for democratic transition by enacting new rules, regulations or making new institutions. However, political parties representing the parliament over the 11th, 12th, 13th, 14th and 15th amendments, have shown their lack of sustained commitment to promoting democratization. Lack of consistent will of political leaders and confrontational political relationships between the mainstream parties may have resulted in the fragile democratization process with limited participation of MPs in the law-making process of the parliament.

Comparison of Constitutional Amendments in Bangladesh

Table 8.1

Strength of the Ruling and the Opposition from 5th to 9th JSs

Name of Sangsad	Ruling Party	Ruling Party in Percentage	Opposition/ Independent	Opposition's strength in Percentage	Gaps in %
5 th Sangsad	171	51.82%	159	48.18%	03.64%
6 th Sangsad	308	93.33%	011	3.33%	90.00%
7 th Sangsad	173	52.42%	157	47.57%	04.85%
8 th Sangsad	213*	71.00%	087	29.00%	42.00%
9 th Sangsad	262*	87.33%	038	12.67%	74.66%

Source: Researcher (2016).

*Note: Results were shown without reserved women seats

Table-8.1 points out the gaps between the ruling and the opposition parties in the JS or parliaments since 1991. Nearly half of the MPs (48.18% and 47.57%) in the 5th and 7th JSs initially belonged to different opposition parties showing some kind of balance in partisan composition (Ahmed, 2013:182-83); in contrast, the 8th and the 9th Sangsads lacked adequate opposition representation, 29% and 12.67%, respectively. It may be argued on the basis of the above table, when the gaps in strength between the ruling and the opposition parties are minimal, parliament works in the effective manner. In the 6th JS that was an exceptional case, opposition parties had not participated in elections and it was very short-lived. In the case of 8th and 9th JSs, the gaps in strength between the ruling and the opposition parties are much higher; and these parliaments performed in less effective manner.

Participation of Private Members

According to the Rules of Procedure (RoP), the non-Minister MPs play significant role in raising the Private Members' Bills in the parliament. But there are some provisions of the RoP (stated in the previous chapters) which made the whole process complicated, thus discouraging the private members to table the bill in individual capacity. Individual members have no freedom to go against the party interest. In the previous chapters, it was observed that a few private members' bills were introduced in 5th, 7th, 8th and 9th Sangsads and the rate of passage is insignificant compared with the public bills (814:06). The 5th, the 7th and the 8th Sangsads, each passed one private member bill (Table 8.2), while the 9th Sangsad passed 03 private members bills. In the words of a prominent MP, who had

wanted to raise a private members' bill, was warned by the prime minister as, if he did not abstain from raising the bill, his re-seeking of the nomination would be threatened (Chapter-4). However, this researcher interviewed, Mr. Abdur Rab Chowdhury, MP, (April 27, 2016 at Dhaka), who stated as follows:

He was asked how he brought that bill without government's concern. Mr. Chowdhury replied that as he was the chairman of the CPMBR (Committee on Private Member's Bills and Resolutions), so he did bring the bill at this stage. Otherwise it was impossible to propose such kind of bill in Sangsad by a private member. He further said that when he was castigated by the law minister, finance minister and speaker, he explained that the bill was instead of spending government's money more; rather it would save the government's money. But they did not agree with him at all. Finally, when the high command of the party put pressure on him, he was forced to withdraw his bill.

Normally, MPs are not so venturesome and bold. Like Mr. Chowdhury, a number of MPs in different JSs have had the same experience. In contrast with the government bill raised in the parliament, the number of private member' bill is very insignificant.

Table 8.2
Nature of Bills from 5th to 9th JSs

Name of Sangsad	Number of Sessions	Government's Bills	Private Member's Bills	Total Bills	% of Govt. Bill	% of Private Bill
5 th Sangsad	22	171	01	172	99.42%	0.58%
6 th Sangsad	01	001	00	01	100%	0.00%
7 th Sangsad	23	190	01	191	99.47%	0.53%
8 th Sangsad	23	184	01	185	99.46%	0.54%
9 th Sangsad	18	268	03	271	98.88%	1.12%
Total	87	814	06	820	99.26% (Average)	0.74% (Average)

Source: Jatiya Sangsad Secretariat and Researcher, 2016

Table-8.2 demonstrates that the number of Private Members' Bill compared to the Government Bill is very insignificant. In terms of the percentage, the Private Members' Bill is only the 0.74% of the Government's Bills. The above table shows that the MPs as individuals have little power to present the bills in the parliament. However, several bills introduced in each Sangsad, elected since 1991, awaited long for passing and were also scrutinized by different committees. But finally, remaining bills have been rejected, withdrawn or returned to individual MPs on different grounds mentioned above.

An Overview of Passed Ordinances in JSs

Table 8.3
Ordinances Passed from 5th to 9th JSs

Name of Sangsad	Tenure of JSs		Total working days	Ordinances (passed)
	Normal (in months)	Actual (in months)		
5 th Sangsad	60	56	400	70
6 th Sangsad	60	12 days	4	0
7 th Sangsad	60	60	382	16
8 th Sangsad	60	60	384	06
9 th Sangsad	60	60	418	29

Source: Compiled by the Researcher (2016) from data of Sangsad Secretariat.

The above Table 8.3 presents the erratic nature of the ordinances passed by the parliament. It shows that parliament has a constraint to establish its absolute control over the law-making process. In comparison with a total of 70 ordinances passed in 1991, the average ordinance making in JS has gone down over the years.

The placement of private member's bill is difficult in the parliament, as explained before, due to procedural difficulties in RoP. What appear from the above discussion is that MPs participation inside the parliament is 'disciplined' and 'controlled' by the party. It may be assumed that this participation were due to avoiding delays in law-making and dissent within the party. A record of absence or walkouts in different JSs.

Table 8.4
Walkouts from 5th to 9th JSs

Name of Sangsad	Total Working Days	Presence days by Opposition	Walkout Times	Walkout Percentage
5 th Sangsad	400 days	265 days	36 times	13.58%
6 th Sangsad	004 days	No opposition	No opposition	No opposition
7 th Sangsad	382 days	229 days	60 times	26.20%
8 th Sangsad	373 days	150 days	74 times	49.33%
9 th Sangsad	418 days	076 days	30 times	39.47%
Total	1577 days	720 days	200 times	

Source: Compiled by the Researcher (2016) from Sangsad Secretariat Data.

Participation or presence of the opposition in different JSs

Table 8.5
Boycotts from 5th to 9th JSs

Name of Sangsad	Total Working Days	Presence days by opposition	Boycott days by oppositions	Boycott in percentage
5 th Sangsad	400 days	265 days	135 days	33.75%
6 th Sangsad	04 days	No opposition	04 days	n/a
7 th Sangsad	382 days	229 days	153 days	40.05%
8 th Sangsad	373 days	150 days	223 days	59.79%
9 th Sangsad	418 days	76 days	342 days	81.82%
Total	1577 days	720 days	857 days	54.34%

Source: Compiled by the Researcher (2016) from data of Previous Chapters 4th to 7th.

The opposition (Table-8.4 and 8.5) resorted to walkouts and boycotts of the JS or parliament in protest against the ruling party's attempt to raise the bill in the parliament as stated above. The opposition was entirely absent in process of bringing the 13th and the 15th amendments. During the 9th JS, the highest number of bills (183) was passed without opposition. However, walkout is supported by the RoP of the parliament in Bangladesh, but no where in the world boycott exists (Interview with Al Masud Hasanuzzaman, April 24, 2016). It emanates from the above table that out of 1577 working days of 5th to 9th JSs, the opposition boycotted the 857 working days. In percentage it amounted more than 50 percent.

An Overview of Constitutional Amendments in Bangladesh

Table 8.6
Constitutional Amendments in Bangladesh: A Comparison

Name of the Constitutional Amendments	Initiator of the Amendment	Supporting/ Opposing Votes	Referendum	Opposition/ Independent Participaation	Present Status
The 11 th Amendment	Consensus by all political parties with CJ	278/0	N/A	Opposition participated	Omitted by the 15 th Amendment
The 12 th Amendment	Consensus among three alliances and political parties	307/0	Yes 84.38% , No 15.62%	Opposition participated	Still valid and run the main features of parliamentary government
The 13 th Amendment	Government Party, Demanded by Opposition Alliances	268/0	N/A	Oppositions were totally absent	Abolished by 15 th Amendment
The 14 th Amendment	Government Party	226/1	N/A	Opposition partially participated	Made redundant by the 15 th Amendment except provisions in articles 129, 139 and 148
The 15 th Amendment	Government Party	290/1	Abolished by 15 th Amendment	Independent MP participateed	Still valid and exists in the constitution.

Source: Summarized from data used in 4th to 7th chapters.

Table-8.6 presents the detailed picture on the five constitutional amendments in Bangladesh. From this table, one can see that only the 12th amendment had been a significant development along the democratic transition. The democratic transition from the military to the parliamentary government took place through this amendment. Despite its bumpy journey, parliamentary democracy has stood out the ordeal. At least, the country has not gone back to the military rule. Some institutional developments that took place during the 7th parliament still have been continuing. The 15th amendment amidst the controversy put a bar on the future military take over. There is no denying that Bangladesh needs miles to go in terms of the acceptable or standard of democratization.

Law-making Process

Law-making in parliamentary democracy is carried out through a formal process. Bill is drafted by the bureaucracy in the ministry. Then it is placed in the parliament. After completing the first and second reading, bill stands in the prior stage of law, and then is sent to the President for his assent. Inside the parliament, MPs only participate in the first and second reading, and they cast vote in the third reading. In practice, a limited number of MPs become the members of either the Select Committee or the Special Committee or only the Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs. In the process of 11th and 12th amendments, the 15-member Select Committee (SC) was formed. It was arranged in the parliament to scrutinize the bills and present a report to the parliament. These 15 members came from the 5 parties, out of 12 elected parties representing the 5th JS (Chapter-4). After the completion of the process, the report was submitted in the open session of the parliament. Not necessarily, in the plenary session all the MPs can participate. The parliamentary board of the respective parties decides who will speak on behalf of the parties. This chance was mostly used by the front-benchers. Here, an implied sanction is visible on a number of MPs. However, all MPs across the board at least get one opportunity to participate in the law-making process. It may be worth mentioning here that Article 70 of the Bangladesh Constitution force the MPs to cast their votes in favor of their party except the independent MPs can participate in without due respect.

The law-making process in Bangladesh allows the Private Members' Bill. But the process of placing the private members' bill described in the Rules of Procedure complicated the process, thus discouraging the private members to raise the bill individually. Few observations appear from the above discussion, such as MPs participation inside the parliament suffers from 'formal' and 'informal' sanctions. In the name of disciplining the MPs, parliament allows to 'control' them. It seems to happen for avoiding delays in law-making and for controlling dissent within the party.

MPs Participation in the First Reading and Second Reading

In the first reading, the bill is placed by a minister. Parliament is a forum for deliberative democracy. No law-making in the parliament is supposed to be taken without deliberation/debate/discussion. Deliberating on the 11th and the 12th, 15-members of the Select Committee spent 18 days, 36 sittings and 100 hours. On the 13th amendment, the

10 members committee spent only 2 days for deliberation. In the 14th Amendment, 14 MPs discussed the matter for 59 days with 3-sittings. The members of the Special Committee of the 15th Amendment spent 10 months 13 days with 27 sittings.

Compared to the deliberation/discussion/debates in the select, special or standing committees, the number of participating MPs in the parliament is much higher. But the time spent is much lower than the average and the total time in the above-cited committees. In cases of the 11th and the 12th amendments, the opposition was found more reactive as they debated more on this issue. In the open sessions of the parliament, 78 MPs spent 18 hours on the debate of the 11th and the 12th Amendments. In the 13th amendment, MPs spent only 10 hours in the parliament.

The opposition also brought some important amendments. When the 13th amendment was placed in the open session, the deliberation was 'one party' dominant. The main opposition stayed outside the parliament. In the 14th amendment bill, the opposition did not take part in the deliberation either in the committee level discussion or in the open debate. However, the opposition brought some amendments. The ruling party accepted no amendments. In the 15th amendment, the opposition was invited to join the Special Committee. They neither joined, nor gave any amendments, and had not participated in the open session. In the absence of the cooperation from the opposition, the amendments turned to be 'one-sided' and were participated by the ruling party MPs only.

Amendments to the Constitution go through a process. After the Bill is placed in the parliament by a Minister, a select or a special committee is formed. A limited number of experienced and front-ranking MPs became the members of the Select, Special or Standing committees. From the 11th to the 15th amendments, this trend is similar. Of the above 5 amendments, only the 11th and the 12th amendments to the constitution, 5 main parties of the 5th JS represented the select committee. But the committee on 13th amendment was 'one-party' dominant. The 14th amendment consisted of the ruling and the opposition parties, but the opposition did not turn up in the deliberations. The opposition also provided some amendments to the bill. On the 15th amendment, a special committee was formed in which 4 main parties of the Grand Alliance represented. But the opposition did not attend the deliberation. In many cases of the amendments, a large

number of amendments were brought by the opposition but quite a few have been accepted.

Participation by MPs in the Amendments Process

Table 8.7
Participation in Open Session (Discussions/Debates/Amendments) 11th to 15th
Amendments (h = hour, m = minute)

Name of the Amendments	Using Days after SC*	Representatives (MPs)			Hours			Amendments on bill			
		Total Participants	Ruling Party's Participants	Opposition 's / Independent** Participants	Time Spent in Hour	Time Used by Ruling MPs	Time Used by Opposition/ Independent ** MPs	Total Amendments	Ruling MPs	Opposition/ Independent** MPs	Accepted ***
11 th Amendment	08	71	15	46	13h 46m	2h 2m	11h 44m	57	06	51	01
12 th Amendment	08	132	17	115	24h 55m	2h 14m	22h 41m	121	03	118	02
13 th Amendment	03	47	46	01	10h 43m	10h 28m	15 m	22	31	absent	nil
14 th Amendment	01	22	06	16	2h 45m	2 h 22m	23 m	78	0	78	nil
15 th Amendment	02	09	08	01**	47m	37 m	11 m	65	42	23**	nil

Source: Summarized from recorded in chapters 4th to 7th .

*Note: SC: Select Committee/Scrutiny Committee/Parliamentary Standing Committee/Special Committee

** Independent MP

***Accepted from opposition MPs

The Table-8.7 shows that it is only on the 11th and the 12th amendments, the total number of MPs participating from both the ruling and the opposition parties were higher than other amendments. On 13th, 14th and 15th amendments, the participation of MPs was lower. These amendments were mostly controlled by the ruling party. As a result, will of the ruling party leaders manifested in these amendments. The opposition in most cases boycotted the parliament rendering non-cooperation to the ruling party. In the cases of the 11th and the 12th amendments, political leaders across the board were united for this amendment. The opposition all together supported the move.

Voting on the Different Amendments:**Table 8.8****Third Reading****Votes Cast on 11th to 15th Constitutional Amendments**

Name of the Amendments	Votes cast in Favor	Votes Against Amendments	Remarks
11 th Amendment 1991	278	nil	JP (Ershad) refrained from voting.
12 th Amendment 1991	307	nil	Existing all parties participate in division vote
13 th Amendment 1996	268	nil (exceptional)	Only ruling alliance participated, as all main political parties boycott the election.
14 th Amendment 2004	226	01	Chief of KSJL*
15 th Amendment 2011	291	01	An independent MP**

Source: Compiled by the Researcher from data of chapter 4th to 7th

*Note: Banga Bir Kader Siddiqui

** Mohammad Fazlul Azim

After the deliberation, the decision in particular area is set to be reached through voting. The Table-8.8 shows that in the 11th and the 12th amendments, the vote was one-hundred percent, all the parties representing the 5th parliament cast votes in support of the 11th and the 12th amendments. In other cases, such as for 13th, 14th and 15th amendments, the ruling party or alliance cast votes in support of the amendment making the amendment 'one party dominant'. The opposition in case of the 13th amendment, stayed outside the parliament. From outside, the opposition is indeed accepted this amendment. As regards 14th amendment, the opposition boycotted the parliament. The same happened in the case of the 15th amendment. The participation by the opposition would have strengthened the position of the amendments. However, Table-8.8 shows the impact of the floor crossing (Article-70) which leads to party dominance over the MPs role in JS.

Participation of Independent MPs

The role of independent MPs virtually has very little impact on the parliament. In the deliberation on the 15th amendment, Fazlul Azim took part in the deliberations. He urged the government side to go for referendum on this issue. His call was ignored. He brought 23 amendments on 15th Amendment Bill, but none was considered. He cast his lone vote against the 15th amendment.

Table-8.9
Women MPs' Participation from 5th to 9th JSs and 11th to 15th Constitutional Amendments

Name of Sangsad	Name of Amendments	Election Mode			Participation in Constitution Amendments (in person)			Participation in Voting			Private Member Bill move by Women MPs
		General Seat	Reserved Seat	Total Seat	Committee or SC	Discussion/ Debate	Amendments	Total Votes	Elected	Reserved	
5 th Sangsad	11 th Amendment	04	30	34	nil	05	02	34	04	30	02
	12 th Amendment	03	30	33	nil	05	02	34	04	30	-
6 th Sangsad	13 th amendment	03	30	35	nil	02	nil	30	03	27	-
7 th Sangsad	N/A	30	06	36	-	-	-	-	-	-	02
8 th Sangsad	14 th Amendment	06	45	51	nil	02	01	-	05	N/A	-
9 th Sangsad	15 th Amendment	19	50	69	02	03	01	54	15	39	-

Source: Researcher (2017).

Women's Participation

The number of women MPs in the law-making process of the parliament has been another area of concern. It may be mentioned in the committees on the Amendments from the 11th to the 14th Amendments, there was no participation of women at all. There were 02 women MPs in the Special Committee on the 15th Amendment. The head of the Special Committee was a woman MP. Another woman was one of the members of the committee. Only some elected women MPs took part in the deliberation. Compared with

male MPs, the number of women MPs' participation is significantly poor, showing the deficit of democratization in our country.

The quality of participation in the parliament may be judged by the issues deliberated by the MPs in the parliament. The issues that came into discussions on the 12th amendment were: election method of the president, referendum, the powers of the prime minister, technocrat minister and the Article-70. As regards the issues raised by the opposition, the Leader of the Opposition, Sheikh Hasina said:

“Regarding the 12th amendment bill, we have many amendments, but we have put more emphasis on Article 56, Article 70(B), 119 and 142. We requested to improve these matters. You have accepted some of our proposals which have improved the Amendment. For this reason, we believe that the Amendment has improved much. In order to fulfill the aspirations of the people, we have accepted this Amendment for the time being” (Debate on the 12th Amendment. August 6, 1991: 134-5).”

The issues can be judged not only at face value, but also in real sense. Some members of the opposition argued for curtailing the powers of the Prime Minister. In the final bill, both sides acquiesced. The growth of a prime minister's power, and concluded that status of PM will be tantamount to the powers of the president in the presidential system. The prime minister enjoys even much more. It is interesting to observe that the AL strongly opposed the provision of keeping referendum in Constitution. The logic of undermining parliamentary sovereignty or its use by the military rulers is not sufficient to drop the referendum from the Constitution. Referendum is a potent instrument by which people still can hold their sway on to the political leaders. By this tool, people can establish their control which often slips out of their hands under representative democracy. By keeping Article 70 in the Constitution, the 12th amendment contradicts the spirit of liberal democracy. This legal framework never considered the patron-client political cultural context of the country. As a result, in the name of disciplining the MPs, the party leader puts his/her personal grip over the MPs. So the face-off of the 12th amendment reveals that the surface appearance and the deep structure of the 12th amendment is likely to produce hybrid characters of democracy and authoritarianism. On the contrary, 13th, 14th and 15th amendments were brought about for the personal and group interests (Interview with G M Quader, April 08, 2016).

Several issues were discussed in the 15th amendment. In this one-party dominant amendment process, a good number of MPs raised the issues like Islam as the state-

religion, whether religious ritual 'Bismillah' would remain in the constitution, deleting Article 58 of the constitution, prohibiting military intervention legally through the Article 7(B) and Article 70, restriction on the freedom of organization of the fundamentalist political parties. This amendment was mainly brought to go back to the Bangladesh's original Constitution of 1972. However, the deletion of the Article-58 created controversy. There had been a consensus in the special committee about the non-party caretaker government. But it is alleged that the ruling AL single-handedly deleted the provision of the caretaker government due to insistence of the prime minister. Here, one can argue that this amendment was lacking the perspective of national interests; rather it gave more importance on the partisan interest. The change was therefore made by the will of chief executive.

Prime Minister Sheikh Hasina stated the background for withdrawing the support for the 13th amendment, in the parliament. She said:

“This amendment (15th) has declared the non-party caretaker government null and void. We have said earlier that after the verdict of the Supreme Court we have taken this decision.”

Although the court left the decision to the parliament, if the parliament would wish, it could have held 2-more elections under this provision. Sheikh Hasina gave her justifications for not toying with this part of opinion of the Court. She justified her position by explaining the background of election under Latifur Rahman in 2001 who was not neutral according to her view. Even mentioning the bitter experience of military-backed caretaker government during 2007-2008, she reminded all, that could have been much prolonged. These prompted her to cancel it. But elections under caretaker government were free and fair. Special committee on the 15th amendment recommended the provision to continue in the constitution. It proves that will of the political leaders more often considers majoritarian interests through their participation in the parliament.

Analysis of the MPs' low Participation in the Parliament

It has been argued in this research that MPs' participation in the law-making process of Bangladesh has been episodic, marginal, limited and highly sanctioned by rules and political culture. For a transitional democracy like Bangladesh, will of political leaders was supposed to be the driving force for major political changes. But in the events leading up to democratic transition, political leaders have failed to show their sustained interest in

accelerating democratic transition towards consolidation. There is no doubt that the political leaders across their political ideologies arrived at consensus about the parliamentary democracy outside the parliament, consensus displaying their collective political will. The issue of parliamentary democracy turned into general will. The parties representing the 5th parliament could not keep the issue merely to lip service since they committed to parliamentary democracy to the people. So the parties like BNP and JP – although these two parties believed in presidential form of government, changed their positions. These two actively participated in the process of amendment. The leaders of the then ruling BNP admitted that they had to manage the dissents inside the parties regarding the choice of the forms of government. The then opposition AL drifted from the past baggage of the BAKSAL. The JI did not insist on Islamic government. Thus it was a grand consensus established amongst all the major political parties in Bangladesh. The pre-parliamentary consensus led to the 11th and the 12th amendments. The relationships between the ruling and the opposition sides were a mix of cooperation and competitive. Whenever the party defeats in the elections, it feels that it has no role in parliamentary democracy (Iftekhairuzzaman, April 27, 2016). However, the parliamentary democracy suffered a hiccup when the opposition resigned *en masse* from the parliament in 1994. Although parliamentary democracy survived, its continuity was seriously shaken as the opposition had been demanding the introduction of the non-party caretaker government for holding future parliament elections. From this state of politics, the relationship between the mainstream parties turned confrontational which even affected the later parliament that can be evidenced by frequent boycotts of the opposition parties. As has already been discussed in the previous chapters, the parliament members compulsion to show ‘excessive allegiance and loyalty demanded by parties due to their selection, is clearly known to be subjective and variable’, even if political will is positively engaged, legal difficulties, though Article 70 had been in existence since long, does not pose a problem (Interview with Jamal Khan, March 27, 2016).

With the onset of confrontational politics, law-making became an one-sided affair. The ruling BNP accepted the demand of the opposition for non-party caretaker-government through the 13th amendment to the Bangladesh Constitution. The opposition from outside the parliament accepted the law as they had been demanding the issue since 1994. As a result, this amendment helped to overcome political violence during that time. Political unrest over this issue led to the killing of 170 persons (See, chapter five). Party leader and

the Chief Executive Khaleda Zia showed her will to solve the crisis. It may even be argued that the front ranking BNP followed suit. No strong opposition was there in the parliament. The same was repeated in the case of the 14th amendment. Although the opposition was in the parliament, they also brought their amendments to the bill, they did not participate in the debate. The main opposition boycotted the parliament resulting in the legitimacy crisis of the amendment which contributed to the rise of political instability in the country emanating from the increase of the age of the Supreme Court Judges. The opposition's participation with amendments to the bill lacked substance without their presence in the debate.

A political analyst said, "the amendments tend to be more partisan than national, more parochial than universal, more exclusive than inclusive, more power - focused than service - oriented" (Interview with Jamal Khan, March 25, 2016). We might not fully agree with the above statement. But there is some grain of truth in this statement. In case of the 15th amendment, the opposition neither participated in the Special Committee, nor brought any amendments to the Constitution, nor even joined the debate in the parliament. In this amendment, will of party leader or chief executive dominated in the final approval of the bill. Even it is alleged that the will of the chief executive's personal choice determined the fate of the non-party caretaker government. Party controlled participation has been dominant. Individual MPs have little scope to participate in two-third majorities in the parliament in 1996, 2001 and 2008, and those have also led the ruling parties to gag the opposition's voice in the parliament. Things might have been different, if two-third majorities did not exist in the parliament. So the electoral system is likely to be an obstacle for democratic transition in Bangladesh. The Article 70 of the Bangladesh Constitution and the Rules 72, 73(1), 74 (1) of the RoP greatly cuts down the potentials of the individual MPs in the parliament. In addition, many clause-wise amendments were brought by MPs, but discussions were limited. Only three amendments on the 11th and the 12th amendments were so far accepted. Clause-wise discussions were discouraged by the ministers (Interview with Abdus Shahid, May 08, 2016). However, the unchanging nature of these rules allows even the democratic government to turn into autocratic.

Conclusion

In conclusion, through analyses in the thesis ranging from chapter one to eight, I have observed that parliament as 'house of the nation' also in Bangladesh, has a clear role in the promotion of democratization. Parliament cannot work itself. Politicians play pivotal role in leading parliament to foster democratization. But the role of JS in Bangladesh has, so far not shown any consistent pattern in democratic transition. After the smooth transition of powers a couple of times, the system faltered again and again. Two important factors may be accounted for in this regard, such as, lack of unwavering will of the leaders towards the system, and the confrontational relationship between the two parties dominating the political landscape in Bangladesh. Added to these two factors, some constitutional provisions and rules included in the RoP have contributed to the low participation of MPs in the law-making process in Bangladesh Jatiya Sangsad. Most importantly, whoever in the position of power of two mainstream parties, except in the 5th JS, has been persisting in their self-denial role of showing responsible behavior in the parliament. In addition, to the variables stated above, it is not to deny the role of socio-economic profiles of MPs determining their participation in law-making. The growing numbers of MPs as business-owners with vested and parochial interests have the same effects in the law-making process. This is a propensity in Bangladesh, as it is in many other transitional democracies. The democratization is attempted on trial and error basis and remains as a test case in Bangladesh. Further, more comprehensive and in-depth research should be carried out in this area, which might reveal more dynamics and insights, and suggest roadmap for effective democratization in Bangladesh.

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Experts terms the 15th Amendment one-sided, at banglanews24.com 24th July, 2011 available at <http://www.banglanews24.com/English/detailsnews.php?nssl=09f4d591f9ff9e5e0bb6766b0188d017&nttl=2011073022617> accessed on 12.08.12.

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www.un.org/Depts/Cartographic/map/profile/banglade.pdf

Appendix 01

SURVEY QUESTIONNAIRE
Department of Political Science
Faculty of Social Science
University of Dhaka
Dhaka-1000, Bangladesh

The Role of Jatiya Sangsad in the Democratization Process of Bangladesh (1991-2013)

I am a Ph.D. research student at the Department of Political Science, Faculty of Social Sciences, University of Dhaka, Bangladesh. The title of my study is The Role of Jatiya Sangsad in the Democratization Process of Bangladesh (1991-2013). As a concerned individual for the period in question, I would like to get vital information from you about the working of Jatiya Sangsad and Democratization through the law making process particularly through constitutional amendments during the period of 1991-2013. The findings of these interviews will be used solely to write my thesis with or without giving any respondent's name. It has no connection with any political party or government or other individuals; however, the findings, and my work will be published at a later date. I need your kind co-operation to ensure the success of my study. Kindly spare some time to answer my questions.

1. How do you define the role of Jatiya Sangsad in relation to democratization?
2. How do you evaluate the role of 5th to 9th Jatiya Sangsad in the democratization process?
3. What were the challenges that Jatiya Sangsad was facing in Bangladesh in the democratization process?
4. Do you think that the lawmaking process has a role in the process of democratization by the Jatiya Sangsad?
5. How can Jatiya Sangsad effectively operate in the process of democratization?
6. Do you think that the 11th to 15th Constitutional Amendments of Bangladesh have contributed to the process of democratization?

Thank you very much for your kind cooperation in my research for which I remain thankful.

(Mohammad Mahabubur Rahaman)
01714-413068

Appendix 02

List of Persons Interviewed

Name of the Persons	Designation and Interview Date and Place
A. Q. M. Badruddoza Chowdhury	Former President of the People's Republic of Bangladesh, Founding Secretary General of BNP, Deputy Leader of the 5 th JS. Deputy Leader of the Opposition in the 7 th Jatiya Sangsad, Minister, Founding Chairman of Bikalpa Dhara, Bangladesh, Interview Date: April 17, 2016, Dhaka.
Suranjit Sengupta	Seventh Times Elected Parliament Member and Former Minister. Chairman Parliamentary Committee, Law Justice and Parliamentary Affairs Standing Committee, 9 th JS. Interview Date, May 04 2016, Dhaka.
Kamal Hossain	Chairman, Ganoforum Bangladesh, Convener of the Constitution Formulation Committee of 1972, First Minister of Law and Parliamentary Affairs (1972-1973), Minister of Foreign Affairs and Resources Minerals and Member of Parliament two times. Interview Date: April 27, 2016, Dhaka.
Mirza Fakhrul Islam	General Secretary, Bangladesh Nationalist Party, Former, State Minister and Member of Parliament. Interview Date: April 26, 2016, Dhaka.
A. S. M. Abdur Rob	President, Jatiyo Samajtantrik Dal (JSD), Former Student Leader & Vice President, Dhaka University Central Student Union (DUCSU), Former Parliament Member, Leader of the Combined Opposition Party (COP), in 4 th Jatiya Sangsad and Minister, Interview in April 23, 2016, Dhaka.
Ghulam Muhammed Quader	Co-Chairman, Jatiya Party, Former Parliament Member, 7 th , 8 th , and 9 th Jatiya Sangsad and Minister. Interview Date: April 08, 2016, Dhaka.
Abdur Rab Chowdhury	Former two times MP, Chairman Parliamentary Standing Committee on Private Member Bills, CSP (Civil Service of Pakistan) and Secretary, Senior Advocate, Bangladesh Supreme Court. Interview Date: April 27, 2016, Dhaka.
Md. Abdus Shahid	Chief Whip, Ninth Parliament, Bangladesh Jatiya Sangsad, Fifth Times Elected Parliament Member. Interview Date: May 08, 2016
Mizanur Rahman Shelley	Former Technocrat Minister, Distinguished Educationist, Professor, Department of Political Science, University of Dhaka. Chairman of the Independent Centre for Development Research, Bangladesh (CDRB), and Editor of Socio Economic Quarterly Asian Affairs, Chairman Bangladesh Media Commission. Interview Date: May 19, 2016.

- Emajuddin Ahmed Distinguished Political Scientist & Former Vice-Chancellor and Pro Vice-Chancellor, Dhaka University, Professor and Chairman, Department of Political Science, University of Dhaka. Interview Date: April 25, 2016, Dhaka.
- Rounaq Jahan Distinguished Political Scientist, Senior Researcher and Professor of International Affairs, Columbia University, New York, USA. Former Professor, Department of Political Science, Dhaka University. Coordinator, Women in Development Programme, UN Asia-Pacific Development Centre, Kuala Lumpur, Malaysia and Head, Rural Women's Programme, ILO, Geneva. Switzerland, Distinguished Fellow, CPD. Interview Date: April, 07, 2016, Dhaka.
- Jamal Khan Expert on Public Management, Professor of Public Sector Management, Department of Management, University of the West Indies, Barbados, West Indies. Interview Date: 25 March 2016, Dhaka.
- Mahbubullah Economist, Educationist, Professor and Chair, Department of Economics, University of Chittagong, Professor and Chairman, Department of Development Studies, DU. Former Chairman, Sonali Bank Limited. Interview Date: April 16, 2016, Dhaka.
- Shahadat Hossain Ex-Chairman, Public Service Commission, CSP and Cabinet Secretary, People's Republic of Bangladesh. Interviewed Date: April 13, 2016, Dhaka.
- Nizam Uddin Ahmed Expert and Writer on Parliamentary Democracy. Professor, Department of Public Administration, University of Chittagong. Chief Coordinator, Public Administration and Governance Research Network. Interview Date: March 30, 2016, Dhaka.
- Al Masud Hasanuzzaman Political Scientist and Expert on Parliamentary Works, Professor and Chairman, Department of Government and Politics, Jahangirnagar University, Senior Scholar in the Department of Political Science, Columbia University, New York, USA. Interview Date: April 24, 2016, Dhaka.
- Iftekharuzzaman Executive Director, Transparency International Bangladesh (TIB), Policy Maker. Interview Date: April 27, 2016, Dhaka.
- Badiul Alam Majumdar Chairman, Shushashoner Jannoy Nagorik (SUJON) and Policy Maker. Interview Date: 05 April 2016, Dhaka.

Appendix 03

NOVEMBER 1990 JOINT DECLARATION OF THREE ALLIANCES

“People from all classes and professions are waging a heroic struggle. The goals are: emancipation from the misrule of the autocratic Ershad regime; ouster of Ershad regime; establishment of a stable democratic process and way of life; and re-establishment of the consciousness and values of the War of Liberation.

“People have suffered jails, torture and repression and have even sacrificed their lives at various stages of the struggle. This they have done with the goal of establishing a genuine representative system of government.

“One of the main aims and purposes of the struggle, which the people have been waging at the cost of their blood, is to end the malpractice of changing government through unconstitutional means like killings, coups etc., and to ensure, instead, change of government through the constitutional means of free and fair elections.

“Hence the central theme of our struggle is to establish a sovereign parliament through a free and fair election.

“But the Ershad regime, which usurped power through unconstitutional means, has been tirelessly endeavouring to perpetuate itself in power through all sorts of chicaneries, tricks and use of force and farcical elections.

“Every election held under this regime followed a regular pattern – vote-stealing, false voting, forcible occupation of polling centres, hijacking of ballot boxes, vote-dacoity, media coup, and finally, announcement of the results of voterless elections. Under these circumstances, no free and fair election can be held under this regime.

“We, the 15-party alliance, the 7-party alliance and the 5-party alliance, shall not take part in any election held under Ershad and the illegitimate Ershad government – be the election presidential or parliamentary. We shall not only boycott such elections but also shall resist these elections.

“We, the 15-party alliance, the 7-party alliance and the 5-party alliance, shall participate only in an election to a sovereign parliament and only when such an election is held under a non-partisan, neutral government.

“Keeping this in view and reflecting the hopes and aspirations of the people as well, we are jointly issuing the following unequivocal declaration regarding the main demands and aims of the current movement.

“1. With a view to freeing the country from the clutches of autocratic Ershad and his regime which has been foisted on the nation through murders, coups and conspiracies, and establishing genuine democracy and democratic system of government in line with the consciousness and values of independence and War of Liberation.:

“(A) Ershad and his government will be forced to resign and a Vice-President, who will be acceptable to the three alliances which are engaged in the anti-autocracy and anti-communal movement, will be appointed while continuing the constitutional process and under the relevant provisions of the Constitution, i.e., Article 51(A) Clause 3 and Article 55(A) Clause 1. The President will dissolve the present government and Parliament and will himself resign and hand over power to that Vice-President.

“(B) An interim, caretaker government will be formed under that Vice-President; the prime responsibility of that government will be to ensure holding of a free and fair election to a sovereign parliament within three months.

“2. (A) The head of the caretaker government will be non-partisan and neutral, i.e., he will not be a follower or be associated, directly or indirectly, with any political party, and will not participate in presidential, vice-presidential or parliamentary elections. No minister of his caretaker government will likewise participate in elections.

“(B) The caretaker government will only run the routine administration and will reconstitute the Election Commission as well as reorganize the work and responsibilities of the Election Commission with a view to holding free and fair elections.

“(C) The confidence of the voters has to be re-established that they will be able to exercise their right to vote freely and without any pressure in accordance with their own choice and conscience; and this has to be ensured.

“(D) The mass media, including the radio and television, will have to be made into independent and autonomous bodies so that they become completely neutral; and it has to be ensured that all parties participating in elections will get unhindered scope for publicity.

“3 The interim, caretaker government will hand over power to the sovereign parliament, elected through free and fair elections, and the government will remain accountable to that parliament.

“4. (A) In recognition of the sovereignty of the people, the process of constitutional rule in the country will be made safe and undisturbed, and all attempts at usurping power through unconstitutional means will be resisted. An elected government must not be unseated without election through any unconstitutional or extra-constitutional means or on any other plea.

“(B) The fundamental rights of the people, the independence and impartiality of the judiciary, and the rule of law will be ensured.

“(C) All laws that conflict with fundamental rights will be rescinded.”

Source: Hakim, 1993: 128

Appendix 04

TEXT OF CONSTITUTION AMENDMENT BILL OF AWAMI LEAGUE SUBMITTED BY ABDUS SAMAD AZAD TO PARLIAMENT SECRETARIAT ON APRIL 14, 1991

A bill, to amend articles 11, 48, 59, 50, 51, 52, 53, 54, 55, 56, 57, 58, 58, 60, 66, 72, 73A, 88, 92A, 119, 122, 124, 125, 141A, 142, 145A, 147, 148, 152, and certain provisions of the second, third and fourth schedules to the Constitution of the People's Republic of Bangladesh.

Whereas it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing:

It is hereby, enacted as follows:

1. Short title and commencement: (1) This Act may be called the Constitution (Eleventh Amendment) Act, 1991; (2) It shall come into force at once.
2. Amendment of Article 11 of the Constitution. – In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the constitution, in Article 11 after the word “guaranteed” the comma and the words “and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured” shall be added.
3. Amendment of PART IV of the Constitution. – In the Constitution in Part IV for Chapters I and II the following shall be substituted, namely:-

CHAPTER 1 – THE PRESIDENT

48 (1) There shall be a President of Bangladesh who shall be elected by Members of Parliament in accordance with the Provisions contained in the Second Schedule. (2) The President shall, as Head of State, take precedence over all other persons in the State, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law. (3) In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to Clause (3) of Article 56, the President shall act in accordance with the advice of the Prime Minister; provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court. (4) A person shall not be qualified for election as President if he (a) is less than thirty five years of age; or (b) is not qualified for election as Member of Parliament; or (c) has been removed from the office of President by impeachment under this Constitution. (5) The Prime Minister shall keep the President informed of matters of domestic and foreign policy, and submit for the consideration of the Cabinet any matter which the President may request him to refer to it.

Article 49: Prerogative of Mercy

49. The President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

Article 50: Term of Office of President

50. (1) Subject to the Provisions of this Constitution the President shall hold office for a term of five years from the date on which he enters upon his office: provided that notwithstanding the expiration of his term the President shall continue to hold office until his successor enters upon office. (2) No person shall hold Office as President for more than two terms, whether or not the terms are consecutive. (3) The President may resign his Office by writing under his hand addressed

to the Speaker. (4) The President during his term of Office shall not be qualified for election as a Member of Parliament, and if a Member of Parliament is elected as President, he shall vacate his seat in parliament on the day on which he enters upon his Office as President.

Article 51: President's Immunity

51. (1) Without prejudice to the provisions of Article 52, the President shall not be answerable in any court for anything done or omitted by him in the exercise or purported exercise of the functions of his office, but this clause shall not prejudice the right of any person to take proceedings against the Government. (2) During the term of Office no criminal proceedings whatsoever shall be instituted or continued against the President in, and no process for his arrest or imprisonment shall issue from, any court.

Article 52: Impeachment of the President

52. (1) The President may be impeached on a charge of violating this Constitution or of grave misconduct, preferred by a notice of voting signed by a majority of the total number of Members of Parliament and delivered to the Speaker, setting out the particulars of the charge, and the motion shall not be debated earlier than fourteen nor later than thirty days after the notice is so delivered; and the Speaker shall forthwith summon parliament if it is not in session. (2) The conduct of the President may be referred by parliament in any court, tribunal or body appointed or designated by parliament for the investigation of a charge under this article. (3) The President shall have the right to appear and to be represented during the consideration of the charge. (4) If after the consideration of the charge a resolution is passed by parliament by the votes of not less than two-thirds of the total number of members declaring that the charge has been substantiated, the President shall vacate his office on the date on which the resolution is passed. (5) Where the Speaker is exercising the functions of the President under Articles 54 the provisions of this article shall apply subject to the modifications that the reference to the Speaker in Clause (1) shall be construed as a reference to the Deputy Speaker, and that the reference in Clause (4) to the vacation by the President of his office shall be construed as a reference to the vacation by the Speaker of his Office as Speaker; and on the passing of a resolution such as is referred to in Clause (4) the Speaker shall cease to exercise the functions of President.

Article 53: Removal of President on Ground of Incapacity

53. (1) The President may be removed from office on the ground of physical and mental incapacity on a motion of which notice, signed by a majority of the total number of Members of parliament, is delivered to the Speaker, setting out particulars of the alleged incapacity. (2) On receipt of the notice the Speaker shall forthwith summon Parliament if it is not in session and shall call for a resolution constituting a medical board (hereafter in this article called "the Board"), and upon the necessary motion being made and carried shall forthwith cause a copy of the notice to be transmitted to the President together with a request signed by the Speaker that the President submit himself within a period of ten days from the date of the request to an examination by the Board. (3) The motion for removal shall not be put to the vote earlier than fourteen nor later than thirty days after notice of the motion is delivered to the Speaker, and if it is again necessary to summon Parliament in order to enable the motion to be made within that period, the Speaker shall summon Parliament. (4) The President shall have the right to appear and to be represented during the consideration of the motion. (5) If the President has not submitted himself to an examination by the Board before the motion is made in Parliament, the motion may be put to the vote, and if it is passed by the votes of not less than two-thirds of the total number of Members of Parliament, the President shall vacate his office on the date on which the motion is passed. (6) If before the motion for removal is made in Parliament the President has submitted himself to an examination by the Board, the motion shall not be put to the vote until the Board has been given an opportunity of reporting its opinion to Parliament. (7) If after consideration by Parliament of the motion and of the report of the Board (which shall be submitted within seven days of the examination held

pursuant to Clause (2) and if not so submitted shall be dispensed with the motion is passed by the votes of not less than two-thirds of the total number of Members of Parliament, the President shall vacate his Office on the date on which the resolution is passed.

Article 54: Speaker to Act as President During Absence, etc.

54. If a vacancy occurs in the Office of President or if the President is unable to discharge the functions of his Office on account of absence, illness or any other cause, the Speaker shall discharge those functions until a President is elected or until the President resumes the functions of his Office, as the case may be.

CHAPTER II – THE PRIME MINISTER AND THE CABINET

55. (1) There shall be a Cabinet for Bangladesh having the Prime Minister as its head and comprising also such other Ministers as the Prime Minister may from time to time designate. (2) The executive power of the Republic shall, in accordance with this Constitution, be exercised by or on the authority of the Prime Minister. (3) The Cabinet shall be collectively responsible to the Parliament. (4) All executive actions of the Government shall be expressed to be taken in the name of the President. (5) The President shall by rules specify the manner in which orders and other instructions made in his name shall be attested or authenticated, and the validity of the order or instruction so attested or authenticated shall not be questioned in any court on the ground that it was not duly made or executed. (6) The President shall make rules for the allocation and transaction of the business of the Government.

Article 56: Minister

56. (1) There shall be a Prime Minister, and such other Ministers, Ministers of State and Deputy Ministers as may be determined by the Prime Minister. (2) The appointments of the Prime Minister and other Ministers, and of the Ministers of State and Deputy Ministers, shall be made by the President; provided that, subject to Clause (4) no person shall be eligible to be so appointed unless he is a Member of Parliament. (3) The President shall appoint as Prime Minister the Member of Parliament who appears to him to command the support of the majority of the Members of Parliament. (4) A Minister who at the time of his appointment is not a Member of Parliament shall, unless elected as a Member of Parliament within a period of six months from the date of such appointment, cease to be a Minister. (5) If occasion arises for making any appointment under Clause (2) or Clause (3) between a dissolution of parliament and the next following general election of Members of Parliament, the persons who were such members immediately before the dissolution shall be regarded for the purposes of this clause as continuing to be such members.

Article 57: Tenure of Prime Minister

57. (1) The Office of the Prime Minister shall become vacant- (a) if he resigns from office at any time by placing his resignation in the hands of the President; or (b) if he ceases to be a Member of parliament. (2) If the Prime Minister ceases to retain the support of a majority of the members of Parliament, he shall either resign his office or advise the President to dissolve Parliament, and if he so advises the President shall dissolve Parliament accordingly. (3) Nothing in this Article shall disqualify the Prime Minister for holding office until his successor has entered upon office.

Article 58: Tenure of Other Ministers

58. (1) The office of Minister other than the Prime Minister shall become vacant – (a) if he resigns from office by placing his resignation in the hands of the Prime Minister for submission the President; (b) if he ceases to be a member of Parliament (c) if the President pursuant to the provisions of Clause (2), so directs; or (d) as provided in Clause (4). (2) The Prime Minister may at any time request a Minister to resign, and if such Minister fails to comply with the request, may

advise the President to terminate the appointment of such Minister. (3) Nothing in sub-clauses (a), (b) and (d) of Clause (1) shall disqualify a Minister for holding office during any period in which Parliament stands dissolved. (4) If the Prime Minister resigns from or ceases to hold office each of the other Ministers shall be deemed also to have resigned from office but shall, subject to the provision of this Chapter, continue to hold office until his successor has entered upon office. (5) In this Article “Minister” includes Minister of State and Deputy Minister.

4. Insertion of CHAPTER III in Part-IV of the Constitution. The following CHAPTER III shall be inserted in the Constitution.

CHAPTER III – LOCAL GOVERNMENT

Article 59: Local Government

59. (1) Local Government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law. (2) Every body such as is referred to in Clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to – (a) administration and the work of public officers; (b) the maintenance of public order; (c) the preparation and implementation of plans relating to public services and economic development.

Article 60: Powers of Local Government Bodies

60. For the purpose of giving full effect to the provisions of Article 59 Parliament shall by law, confer power on the Local Government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds.

Article 66: Qualification and Disqualification for Election to Parliament

5. Amendment of Article 66 of the Constitution. In the Constitution, in Article 66 for Clause (24), the following shall be substituted, namely:- “(3) For the purpose of this Article a person shall not be deemed to hold an office for profit in the service of the Republic by reason only that he is a Minister, Minister of State or Deputy Minister”.

Article 72: Sessions of Parliament

6. Amendment of Article 72 of the Constitution. – In the Constitution, in Article 72 Clause (AA) shall be omitted.

Article 73A, 88, 92A, 119, 122, 123, 124, 125, 141A, 142, 145A, 147, 148 and 152.

7. Amendment of Article 73A of the Constitution:- In the Constitution, Article 73A shall be omitted.
8. Amendment of Article 88 of the Constitution – In the Constitution, in Article 88 Clause (AA) shall be omitted.
9. Amendment of Article 92A of the Constitution – In the Constitution, for Article 119 the following shall be substituted, namely:-

“119(1) The superintendence, direction and control of the preparation of the electoral rolls for all elections to Parliament, the conduct of such elections and of elections to the office of President, shall vest in the Election Commission which shall, in accordance with this Constitution and any other law – (a) hold elections to the office of President; (b) hold elections of members of Parliament; and (c) delimit the constituencies and prepare electoral rolls for the purpose of elections to Parliament. (2) The Election Commission shall perform such functions, in addition to

those specified in the foregoing clauses, as may be prescribed by this Constitution or by any other law”.

11. Amendment of Article 122 of the Constitution – In the Constitution, (a) in Article 122 the words “to the offices of President and Vice-President” shall be omitted, and (b) in Article 122, Clause (3) shall be omitted.
12. Amendment of Article 123 of the Constitution – In the Constitution, for Article 123 the following shall be substituted, namely:-

“123. (1) In case of vacancy in the office of President occurring by reason of the expiration of his term of office an election to fill the vacancy shall be held within the period of ninety days prior to the date of expiration of term: provided that if the term expires before the dissolution of the Parliament by the members of which he was elected the election to fill the vacancy shall not be held until after the next general election of members of Parliament, but shall be held within thirty days after the first sitting of Parliament following such general election. (2) In the case of a vacancy in the office of President occurring by reason of the death, resignation or removal of the President, an election to fill the vacancy shall be held within the period of ninety days after the occurrence of the vacancy. (3) A general election of members of Parliament shall be held – (a) in the case of a dissolution by reason of the expiration of its term, within the period of ninety days preceding such dissolution; (b) in the case of dissolution otherwise than by reason of such expiration, within ninety days of such dissolution; provided that the persons elected at a general election under sub-clause (a) shall not assume office as members of Parliament except after the expiration of the term referred to therein. (4) An election to fill the seat of a Member of Parliament which falls vacant otherwise than by reason of the dissolution of Parliament shall be held within ninety days of the occurrence of the vacancy.

13. Amendment of Article 124 of the Constitution – In the Constitution, for Article 124 the following shall be substituted, namely:-

“124. Subject to the provisions of this Constitution, Parliament may by law make provision with respect to all matters relating to or in connection with elections to Parliament including the delimitation of constituencies, the preparation of electoral rolls, the holding of elections, and all other matters necessary for securing the due constitution of Parliament”.

14. Amendment of Article 125 of the Constitution – In the Constitution, in Article 125, in Clause (b), for the words “Offices of President and Vice-President” the words “Office of President” shall be substituted.
15. Amendment of Article 141A of the Constitution – In the Constitution, in Article 141A, at the end of Clause (1) the following new paragraph shall be added, namely:- “Provided that such Proclamation shall require for its validity the counter signature of the Prime Minister”.
16. Amendment of Article 142 of the Constitution – In the Constitution, in Article 142, the Clauses (IA), (IB) and (IC) shall be omitted.
17. Amendment of Article 145A of the Constitution – In the Constitution, in Article 145A, the Words “Provided that no such treaty shall be so laid if the President considers it to be against the national interest to do so” shall be omitted.
18. Amendment of Article 147 of the Constitution – In the Constitution, in Article 147 for Clause (4) the following shall be substituted, namely:- “(4) This Article applies to the offices of (a) President; (b) Prime Minister; (c) Speaker or Deputy Speaker; (d) Minister, Minister of State or Deputy Minister; (e) Judge of the Supreme Court; (f) Comptroller and Auditor General; (g) Election Commissioner; (h) Member of Public Service Commission”.
19. Amendment of Article 148 of the Constitution – In the Constitution, in Article 148, Clause (IA) shall be omitted.

20. Amendment of Article 152 of the Constitution – In the Constitution, in Article 152, in Clause (1), the words “the Vice-President means the Vice-President of Bangladesh elected or appointed under this Constitution” shall be omitted.
21. Insertion of new Second Schedule in the Constitution – In the Constitution, after First Schedule, the following Second Schedule shall be inserted, namely:-

SECOND SCHEDULE ELECTION OF PRESIDENT

(Article 48)

1. The Chief Election Commissioner (in this Schedule referred to as “the Commissioner”) shall hold and conduct any election to the office of President, and shall be the Returning officer for such election.
2. The Commissioner shall appoint a presiding officer to preside at the meeting of the members of Parliament held pursuant to the provisions of this Schedule.
3. The Commissioner shall by public notification fix the time and place for delivering nomination papers, holding a scrutiny, making withdrawals, and (if necessary) holding a poll.
4. At any time before noon on the day fixed for depositing nomination papers any member of Parliament may nominate for election as President a person qualified for such election, by delivering to the returning officer a nomination paper signed by himself as proposer and by another member of Parliament as seconder, together with a statement signed by the person nominated that he consents to the nomination; provided that no person shall sign, whether as proposer or as seconder, more than one nomination paper at any one election.
5. A scrutiny of nomination papers shall be held by the Commissioner at the time and place fixed by him, and if after a scrutiny only one person remains validly nominated, the Commissioner shall declare that person elected, but if more than one person remain validly nominated he shall announce, by public notification, the names of the persons validly nominated (in this Schedule referred to as the candidates).
6. A candidate may withdraw his candidature at any time before noon on the day fixed for this purpose by delivering a notice in writing under his hand to the presiding officer, and a candidate who has so withdrawn shall not be allowed to cancel such notice.
7. If all but one of the candidates have withdrawn, that one shall be declared by the Commissioner to be elected.
8. If there is no withdrawal or if, after withdrawals have taken place, two or more candidates remain validly nominated, the Commissioner shall announce by public notification the names of the candidates and their proposers and seconders, and shall proceed to hold a poll by secret ballot in accordance with the provisions of the succeeding paragraphs.
9. If, before the choice of the poll, a candidate who has been nominated dies and a report of this death is received by the presiding officer, the presiding officer, if he is satisfied that the candidate has died, shall countermand the poll and report the facts to the Commissioner, and proceedings with reference to the election shall be commenced anew.
10. A poll shall be taken at a meeting of members of Parliament and the presiding officer shall conduct the poll with the assistance of such officers as he may, with the approval of the Commissioner, appoint.

11. A ballot paper, bearing the names of the candidates, shall be issued to every member of Parliament who presents himself for voting at the meeting of Parliament (hereinafter referred to as a person voting), and he shall exercise his vote personally by marking the paper with a cross against the name of the candidate for whom he wishes to vote.
12. A ballot paper shall be invalid if – (a) there is upon it any name, word or mark, other than the official number, by which the person voting may be identified; or (b) it does not contain the initials of the presiding officer; or (c) it does not contain a cross; or (d) a cross is placed against the names of two or more candidates; or (e) there is any uncertainty as to the identity of the candidate against whose name the cross is placed.
13. After the close of the poll the presiding officer shall, in the presence of such of the candidates or their authorized representatives as may desire to be present, open and empty the ballot boxes, count in the manner prescribed by law under Article 124 the number of votes recorded for each candidate on the valid ballot papers, and communicate the number of the votes so recorded to the Commissioner.
14. If there are only two candidates the candidate who has obtained the larger number of votes shall be declared by the Commissioner to be elected.
15. If there are three or more candidates and one of those candidates has obtained a larger number of votes than the aggregate number of votes obtained by the remaining candidates, he shall be declared by the Commissioner to be elected.
16. If there are three or more candidates and the last preceding paragraph does not apply, a further poll shall be held in accordance with the preceding provisions of this Schedule, at which the candidate who obtained the smallest number of votes at the previous poll shall be excluded.
17. The three last preceding paragraphs shall apply in relation to the further poll and any subsequent poll which may be necessary under the provisions of those paragraphs.
18. Where at any poll any two or more candidates obtain an equal number of votes then (a) if there are only two candidates for election, or (b) if one of the candidates who obtained equal number of votes is required to be excluded from a further poll under paragraph 16 of this Schedule; the selection of the candidate to be elected or, as the case may be, excluded, shall be made by the drawing of lots.
19. When, after any poll, the counting of the votes has been completed and the result of the voting determined, the Commissioner shall forth with cause it to be declared by public notification.
20. The Commissioner may by public notification, with the Approval of the President, make rules for carrying out the purposes of this Schedule.
21. Amendment of THIRD SCHEDULE to the Constitution, – In the Constitution, (a) in the Third Schedule, paragraph IA shall be omitted, (b) in the Third Schedule, in paragraph 2, the words “Deputy Prime Ministers” shall be omitted, and (c) in the Third Schedule, in Forms 3 and 4 for the word “President” the words “Chief Justice” shall be substituted.
22. Amendment of FOURTH SCHEDULE to the Constitution – In the Constitution, in Fourth Schedule, for paragraph 20, the following shall be substituted, namely:-

“20. Special provision relating to President, - (1) On the commencement of this Act, the person who as the Vice-President of Bangladesh, was holding the office of Acting President immediately

before such commencement, shall become the President and shall enter upon the office of President of Bangladesh and shall hold the office of President of Bangladesh as if he has been an elected President under the Constitution as amended by this Act, until a person, elected under Article 48 of this amended Constitution enters upon the office of President of Bangladesh (2) After the commencement of this Act, the Parliament shall as soon as possible hold the election of the President under the amended Article 48 of the Constitution. (3) Immediately after the President, elected under paragraph (2) of this Article has entered upon the office, the person mentioned in Sub-paragraph (1) who was holding the office of the Acting President before the commencement of this Act, shall return to the office of the Chief Justice of Bangladesh and shall hold the said office under CHAPTER VI of the Constitution.

It is necessary to handover power to a sovereign Parliament and to ensure the accountability of the Government to the Parliament composed of the elected representatives of the people, elected in an election held under a caretaker Government formed by way of an achievement of popular upsurge, based on the programme of united movement of three alliances: the fifteen party alliance, seven party alliance and five party alliance, and to attain those objectives and to establish parliamentary form of Government and to institutionalise democracy this amendment is necessary and indispensable.

Source: Hakim, 1993: 131-143.

Appendix 05

TEXT OF THE CONSTITUTION (TWELFTH AMENDMENT) BILL, 1991, MOVED BY PRIME MINISTER KHALEDA ZIA ON JULY 2, 1991

A bill further to amend certain provisions of the Constitution of the People's Republic of Bangladesh.

Whereas it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing.

It is hereby enacted as follow:-

1. Short title and Commencement – (1) This Act may be called the Constitution (Twelfth Amendment) Act, 1991. (2) The provisions of this Act, except the provisions of section 12, shall come into force at once and the provisions of section 12 shall be deemed to have come into force on the 16th day of March 1991.
2. Amendment of Article 11 of the Constitution – In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 11, after the word “guaranteed” the comma and words, “and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured” shall be inserted.
3. Amendment of Part IV of the Constitution. – In the Constitution, in Part IV, for Chapters I and II the following shall be substituted, namely:-

CHAPTER I – THE PRESIDENT

48. The President. – (1) There shall be a President of Bangladesh who shall be elected by members of Parliament in accordance with the provisions contained in the Fifth Schedule. (2) The President shall, as Head of State, take precedence over all other persons in the powers and perform the duties conferred and imposed on him by this Constitution and by any other law. (3) In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 58, the President shall act in accordance with the advice of the Prime Minister. Provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court. (4) A person shall not be qualified for election as President if he – (a) is less than thirty-five years of age; or (b) is not qualified for election as a member of Parliament; or (c) has been removed from the office of President by impeachment under this Constitution. (5) The Prime Minister shall keep the President informed on matters of domestic and foreign policy, and submit for the consideration of the Cabinet any matter which the President may request him to refer to it.

49. Prerogative of mercy. – The President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

50. Term of office of President, – (1) Subject to the provisions of this Constitution, the President shall hold office for a term of five years from the date on which he enters upon his office: Provided that notwithstanding the expiration of his term the President shall continue to hold office until his successor enters upon office. (2) No Person shall hold office as President for more than two terms, whether or not the terms are consecutive. (3) The President may resign his office by writing under his hand addressed to the Speaker. (4) The President during his term of office shall not be qualified for election as a member of Parliament, and if a member of Parliament is elected as President he shall vacate his seat in Parliament on the day on which he enters upon his office as President.

51. President's immunity. – (1) without prejudice to the provisions of article 52, the President shall not be answerable in any court for anything done or omitted by him in the exercise or purported exercise of the functions of this office, but this clause shall not prejudice the right of any person to take proceedings against the Government. (2) During his term of office no criminal proceedings whatsoever shall be instituted or continued against the President in, and no process for his arrest or imprisonment shall issue from, any court.

52. Impeachment of the President. – (1) The President may be impeached on a charge of violating this Constitution or of grave misconduct, preferred by a notice of motion signed by at least one-half of the total number of members of Parliament and delivered to the Speaker, setting out the particulars of the charge, and the motion shall not be debated earlier than fourteen nor later than thirty days after the notice is so delivered; and the Speaker shall forthwith summon Parliament if it is not in session. (2) The conduct of the President may be referred by Parliament to any court, tribunal or body appointed or designated by Parliament for the investigation of a charge under this article. (3) The President shall have the right to appear and to be represented during the consideration of charge. (4) If after the consideration of the charge a resolution is passed by Parliament by the votes of not less than two-thirds of the total number of members declaring that the charge has been substantiated, the President shall vacate his office on the date on which the resolution is passed. (5) Where the Speaker is exercising the function of the President under article 54 the provisions of this article shall apply subject to the modifications that the reference to the Speaker in clause (1) shall be construed as a reference to the Deputy Speaker, and that the reference in clause (4) to the vacation by the President of his office shall be construed as a reference to the vacation by the Speaker of his office as Speaker; and on the passing of a resolution such as is referred to in clause (4) the Speaker shall cease to exercise the functions of President.

53. Removal of President on ground of incapacity. – (1) The President may be removed from office on the ground of physical or mental incapacity on a motion of which notice, signed by not less than one-half of the total number of members of Parliament, is delivered to the Speaker setting out particulars of the alleged incapacity. (2) On receipt of the notice the Speaker shall forthwith summon Parliament if it is not in session and shall call for a resolution constituting a medical board (hereinafter in this article called “the Board”) and upon the necessary motion being made and carried shall forthwith cause a copy of the notice to be transmitted to the President together with a request signed by the Speaker that the President submit himself within a period of ten days from the date of the request to an examination by the Board. (3) The motion for removal shall not be put to the vote earlier than thirty days after notice of the motion is delivered to the Speaker, and if it is again necessary to summon Parliament in order to enable the motion to be made within that period, the Speaker shall summon Parliament. (4) The President, shall have the right to appear and to be represented during the consideration of the motion. (5) If the President has not submitted himself to an examination by the Board before the motion is made in Parliament, the motion may be put to the vote, and if it is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which the motion is passed. (6) If before the motion for removal is made in Parliament, the President has submitted himself to an examination by the Board, the motion shall not be put to the vote until the Board has been given an opportunity of reporting its opinion to Parliament. (7) If after consideration by Parliament of the motion and of the report of the Board (which shall be submitted within seven days of the examination held pursuant to clause (2) and if not so submitted shall be dispensed with) the motion is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which the resolution is passed.

54. Speaker to act as President during absence, etc. – If a vacancy occurs in the office of President or if the President is unable to discharge the functions of his office on account of absence, illness or any other cause the Speaker shall discharge those functions until a President is elected or until the President resumes the function of this office, as the case may be.

CHAPTER II – THE PRIME MINISTER AND THE CABINET

55. The Cabinet, - There shall be a Cabinet for Bangladesh having the Prime Minister at its head and comprising also such other Ministers as the Prime Minister may from time to time designate. (2) The executive power of the Republic shall, in accordance with this Constitution, be exercised by or on the authority of the Prime Minister. (3) The Cabinet shall be collectively responsible to Parliament. (4) All executive actions of the Government shall be expressed to be taken in the name of the President. (5) The President shall by rules specify the manner in which orders and other instruments made in his name shall be attested or authenticated, and the validity of the order or instruction so attested or authenticated shall not be questioned in any court on the ground that it was not duly made or executed. (6) The President shall make rule for the allocation and transaction of the business of the Government.

56. Minister – (1) There shall be a Prime Minister, and such other Ministers, Ministers of State and Deputy Ministers as may be determined by the Prime Minister. (2) The appointments of the Prime Minister and other Ministers and of the Ministers of State and Deputy Ministers, shall be made by the President: Provided that not less than four-fifths of their number shall be appointed from among members of Parliament and not more than one-fifth of their number may be chosen from persons qualified for election as members of Parliament. (3) The President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament. (4) If occasion arises for making any appointment under clause (2) or clause (3) between a dissolution of Parliament and the next following general election of members of Parliament, the persons who were such members immediately before the dissolution shall be regarded for the purpose of this clause as continuing to be such members.

57. Tenure of office of Prime Minister, – (1) The office of Prime Minister shall become vacant – (a) if he resigns from office at any time by placing his resignation in the hands of the President; or (b) if he ceases to be a member of Parliament; (2) if the Prime Minister ceases to retain the support of a majority of the members of Parliament, he shall either resign his office or advise the President in writing to dissolve Parliament, and if he so advises the President shall dissolve Parliament accordingly. (3) Nothing in this article shall disqualify the Prime Minister for holding office until his successor has entered upon office.

58. Tenure of office of other Ministers. – (1) The office of a Minister other than the Prime Minister shall become vacant – (a) if he resigns from office by placing his resignation in the hands of the Prime Minister for submission to the President; (b) if he ceases to be a member of Parliament; (c) if the President pursuant to the provisions of clause (2) so directs; or (d) as provided in clause (4) (2) The Prime Minister may at any time request a Minister to resign, and if such Minister fails to comply with the request, may advise the President to terminate the appointment of such Minister (3) Nothing in sub-clauses (a), (b) and (d) of clause (2) shall disqualify a Minister for holding office during any period in which Parliament stands dissolved. (4) If the Prime Minister resigns from or ceases to hold office each of the other Ministers shall be deemed also to have resigned from office but shall, subject to the provisions of this Chapter, continue to hold office until his successor has entered upon office. (5) In this article “Minister” includes Minister of State and Deputy Minister.

CHAPTER III – LOCAL GOVERNMENT

59. Local Government – (1) Local Government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law. (2) Every body such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to – (a) administration and the work of public officers; (b) the maintenance of public order; (c) the preparation and implementation of plans relating to public services and economic development.

60. Powers of local government bodies, – For the purpose of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds.

4. Amendment of article 66 of the Constitution. – In the Constitution, in article 66, - (a) in clause (2), for sub-clause (d) the following shall be substituted, namely:- “(d) has been, on conviction for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless – (i) such conviction has been reversed on appeal or revision; or (ii) a period of five years has elapsed since his release; (b) in clause (2A) the words and commas “President, Vice-President, Prime Minister, Deputy Prime Minister”, shall be omitted; and (c) in clause (4), the words and figure “or as to whether a member of Parliament should vacate his seat pursuant to article 70” shall be omitted.

5. Substitution of article 70 of the Constitution – (1) In the Constitution for article 70 the following shall be substituted, namely:-

“70. Vacation of seat on resignation, etc. – If a person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party – (a) resigns from that party; (b) loses the membership of, or is expelled from, that party; (c) forms, together with some other members of that party, any group within that party; (d) acts in Parliament against the decision of that party; or (e) votes in Parliament against that party; and the leader of that party in Parliament communicates this fact to the Election Commission in writing, the seat of that member shall fall vacant on the date of receipt of such communication by the Election Commission.

Explanation, - If a member of Parliament – (a) being present in Parliament abstains from voting, or (b) absents himself from any sitting of Parliament, ignoring the direction of the party which nominated him at the election as a candidate not to do so, he shall be deemed to have voted against that party. (2) A member of Parliament whose seat falls vacant under clause (1) shall be disqualified for election as a member of Parliament for a period of five years from the date his seat so falls vacant. (3) If at any time groups are formed by members of Parliament of a political party and a question arises as to which group represents that party, the question may be referred to the Speaker by any such group in writing for a decision, and the Speaker shall, within seven days of the receipt of the reference, convene a meeting of all members of Parliament of that party and decide the question by putting it to vote and the decision of the Speaker on the result of such voting shall be final. (4) If the person, after being elected a member of Parliament as an independent candidate, joins any political party, he shall, for the purpose of this article, be deemed to have been elected as a nominee of that Party.”

6. Amendment of article 72 of the Constitution. – In the Constitution, in article 72, - (a) in clause (1), in the proviso, for the full stop at the end a colon shall be substituted and thereafter the following new proviso shall be added, namely:- “Provided further that in the exercise of his functions under this clause, the President shall act in accordance with the advice of the Prime Minister tendered to him in writing”; and (b) clause 4(A) shall be omitted.

7. Amendment of article 73A of the Constitution. – In the Constitution, in article 73A, in clause (2), the words “Deputy Prime Minister” shall be omitted.

8. Amendment of article 88 of the Constitution. – In the Constitution, in article 88, clause (AA) shall be omitted.

9. Amendment of article 109 of the Constitution. – In the Constitution, in article 109 after the word “courts” the words “and tribunals” shall be inserted.

10. Amendment of article 119 of the Constitution. – In the Constitution, in article 119, for clause (1) the following shall be substituted, namely:- “(1) The superintendence, direction

and control of the preparation of the electoral rolls for all elections to Parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with this Constitution and any other law – (a) hold elections of members of Parliament; and (b) delimit the constituencies and prepare electoral rolls for the purpose of elections to parliament”.

11. Amendment of article 122 of the Constitution. – In the Constitution, in article 122. – (a) in clause (1) the words “to the office of President and Vice-President and” shall be omitted; (b) clause (3) shall be omitted.
12. Amendment of article 123 of the Constitution. – In the Constitution, in article 113. – (a) for clause (1), (2), (2A) and (2B) the following shall be substituted, namely:- “(1) In the case of a vacancy in the office of President occurring by reason of the expiration of his term of office an election to fill the vacancy shall be held within the period of ninety days prior to the date of expiration of the term: Provided that if the term expires before the dissolution of the Parliament by the members of which he was elected the election to fill the vacancy shall not be held until after the next general election of members of Parliament, but shall be held within thirty days after the first sitting of parliament following such general election. (2) In the case of a vacancy in the office of President occurring by reason of the death, resignation or removal of the President, an election to fill the vacancy shall be held within the period of ninety days after the occurrence of the vacancy”; and (b) in clause (4), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:- “Provided that in a case where, in the opinion of the Speaker and the Chief Election Commissioner, it is not possible for reasons of an act of God, to hold such election within the period specified in this clause, such election shall be held within ninety days following next after the last day of such period”.
13. Substitution of article 124 of the Constitution – In the Constitution, for article 124 the following shall be substituted, namely:- “124. Subject to the provisions of this Constitution, Parliament may by law make provision with respect to all matters relating to or in connection with elections to Parliament, including the delimitation of constituencies, the preparation of electoral rolls, the holding of elections, and all other matters necessary for securing the due constitution of parliament”.
14. Amendment of article 125 of the Constitution. – In the Constitution, in article 125, in clause (b), the words “and Vice-President” shall be omitted.
15. Amendment of article 141A of the Constitution. – In the Constitution, in article 141A, in clause (1), the following proviso shall be added, namely:- “Provided that such Proclamation shall require for its validity the prior counter signature of the Prime Minister”.
16. Amendment of article 141C of the Constitution. – In the Constitution, the article 141C in clause (1) for the words “by order” the words and comma “on the written advice of the Prime Minister, by order” shall be substituted.
17. Amendment of article 142 of the Constitution, - In the Constitution, the article 142, - (a) in clause (1A), the figures and commas “48, 56, 58”, shall be omitted; (b) after clause (1C), the following new clause shall be inserted, namely: “(ID) Nothing in clause (1C) shall be deemed to be an expression of confidence or no-confidence in the Cabinet or Parliament”.
18. Amendment of article 147 of the Constitution. – In the Constitution, in article 147, in clause (4), - (a) sub-clause (aa) shall be omitted; (b) in sub-clause (b), the words “or Deputy Prime Minister” shall be omitted.
19. Amendment of article 148 of the Constitution. – In the Constitution, in article 148, clause (1A) shall be omitted.

20. Amendment of article 152 of the Constitution. – In the Constitution, in article 152, in clause (1), the words “the Vice-President means the Vice-President of Bangladesh elected or appointed under this Constitution” shall be omitted.
21. Amendment of the Third Schedule to the Constitution. – In the Constitution, in the Third Schedule, - (a) form 1A shall be omitted; and (b) in form 2, in the heading the comma and words “Deputy Prime Minister” shall be omitted.
22. Amendment of the Fourth Schedule to the Constitution. – In the Constitution, in the Fourth Schedule, after paragraph 21, the following new paragraph 22 shall be added, namely:-

“22. Notwithstanding anything contained in the Constitution, the Parliament functioning immediately before the commencement of the Constitution (Twelfth Amendment) Act, 1991 (of 1991) shall be deemed to have been duly elected and constituted in accordance with the Constitution and law and shall continue to function under the provisions of article 72 of the Constitution”.
23. Insertion of new Fifth Schedule to the Constitution. – In the Constitution, after the Fourth Schedule the following new Fifth Schedule shall be inserted:-

FIFTH SCHEDULE: ELECTION OF PRESIDENT

[Article 48]

1. The Speaker shall hold and conduct any election to the office of President, and shall be the returning officer for such election.
2. The Speaker shall preside at the meeting of the members of Parliament held pursuant to the provisions of this Schedule.
3. The Speaker shall, by public notification, fix the time and place for delivering nomination papers, holding a scrutiny, making withdrawals, and (if necessary) holding a poll.
4. At any time before noon on the day fixed for depositing nomination papers any member of parliament may nominate for election as President a person qualified for such election, by delivering to the returning officer a nomination paper signed by himself as proposer and by another member of Parliament as seconder, together with a statement signed by the person nominated that he consents to the nomination: Provided that no person shall sign, whether as proposer or as seconder, more than one nomination paper at any one election.
5. A scrutiny of nomination papers shall be held by the Speaker at the time and place fixed by him, and if after a scrutiny only one person remains validly nominated, the Speaker shall declare that person elected, but if more than one person remains validly nominated he shall announce, by public notification, the names of the persons validly nominated (in this Schedule referred to as the candidates).
6. A candidate may withdraw his candidature at any time before noon on the day fixed for this purpose by delivering a notice in writing under his hand to the Speaker, and a candidate who has so withdrawn shall not be allowed to cancel such notice.
7. If all but one of the candidates have withdrawn, that one shall be declared by the Speaker to be elected.
8. If there is no withdrawal or if, after withdrawals have taken place, two or more candidates remain validly nominated, the Speaker shall announce by public notification the names of the candidates and their proposers and seconders and shall proceed to hold a poll in accordance with the provisions of the succeeding paragraphs.

9. If, before the close of the poll a candidate who has been validly nominated dies and a report of his death is received by the Speaker and the Speaker is satisfied that the candidate has died, he shall countermand the poll and all proceedings with reference to the election shall be commenced anew.
10. A poll shall be taken at a meeting of members of Parliament on such date and time as the Speaker may, by public notification, fix in this behalf and the Speaker shall conduct the poll with the assistance of such officers as he may appoint.
11. If there are only two candidates the candidate who has obtained the larger number of votes shall be declared by the Speaker to be elected.
12. If there are three or more candidates and one of those candidates has obtained a larger number of votes than the aggregate number of votes obtained by the remaining candidates, he shall be declared by the Speaker to be elected.
13. If there are three or more candidates and the last preceding paragraph does not apply, a further poll shall be held at which the candidate who obtained the smallest number of votes at the previous poll shall be excluded.
14. Where at any poll any two or more candidates obtain an equal number of votes, than the result of the poll shall be decided by the casting vote of the Speaker openly.
15. After the close of the poll the Speaker shall announce the result of the poll and shall forthwith cause it to be declared by public notification.
16. The decision of the Speaker on all matters relating to the election of the President shall be final.
17. The Speaker may, by public notification, with approval of the President, make rules for carrying out the purposes of this Schedule”.

STATEMENT OF OBJECTS AND REASONS

The present Parliament is the outcome of a persistent, severe and bloody people’s movement for the last eight years which culminated into an unprecedented mass upsurge at its last stage. This unique Parliament has, therefore, a distinct national appeal. The members of this parliament, who have been elected by direct adult franchise in a free, fair and impartial election held under a neutral non-partisan care-taker government in an ever peaceful atmosphere have, therefore, an undisputed and fervent appeal and prestige. To them the people’s aspiration is immense. Such hopes and aspirations of the people could only be fulfilled by establishing a government accountable to Parliament through a democratic process based on the backdrop of realities and multiparty system. Thus, to odora democracy with an institutional shape this amendment Bill of the Constitution is deemed expedient and essential.

Source: Hakim, 1993: 144-155

Appendix 06

THE CONSTITUTION (ELEVENTH AMENDMENT) ACT, 1991

An act further to amend the Fourth Schedule to the Constitution of the People's Republic of Bangladesh

WHEREAS in the face of the country-wide popular upsurge for overthrowing the illegal and undemocratic government and giving democracy in institutional shape the then President was compelled to tender resignation;

AND WHEREAS after the historic success of the students, peasants, workers, employees, the people in general, the Main Political Alliances and parties and all professional organization, regardless of their political affiliation, belief and leanings, the three Main Political Alliances and parties made an ardent call to the Chief Justice of Bangladesh, Mr. Justice Shahabuddin Ahmed to take the reins of a neutral and impartial government as its head;

AND WHEREAS the then President appointed Chief Justice Mr. Shahabuddin Ahmed as Vice-President in the vacancy caused by the resignation of the then Vice-President and tendered his resignation to him;

AND WHEREAS upon a positive assurance of the three Main Political Alliances and parties of the country to the effect that after having run the government temporarily till the establishment of an elected democratic government through a free, fair, and impartial election to Parliament he would be eligible to return to the office of the Chief Justice of Bangladesh and with the noble purposes of restoring democracy the Chief Justice, on the 21st day of Agrahayan, 1397 B . S. corresponding to the 6th day of December, 1990, assumed the onerous responsibility of running an impartial government as Acting President;

AND WHEREAS during the period in which Chief Justice Mr Shahabuddin Ahmed exercised the powers and performed the functions of the President in his capacity as Vice-President, a Parliament comprising people's representatives and a people's government have been established through a free, fair and impartial election:

AND WHEREAS it is expedient to make provisions for ratification and confirmation of the appointment of Chief Justice Mr Shahabuddin Ahmed as Vice-President, the exercise and performance by him of all powers and functions of the President acting as such and all laws and Ordinances made by him and acts and things done and all actions taken by him in that capacity and for his return to the office of the Chief Justice of Bangladesh in accordance with the assurances of the people and the Main Political Alliances and parties.

It is hereby enacted as follows:-

- 1. Short title.-** This Act may be called the Constitution (Eleventh Amendment) Act, 1991.
- 2. Amendment of the Fourth Schedule to the Constitution.-** In the Constitution, in the Fourth Schedule, after paragraph 20, the following new paragraph 21 shall be added, namely:-

***21. Ratification and confirmation of the appointment of Vice-President, etc.-** (1) The appointment of, and the administration of oath to the Chief Justice of Bangladesh as Vice-President on the 21st day of Agrahayan, 1397 B. S. corresponding to the 6th day of December, 1990, and the resignation tendered to him by the then President and all powers exercised, all laws and Ordinances made and all orders made, acts and things done, and actions taken, or purported to have been made, done or taken by the said Vice President acting as President during the period between the 21st day of Agrahayan, 1397 B. S. corresponding to the 6th day of December, 1990,

and the date of commencement of the Constitution (Eleventh Amendment) Act, 1991 (Act No. XXIV of 1991) (both days inclusive) or till the new President elected under article 48(1) of the Constitution has entered upon his office (whichever is later), are hereby ratified and confirmed and declared to have been validly made, administered, tendered, exercised, done and taken according to law.

(2) The said Vice-President shall, after the commencement of the Constitution (Eleventh Amendment) Act, 1991 (Act No. XXIV of 1991), and after the new President elected under this Constitution has entered upon his office, he eligible to resume the duties and responsibilities of the Chief Justice of Bangladesh and the period between the 21st day of Agrahayan, 1397 B. S. corresponding to the 6th day of December, 1990 and the date of which he resumes such duties and responsibilities shall be deemed to be the period of actual service within the meaning of section 2(a) of the Supreme Court Judges (Leave, Pension and Privileges) Ordinance, 1982 (Ordinance No. XX of 1982)”.

Source: Salam (3rd Edition), 2008: 206-207.

Appendix 07

THE CONSTITUTION (TWELFTH AMENDMENT) ACT, 1991

An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Constitution (Twelfth Amendment) Act, 1991.

(2) The provisions of this Act, except the provisions of section 14(b), shall come into force at once and the provisions of section 14(b) shall be deemed to have come into force on the 1st day of Chaitra, 1397 corresponding to the 16th day of March, 1991.

2. Amendment of Article 11 of the Constitution.- In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, in article 11, after the word "guaranteed" the comma and words, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured shall be inserted.

3. Amendment of Part IV of the Constitution.- In the Constitution in Part IV, for Chapters I and II the following Chapters I, II and III shall be substituted, namely:-

CHAPTER 1 – THE PRESIDENT

48. The President – (1) There shall be a President of Bangladesh who shall be elected by members of Parliament in accordance with law.

(2) The President shall, as Head of State, take precedence over all other persons in the State, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law.

(3) In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister:

Provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court.

(4) A person shall not be qualified for election as President if he-

- (a) is less than thirty-five years of age; or
- (b) is not qualified for election as a member of Parliament; or
- (c) has been removed from the office of President by impeachment under this Constitution.

(5) The Prime Minister shall keep the President informed on matters of domestic and foreign policy, and submit for the consideration of the Cabinet any matter which the President may request him to refer to it.

49. Prerogative of mercy.- The President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

50. Term of office of President.- (1) Subject to the provisions of this Constitution, the President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that notwithstanding the expiration of his term the President shall continue to hold office until his successor enters upon office.

(2) No person shall hold office as President for more than two terms, whether or not the terms are consecutive.

(3) The President may resign his office by writing under his hand addressed to the Speaker.

(4) The President during his term of office shall not be qualified for election as a member of Parliament, and if a member of Parliament is elected as President he shall vacate his seat in Parliament on the day on which he enters upon his office as President.

51. President's immunity.- (1) Without prejudice to the provisions of article 52, the President shall not be answerable in any court for anything done or omitted by him in the exercise or purported exercise of the functions of this office, but this clause shall not prejudice the right of any person to take proceedings against the Government.

(2) During his term of office no criminal proceedings whatsoever shall be instituted or continued against the President in, and no process for his arrest or imprisonment shall issue from, any court.

52. Impeachment of the President- (1) The President may be impeached on a charge of violating this Constitution or of grave misconduct, preferred by a notice of motion signed by a majority of the total number of members of Parliament and delivered to the Speaker, setting out the particulars of the charge, and the motion shall not be debated earlier than fourteen nor later than thirty days after the notice is so delivered; and the Speaker shall forthwith summon Parliament if it is not in session.

(2) The conduct of the President may be referred by Parliament to any court, tribunal or body appointed or designated by Parliament for the investigation of a charge under this article.

(3) The President shall have the right to appear and to be represented during the consideration of the charge.

(4) If after the consideration of the charge a resolution is passed by Parliament by the votes of not less than two-thirds of the total number of members declaring that the charge has been substantiated, the President shall vacate his office on the date on which the resolution is passed.

(5) Where the Speaker is exercising the functions of the President under article 54 the provisions of this article shall apply subject to the modifications that the reference to the Speaker on clause (1) shall be construed as a reference to the Deputy Speaker, and that the reference in clause (4) to the vacation by the President of his office shall be construed as a reference in the vacation by the Speaker of his office as Speaker; and on the passing of a resolution such as is referred to in clause (4) the Speaker shall cease to exercise the functions of President.

53. Removal of President on ground of incapacity.- (1) The President may be removed from office on the ground of physical or mental incapacity on a motion of which notice, signed by a majority of the total number of members of Parliament, is delivered to the Speaker, setting out particulars of the alleged incapacity.

(2) On receipt of the notice the speaker shall forthwith summon Parliament if it is not in session and shall call for a resolution constituting a medical board (hereinafter in this article called "the

Board”), and upon the necessary being made and carried shall forthwith cause a copy of the notice to be transmitted to the President together with a request signed by the Speaker that the President submit himself within a period of ten days from the date of the request to an examination by the Board.

(3) The motion for removal shall not be put to the vote earlier than fourteen nor later than thirty days after notice of the motion is delivered to the Speaker, and if it is again necessary to summon Parliament in order to enable the motion to be made within that period, the Speaker shall summon Parliament.

(4) The President shall have the right to appear and to be represented during the consideration of the motion.

(5) If the President has not submitted himself to an examination by the Board before the motion is made in Parliament, the motion may be put to the vote, and if it is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which the motion is passed.

(6) If before the motion for removal is made in Parliament, the President has submitted himself to an examination by the Board, the motion shall not be put to the vote until the Board has been given an opportunity of reporting its opinion to Parliament.

(7) If after considerations by Parliament of the motion and of the report of the Board (which shall be submitted within seven days of the examination held pursuant to clause (2) and if not so submitted shall be dispensed with) the motion is passed by the votes of not less than two-thirds of the total number of members of Parliament, the President shall vacate his office on the date on which the resolution is passed.

54. Speaker to act as President during absence, etc.- If a vacancy occurs in the office of President or if the President is unable to discharge the functions of his office on account of absence, illness or any other cause the Speaker shall discharge those functions until a President is elected or until the President resumes the functions of his office, as the case may be.

CHAPTER II – THE PRIME MINISTER AND THE CABINET

55. The Cabinet.- (1) There shall be a Cabinet for Bangladesh having the Prime Minister at its head and comprising also such other Ministers as the Prime Minister may from time to time designate.

(2) The executive power of the Republic shall, in accordance with this Constitution, be exercised by or on the authority of the Prime Minister.

(3) The Cabinet shall be collectively responsible to Parliament.

(4) All executive actions of the Government shall be expressed to be taken in the name of the President.

(5) The President shall by rules specify the manner in which orders and other instruments made in his name shall be attested or authenticated, and the validity of any order of instrument so attested or authenticated shall not be questioned in any court on the ground that it was not duly made or executed.

(6) The President shall make rule for the allocation and transaction of the business of the Government.

56. Ministers.- (1) There shall be a Prime Minister, and such other Ministers, Ministers of State and Deputy Ministers as may be determined by the Prime Minister.

(2) The appointments of the Prime Minister and other Ministers and of the Ministers of State and Deputy Ministers, shall be made by the President.

Provided that not less than nine-tenths of their number shall be appointed from among members of Parliament and not more than one-tenth of their number may be chosen from among persons qualified for election as members of Parliament.

(3) The President shall appoint as Prime Minister the member of Parliament who appears to him to command the support of the majority of the members of Parliament.

(4) If occasion arises for making any appointment under clause (2) or clause (3) between a dissolution of Parliament and the next following general election of members of Parliament, the persons who were such members immediately before the dissolution shall be regarded for the purposes of this clause as continuing to be such members.

57. Tenure of office of Prime Minister- (1) The office of the Prime Minister shall become vacant

—
(a) if he resigns from office at any time by placing his resignation in the hands of the President: or
(b) if he ceases to be a member of Parliament.

(2) If the Prime Minister ceases to retain the support of a majority of the members of Parliament, he shall either resign his office or advise the President in writing to dissolve Parliament, and if he so advises the President shall, if he is satisfied that no other member of Parliament commands the support of the majority of the members of Parliament, dissolve Parliament accordingly.

(3) Nothing in this article shall disqualify the Prime Minister for holding office until his successor has entered upon office.

58. Tenure of office of other Ministers.- (1) The office of a Minister other than the Prime Minister shall become vacant-

(a) if he resigns from office by placing his resignation in the hands of the Prime Minister for submission to the President;
(b) if he ceases to be a member of Parliament, but this shall not be applicable to a Minister chosen under the proviso to article 56(2);
(c) if the President, pursuant to the provisions of clause (2), so directs; or
(d) as provided in clause (4).

(2) The Prime Minister may at any time request a Minister to resign, and if such Minister fails to comply with the request, may advise the President to terminate the appointment of such Minister.

(3) Nothing in sub-clauses (a), (b) and (d) of clause (1) shall disqualify a Minister for holding office during any period in which Parliament stands dissolved.

(4) If the Prime Minister resigns from or ceases to hold office each of the other Ministers shall be deemed also to have resigned from office but shall, subject to the provisions of this Chapter, continue to hold office until his successor has entered upon office.

(5) In this article “Minister” includes Minister of State and Deputy Minister.

CHAPTER – III LOCAL GOVERNMENT

59: Local Government.- (1) Local Government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.

(2) Everybody such as is referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament, which may include functions relating to-

- (a) administration and the work of public officers;
- (b) the maintenance of public order;
- (c) the preparation and implementation of plans relating to public services and economic development.

60: Powers of Local Government Bodies.- For the purposes of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds.”

4: Amendment of article 66 of the Constitution.- In the Constitution, in article 66, in clause (2A), the words and commas “Vice President,” and “Deputy Prime Minister,” shall be omitted.

5: Substitution of article 70 of the Constitution.- (1) In the Constitution for article 70 the following shall be substituted, namely:-

“70: Vacation of Seat on Resignation, ETC.- (1) A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from that party or votes in Parliament against that party.

Explanation.- If a member of Parliament-

- (a) being present in Parliament abstains from voting, or
- (b) absents himself from any sitting of parliament.

ignoring the direction of the party which nominated him at the election as a candidate not to do so, he shall be deemed to have voted against that party.

(2) If, at any time, any question as to the leadership of the Parliamentary party of a political party arises, the Speaker shall, within seven days of being informed of it in writing by a person claiming the leadership of the majority of the members of that party in Parliament, convene a meeting of all members of Parliament of that party in accordance with the Rules of procedure of Parliament and determine its Parliamentary leadership by the votes of the majority through division and if, in the matter of voting in Parliament, any member does not comply with the direction of the leadership so determined, he shall be deemed to have voted against that party under clause (1) and shall vacate his seat in the Parliament.

(3) If a person, after being elected a member of Parliament as an independent candidate, joins any political party, he shall, for the purpose of this article, be deemed to have been elected as a nominee of that Party.”

6: Amendment of article 72 of the Constitution.- In the Constitution, in article 72-

(a) in clause (1), for the proviso the following provisos shall substituted, namely:

Provided that a period exceeding sixty days shall not intervene between the end of one session and the first sitting of Parliament in the next session.

7: Amendment of article 73A of the Constitution.- In the Constitution, in article 73A-

- (a) in clause (1), after the words “entitled to vote”, the words or to speak on any matter not related to his Ministry” shall be inserted; and
- (b) in clause (2), the words “Deputy Prime Minister” shall be omitted.

8: Amendment of article 88 of the Constitution.- In the Constitution, in article 88, clause (aa) shall be omitted.

9: Amendment of article 92 of the Constitution.- In the Constitution, in article 92, after clause (2), the following new clause shall be added, namely:-

“(3) Notwithstanding anything contained in the foregoing provisions of this Chapter, if, in respect of a financial year, Parliament–

- (a) has failed to make the grants under article 89 and pass the law under article 90 before the beginning of that year and has not also made any grant in advance under this article; or
- (b) has failed to make the grants under article 89 and pass the law under article 90 before the expiration of the period for which the grants in advance, if any, were made under this article.

the President may, upon the advice of the prime Minister, by order, authorise the withdrawal from the Consolidated Fund moneys necessary to meet expenditure mentioned in the financial statement for that year for a period not exceeding sixty days in that year, pending the making of the grants and passing of the law.”

10: Amendment of article 92A of the Constitution.- In the Constitution, article 92A shall be omitted.

11: Amendment of article 109 of the Constitution.- In the Constitution, in article 109 after the word “courts” the words “and tribunals” shall be inserted.

12: Amendment of article 19 of the Constitution.- In the Constitution, in article 19, for clause (1) the following shall be substituted, namely:-

“(1) The superintendence, direction and control of the preparation of the electoral rolls for elections to the office of President and to Parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with this Constitution and any other law-

- (a) hold elections to the office of President;
- (b) hold elections of members of Parliament;
- (c) delimit the constituencies for the purposes of elections to Parliament; and
- (d) prepare electoral rolls for the purposes of elections to the office of President and to Parliament.”

13: Amendment of article 122 of the Constitution.- In the Constitution, in article 122-

- (a) in clause (1), the words “to the offices of President and Vice-President and” shall be omitted;
- (b) clause (3) shall be omitted.

14: Amendment of article 123 of the Constitution.- In the Constitution, in article 123-

- (a) for clauses (1), (2), (2A) and (2B) the following shall be substituted, namely:-

“(1) In the case of a vacancy in the office of President occurring by reason of the expiration of his term of office an election to fill the vacancy shall be held within the period of ninety to sixty days prior to the date of expiration of the term;

Provided that if the term expires before the dissolution of the Parliament by the members of which he was elected the election to fill the vacancy shall not be held until after the next general election

of members of Parliament, but shall be held within thirty days after the first sitting of Parliament following such general election.

(2) In the case of a vacancy in the office of President occurring by reason of the death, resignation or removal of the President, an election to fill the vacancy shall be held within the period of ninety days after the occurrence of the vacancy.” and

(b) in clause (4), for the full-stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:

“Provided that in a case where, in the opinion of the Chief Election Commissioner, it is not possible, for reasons of an act of God, to hold such election within the period specified in this clause, such election shall be held within ninety days following next after the last day of such period.”

15: Substitution of article 124 of the Constitution.- In the Constitution, in article 124 the following shall be substituted, namely:-

“**124: Parliament may make provision as to Elections.-** Subject to the provisions of his Constitution, Parliament may by law make provision with respect to all matters relating to or in connection with elections to Parliament, including the delimitation of constituencies, the preparation of electoral rolls, the holding of elections, and all other matters necessary for securing the due Constitution of Parliament.”

16: Amendment of article 125 of the Constitution.- In the Constitution, in article 125, in clause (b), the words “and Vice-President” shall be omitted.

17: Amendment of Article 141A of the Constitution.- In the Constitution, in article 141A, in clause (1), the following proviso shall be added, namely:-

“Provided that such Proclamation shall require for its validity the prior counter signature of the Prime Minister.”

18: Amendment of article 141C of the Constitution.- In the Constitution, in article 141C, in clause (1), for the words “by order” the words and comma “on the written advice of the Prime Minister, by order” shall be substituted.

19: Amendment of article 142 of the Constitution.- In the Constitution, in article 142.-

(a) in clause (1A) for the comma before the figure “56” the word “or” shall be substituted and the commas and figures, “58, 80, 92A” shall be omitted;

(b) in clause (1B), for the words “the office of President” the word “Parliament” shall be substituted; and

(c) after clause (1C), the following new clause shall be inserted, namely:-

“(1D) Nothing in clause (1C) shall be deemed to be an expression of confidence or no-confidence in the Cabinet or Parliament.”

20: Amendment of article 145A of the Constitution.- In the Constitution, in article 145A for the proviso the following proviso shall be substituted, namely:-

“Provided that any such treaty connected with national security shall be laid in a secret session of Parliament.”

21: Amendment of article 147 of the Constitution.- In the Constitution, in article 147, in clause (4). –

(a) sub-clause (aa) shall be omitted; and

(b) in sub-clause (b), the words “or Deputy Prime Minister” shall be omitted.

22: Amendment of article 148 of the Constitution.- In the Constitution, in article 148, inn clause (1A) shall be omitted.

23: Amendment of article 152 of the Constitution.- In the Constitution, in article 152, in clause (1), the words “the Vice-President” means the Vice-President of Bangladesh elected or appointed under this Constitution” shall be omitted.

24. Amendment of the Third Schedule to the Constitution.- In the Constitution, in the third schedule, -

(a) form 1A shall be omitted; and

(b) in form 2, in the heading, the comma and words, “Deputy Prime Ministers” shall be omitted.

25: Amendment of the Fourth Schedule to the Constitution.- In the Constitution, in the fourth schedule,-

(a) paragraph 20 shall be omitted; and

(b) after paragraph 21, the following new paragraph 22 shall be added, namely.-

“22. Notwithstanding anything contained in the Constitution, the Parliament functioning immediately before the commencement of the Constitution (Twelfth Amendment) Act, 1991 (XXVIII of 1991) shall be deemed to have been duly elected and constituted in accordance with the Constitution and Law and shall continue to function under the provisions of article 72 of the Constitution.”

Source: Salam (3rd Edition), 2008: 209-221.

Appendix 08

The Constitution (Thirteenth Amendment) Act, 1996 Act No. 1 of 1996

[28th March 1996]

An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows:

1: Short title. – This Act may be called the Constitution (Thirteenth Amendment) Act, 1996.

2: Insertion of new article 58A in the Constitution. – In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, after article 58, the following new article shall be inserted, namely:-

“58A: APPLICATION OF CHAPTER. – Nothing in this Chapter, except the provisions of article 55(4), (5) and (6), shall apply during the period in which Parliament is dissolved or stands dissolved:

Provided that, notwithstanding anything contained in Chapter IIA, where the President summons Parliament that has been dissolved to meet under article 72(4), this Chapter shall apply.”

3: Insertion of new Chapter IIA in the Constitution. – In the Constitution, in Part IV, after Chapter II, the following new Chapter shall be inserted, namely.

“CHAPTER – IIA NON-PARTY CARE-TAKER GOVERNMENT

58B: THE NON-PARTY CARE-TAKER GOVERNMENT. – 1) There shall be a Non-Party Care-taker Government during the period from the date on which the Chief Adviser of such government enters upon office after Parliament is dissolved or stands dissolved by reason of expiration of its term till the date on which a new Prime Minister enters upon his office after the constitution of Parliament.

2) The Non-Party Care-taker Government shall be collectively responsible to the President.

3) The executive power of the Republic shall, during the period mentioned in clause (1), be exercised, subject to the provisions of article 5 & D (1), in accordance with this Constitution, by or on the authority of the Chief Adviser and shall be exercised by him in accordance with the advice of the Non-Party Care-taker Government.

4) The provisions of articles 55(4), (5) and (6) shall (with the necessary adaptations) apply to similar matters during the period mentioned in clause (1).

58C: Composition of the Non-Party Care-taker Government, appointment of Advisers, etc. –

1) The Non-Party Care-taker Government shall consist of the Chief Adviser at its head and not more than ten other Advisers, all of whom shall be appointed by the President.

2) The Chief Adviser and other Advisers shall be appointed within fifteen days after Parliament is dissolved or stands dissolved, and during the period between the date on which Parliament is dissolved or stands dissolved and the date on which the Chief Adviser is appointed, the Prime

Minister and his cabinet who were in office immediately before Parliament was dissolved or stood dissolved shall continue to hold office as such.

3) The President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired last and who is qualified to be appointed as an Adviser under this article:

Provided that if such retired chief Justice is not available or is not willing to hold the office or Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired next before the last retired Chief Justice.

4) If no retired Chief Justice is available or willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired last and who is qualified to be appointed as an Adviser under this article:

Provided that if such retired Judge is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired next before the last such retired Judge.

5) If no retired Judge of the Appellate Division is available or willing to hold the office of Chief Adviser, the President shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among citizens of Bangladesh who are qualified to be appointed as Advisers under this article.

6) Notwithstanding anything contained in this Chapter, if the provisions of clauses (3), (4) and (5) cannot be given effect to, the President shall assume the functions of the Chief Adviser of the Non-Party Care-taker Government in addition to his own functions under this Constitution.

7) The President shall appoint Advisers from among the persons who are –

- a) qualified for election as a member of Parliament;
- b) not members of any political party or of any organization associated with or affiliated to any political party;
- c) not, and have agreed in writing not to be, candidates for the ensuing election of members of Parliament;
- d) not over seventy-two years of age.

8) The Adviser shall be appointed by the President on the advice of the Chief Adviser.

9) The Chief Adviser or an Adviser may resign his office by writing under his hand addressed to the President.

10) The Chief Adviser or an Adviser shall cease to be Chief Adviser or Adviser if he is disqualified to be appointed as such under this article.

11) The Chief Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Prime Minister, and an Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Minister.

12) The Non-Party Care-taker Government shall stand dissolved on the date on which the Prime Minister enters upon his office after the constitution of new Parliament.

58D: FUNCTIONS OF NON-PARTY CARE-TAKER GOVERNMENT. – (1) The Non-Party Care-taker Government shall discharge its functions as an interim government and shall carry on the routine functions of such government with the aid and assistance of persons in the services of the Republic; and, except in the case of necessity for the discharge of such functions its shall not make any policy decision.

2) The No-Party Care-taker Government shall give to the Election Commission all possible aid and assistance that may be required for holding the general election of members of Parliament peacefully, fairly and impartially.

58E: CERTAIN PROVISIONS OF THE CONSTITUTION TO REMAIN INEFFECTIVE. – Notwithstanding anything contained in articles 48(3), 141A(1) and 141C(1) of the Constitution, during the period the Non-Party Care-taker Government is functioning, provisions in the Constitution requiring the President to act on the advice of the Prime Minister or upon his prior counter-signature shall be ineffective.”

4: Amendment of article 61 of the Constitution. – In the Constitution, in article 61, after the word “law” at the end, the commas, words and figure “and such law shall, during the period in which there is a Non-Party Care-taker Government under article 58B, be administered by the President.”

5: Amendment of article 99 of the Constitution. – In the Constitution, in article 99, in clause (1), after the words “quasi-judicial office”, the words “or the office of Chief Adviser or Adviser” shall be inserted.

6: Amendment of article 123 of the Constitution. – In the Constitution, in article 123, for clause (3)

Source: Salam, M. A. (2008) 3rd Edition, *The Constitution of Bangladesh* (As modified up to date), Dhaka: Centre for Information and Justice (CIJ), pp. 222-228.

Appendix 09

The Constitution (Fourteenth Amendment) Act, 2004

An Act Further to amend certain provisions of the Constitution of the People's Republic of Bangladesh.

Whereas it is expedient further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing, it is hereby enacted as follows:

1. Short title and commencement: (1) This Act may be called the Constitution (Fourteenth Amendment) Act, 2004

(2) This Act shall come into force at once.

2. Insertion of article 4A in the Constitution: (1) In the Constitution of the People's Republic of Bangladesh, hereinafter referred to as the Constitution, after article 4, the following new article shall be inserted, namely:

“4A. Portrait: (1) Portrait of the President shall be preserved and displayed at the offices of the President, Prime Minister and Speaker, and all embassies and missions of Bangladesh abroad.

(2) In addition to clause (1), Portrait, of only the prime Minister, shall be preserved and displayed at the offices of the President and the Speaker, and in head and branch offices of all government and semi-government offices, autonomous bodies, statutory public authorities, government educational institutions, embassies and missions of Bangladesh abroad.”

3. Amendment of article 65 of the Constitution: In the Constitution, in article 65 for clause (3), the following clause (3) shall be substituted, namely:

(3) Until the dissolution of Parliament occurring next after the expiration of the period of ten years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of the commencement of the Constitution (Fourteenth Amendment) Act, 2004, there shall be reserved forty five seats exclusively for women members and they will be elected by the aforesaid members in accordance with law on the basis of procedure of proportional representation in the Parliament through single transferable vote:

Provided that nothing in this clause shall be deemed to prevent a woman from being elected to any of the seats provided for in clause (2) of the article.”

4. Amendment of article 96 of the Constitution: In the Constitution, in Clause (1) of article 96, for the word “sixty-Five”, the word “sixty-seven” shall be substituted.

5. Amendment of article 129 of the Constitution: In the Constitution, in article 129, for clause (1), the following clause shall be substituted, namely:

“(1) The Auditor-General shall, subject to the provisions of the article, hold office for five years from the date on which he entered upon his office, or until he attains the age of sixty-five years, whichever is earlier.”

6. Amendment of article 139 of the Constitution: In the Constitution, in clause (1) of article 139, for the word “sixty-two”, the word “sixty-five” shall be substituted.

7. Amendment of article 148 of the Constitution: In the Constitution, in article 148, after clause (2), the following new clause shall be inserted, namely:

“(2A) If, within three days next after publication through official Gazette of the result of a general election of members of Parliament under clause (3) of article 123, the person specified under the Constitution of the purpose or such other person designated by that person for the purpose, is unable to, or does not, administer oath to the newly elected members of Parliament, on any

account, the Chief Election Commissioner shall administer such oath within three days next thereafter, as if, he is the person specified under the Constitution for the purpose,”

8. Amendment of the Fourth Schedule to the Constitution: In the Constitution, in the Fourth Schedule, after paragraph 22, the new following paragraph 23 shall be added, namely:

“(23) Temporary special provision regarding women members in the Parliament: (1) For the residual period of the Parliament in existence at the time of the commencement of the Constitution (Fourteenth Amendment) Act, 2004, there shall be reserved forty five seats exclusively for women members and they will be elected by members of the Parliament in accordance with law on the basis of procedure of proportional representation in the Parliament through single transferable vote,

(2) During the period mentioned in sub-paragraph (1), the Parliament shall consist of the three hundred members mentioned in clause (2) of article 65 and the forty five women members mentioned in sub-paragraph (1) of this paragraph.” (The Constitution of the People’s Republic of Bangladesh (2011), Ministry of Law, Justice and Parliamentary Affairs Government of the People’s Republic of Bangladesh).

Source: The Constitution of the People’s Republic of Bangladesh (October, 2011), Printed with latest amendment, Ministry of Law, Justice and Parliamentary Affairs Government of the People’s Republic of Bangladesh, pp. 134-135.

Appendix 10

List of Distinguished Persons Invited and Met with SC (Special Committee) for the 15th Amendment

A. Former Chief Justice:

Sl. No.	Invited Distinguished former CJs	Sl. No.	Presented Former CJs
1.	Justice Kamal Uddin Hossain	1.	Justice Mostofa Kamal
2.	Justice Mostofa Kamal	2.	Justice Md. Fazlul Karim
3.	Justice Muhmmad Habibur Rahman	3.	Justice Md. Tafazzal Islam
4.	Justice Md. Fazlul Karim		
5.	Justice Md. Tafazzal Islam		

B. Eminent Constitution and Law Expert:

Sl. No.	Invited Distinguished	Sl. No.	Presented Distinguished
1.	Justice Sayed Amirul Islam, Former Justice	1.	Justice Sayed Amirul Islam, Former Justice
2.	Mr. T. H. Khan, Senior Advocate	2.	Dr. Kamal Hossain, Senior Advocate
3.	Dr. Kamal Hossain, Senior Advocate	3.	Barrister Amirul Islam, Senior Advocate
4.	Barrister Amirul Islam, Senior Advocate	4.	Mr. Mahbube Alam, Attorney General
5.	Barrister Rokon Uddin Mahmud, Senior Advocate	5.	Barrister Rafiq-Ul Haque, Former Attorney General
6.	Barrister Rabeya Bhuiyan, Senior Advocate	6.	Mr. Mahmudul Islam, Former Attorney General
7.	Mr. Mahbube Alam, Attorney General	7.	Mr. Azmalul Hossain QC, Senior Advocate
8.	Barrister Rafiq-Ul Haque, Former Attorney General	8.	Mr. Toufiq Newaz, Senior Advocate
9.	Mr. Mahmudul Islam, Former Attorney General	9.	Dr. M Jahir, Senior Advocate
10.	Mr. Azmalul Hossain QC, Senior Advocate	10.	Sheikh Fazle Noor Taposh, Honorable MP
11.	Mr. Toufiq Newaz, Senior Advocate		
12.	Dr. M. Jahir, Senior Advocate		
13.	Sheikh Fazle Noor Taposh, Honorable MP		

C. Different Political Party Chiefs And Top Leaders:

Invited Distinguished (Party – wise)	Sl. No.	Presented Distinguished (Party-wise)
<u>Bangladesh Awami League</u> Honorable Leader of JS, PM and President and Top leaders of the Party of Bangladesh Awami League.	1.	Sheikh Hasina, Honorable President of BLA
	2.	Mr.Md. Abdul Jalil, MP and Member of BLA Advisory Committee
	3.	Mr. Mohmmah Nasim, Senior Leader of BLA
	4.	Mr. Abul Hasanat Abdullah, Senior Leader of BLA
	5.	Dr. Mohiuddin Khan Alamgir MP and leader of BLA
	6.	Mr. Abul Maal Abdul Muhith Honorable Minister of Finance and leader of BLA
	7.	Begum Motia Chowdhury, Minister of Agriculture and leader of BLA
	8.	Mr. Hossain Tawfiq Imam, Adviser of Prime Minister BLA
	9.	Mr. Mousiur Rahman, Adviser of Prime Minister of BLA
	10.	Dr. Alauddin Ahmed, Adviser of Prime Minister of BLA
	11.	Dr. A. K. Azad Chowdhury. Advisor of BLA
	12.	Mr. Mahbulul Alam Hanif , Joint Secretary of BLA
	13.	Mr. Yousuf Hossain Khan of BLA
	14.	Dr. Durgadas Bartchharge. Member of Advisor Council of BLA
<u>Bangladesh Nationalist Party (BNP)</u> Honorable Leader of the Opposition and top political leaders of BNP was invited.		None from BNP was Met with special Committee Party
<u>Bangladesh Jatiya Party (BJP)</u> Chief of Party and top political leaders of BJP was invited.		None from BJP was Met with special Committee Party
<u>Jatiya Party (Ershad)</u> Chairman and top Political Leaders of Jatiya Party (Ershad)	Sl. No.	Presented Participated leaders of Jatiya Party of Ershad
	1.	Mr. Hussain Muhammad Ershad, Chairman and MP of Jatiya Party
	2.	Kazi Feroz Rashid, leader and MP of JP
	3.	Dr. T I M Fazzle Rabbi Chowdhury, MP of JP
	4.	Mr. Md. Mujibul Haque, MP and Presidium Member of JP
	5.	Mr. A B M Ruhul Amin Hawladar, MP and Secretary General of JP
	6.	Mr. Md. Mujibar Rahman, MP and Presidium Member of JP

	7.	Mr. Sunil Shuvo Ray, Press Secretary of Jatiya Party
	8.	Prof. Deloar Hossain, Presidium Member of Jatiya Party
	9.	Mr. Zia Uddin Bablu, MP and Presidium Member of Jatiya Party
<u>Jatiya Samajtantrik Dal (Inu)</u> Chairperson and top leaders of JSd (Inu)	1.	Shah Zikrul Ahmed MP Of JSD
	2.	Mr. Nurul Ambia, General Secretary of JSD
	3.	Begum Shirin Akter, Presidium Member of JSD
<u>Bangladesh Worker Party</u> Chairperson and top leaders of BWP	1.	Mr. Fazzle Hossain Badsha, MP of BWP
	2.	Mr. Bomol Biswas of BWP
	3.	Mr. Anisur Rahman Mollikn of BWP
	4.	Jeneral Secretary of BWP
<u>Libarel Democratic Party</u> Chairperson and top leaders of LDP		No Participation from LDP
<u>Democracy Party</u> Chairperson and top leaders of DP	1.	Mr. Mohammad Afzal of DP
	2.	Mirja Golam Kibria of DP
	3.	Dr. Md. Shahiduzzaman of DP
	4.	Mr. Nurur Rahman Salim of DP
	5.	Mr. Saiful Islam of DP
	6.	Mr. Mahmudur Rahman Babu of DP
<u>Bangladesh National Awami Party</u> Chairperson and top leaders of (NAP)	1.	Advocate Anamul Haque of NAP
	2.	Mr. Abdur Rashid Sarkar of NAP
	3.	Advocate Abdur Rahman of NAP
	4.	Mr. Ismail Hossain of NAP

D. Eminent Citizen of the Country:

Sl. No.	Invited Distinguished	Sl. No.	Presented Distinguished
1.	Prof. Kabir Chowdhury	1.	Prof. Kabir Chowdhury
2.	Mr. Rehman Sobhan	2.	Mr. Rehman Sobhan
3.	Dr. Anisuzzaman	3.	Dr. Anisuzzaman
4.	Prof. Dr. A A M S Arefin Siddique	4.	Prof. Dr. A A M S Arefin Siddique
5.	Mr. Badiual Alam Mujamdar	5.	Sayed Shamsul Haque
6.	Prof. Mozaffar Ahmed	6.	Mr. A B M Musa
7.	Mr. Iqbal Sobhan Chowdhury	7.	Prof. Rafiqul Islam
8.	Sayed Shamsul Haque	8.	Sayed Abul Maksud
9.	Begum Selina Hossain	9.	Mr. Zillur Rahman Siddiqe
10.	Mr. A B M Musa	10.	Mr. Asif Nazrul

11.	Prof. Rafiqul Islam	11.	Mr. Shariar Kabir
12.	Sayed Abul Maksud	12.	Mr. Muntasir Mamun
13.	Prof. Emaj Uddin Ahmed	13.	Dr. Mizanur Rahman
14.	Prof. M Muniruzzaman Mia	14.	Ad. Sultana Kamal
15.	Mr. Zillur Rahman Siddiqe	15.	Dr. Dhpriyo Bartchargge
16.	Mr. Asif Nazrul	16.	Akbor Ali Khan Khan
17.	Mr. Shariar Kabir	17.	Mr. M Hafizuddin Khan
18.	Mr. Muntasir Mamun	18.	Mr. A S M Shajan
19.	Dr. Ajoy Ray		
20.	Dr. Mizanur Rahman		
21.	Ad. Sultana Kamal		
22.	Dr. Davopriyo Bhattacharya		
23.	Dr. Akbar Ali Khan		
24.	Mr. Mahfuzullah		
25.	Mr. M Hafizuddin Khan		
26.	Mr. A S M Shajan		

E. Topmost Editors of Dailies of the Country:

Sl. No.	Invited Distinguished	Sl. No.	Presented Distinguished
1.	Prof. Dr. Sayed Anwar Hossain, Editor of The Daily Sun	1.	Prof. Dr. Sayed Anwar Hossain, Editor of The Daily Sun
2.	Mr. Anwar Hossain, Editor of the Daily Ittifaq	2.	Dr. Alamgir Mohiuddin, Editor of the Daily Naya Diganta
3.	Dr. Alamgir Mohiuddin, Editor of the Daily Naya Diganta	3.	Mr. Motiur Rahman, Editor of the Daily Prothom Alo
4.	Mr. Motiur Rahman, Editor of the Daily Prothom Alo	4.	Mr. Atikullah Khan Masud, Editor of the Daily Janokantha
5.	Mr. Atikullah Khan Masud, Editor of the Daily Janokantha	5.	Mr. Naimul Islam Khan, Editor of the Daily Amader Somoy
6.	Mr. Naimul Islam Khan, Editor of the Daily Amader Somoy	6.	Mr. Mahmudur Rahman, Editor The Daily Amar Desh
7.	Mr. Mahmudur Rahman, Editor of the Daily Amar Desh	7.	Mr. Abed Khan, Editor of the Daily Kaler Kantha
8.	Mr. Rafiqul Amin, Editor of the Daily Destiny	8.	Mr. Riaz Uddin Ahmed, Editor of The News Today
9.	Mr. Abed Khan, Editor of the daily Kaler Kantha	9.	Mr. Shajan Sordar, Editor of The Daily Bangladesh Protidin

10.	Sayed Hossain Chowdhury, Editor of the Daily Jay Jay Din	10.	Mr. Shamal Dutta, Editor The daily Borer Paper
11.	Mr. Nabubul Alam, Editor The Daily Independent	11.	Mr. A M M Bhauddin, Editor The daily Inqulab
12.	Mr. Riaz Uddin Ahmed, Editor of The News Today	12.	Mr. Mahfuz Anam, Editor of The Daily Star
13.	Mr. Shajan Sordar, Editor of the Daily Bangladesh Protidin	13.	Begum Salma Islam, Editor of the Jugnator
14.	Mr. Shamal Dutta, Editor of the Daily Borer Kagoj	14.	Mr. Motiur Rahman Chowdhury, Editor of the Manob Jomin
15.	Mr. A M M Bhauddin, Editor of the Daily Inqelab	15.	Mr. Golam Soroar, Editor of the Daily Samakal
16.	Mr. Mahfuz Anam, Editor of The Daily Star	16.	Mr. Nurul Kobir, Editor of The New Age
17.	Begum Salma Islam, Editor of the Juganator	17.	Mr. A H M Moazzem Hossain, Editor of the Financial Express
18.	Mr. Motiur Rahman Chowdhury, Editor of the Manob Jamin	18.	Mr. Mizanur Rahman Mizan, Editor of the Dainek Khabor
19.	Mr. Altamash Korib, Editor of the Sangbad		
20.	Mr. Golam Soroar, Editor of the Daily Samakal		
21.	Mr. Nurul Kobir, Editor of the New Age		
22.	Dr. Rezon Siddique, Editor of the Daily Dinkal		
23.	Mr. A H M Moazzem Hossain, Editor of the Financial Express		
24.	Mr. Mizanur Rahman Mizan, Editor of the Dainek Khabor		
25.	Mr. k M Balaet Hossain Editor of the Dainek Borrer Dak		

F. Honorable Members of Sector Commander Forum:

Invited Distinguished	Sl. No.	Presented Distinguished
Sector Commander forum		Sector Commander Forum
	1.	Air Vice Marshal (Retd.) A K Khandorkar, Bir Uttom, Chairman
	2.	Major General K. M. Safiullah, Bir Uttom (Retd.), Vice-Chairman
	3.	Lt. Col. Abu Osman Chowdhury (Retd.), Vice-Chairman
	4.	Lt. Genarel M. Harun-Or-Rashid, Bir Protik (Retd.), General Secretary
	5.	Mr. Sayed Rezaul Hayet, Former Secretary, Member
	6.	Col (Dr.) Shamsul Alam (Rted), Member
	7.	Mr. Md. Nurul Alam, Former Additional, IGP
	8.	Mr. Anawarul Alam, Former Ambassador, Foreign Secretary
9.	Mr. M. Hamid, Cultural Secretary	

Source: Special Committee Report on Fifteenth Amendment in 9th Jatiya Sangsad by the People's Republic of Bangladesh, June 2011, pp. 31-36.

Appendix 11

The Constitution (Fifteenth Amendment) Act, 2011 (Act No. XIV of 2011)

The 15th Amendment of the Constitution has brought about some fundamental changes. It amended preamble, Articles 8, 19, 25, 42, 47, 65, 66, 72, 80, 82, 88, 93, 117, 118, 122, 123, 125, 129, 139, 141A, 147, 152, 1st Schedule, 3rd Schedule, 4th Schedule. It substituted Articles 2A, 4A, 6, 9, 10, 12, 38, 44, 61, 70, Chapter I of Part VI, 116, 142, 145A, 150. It inserted new Articles 7A, 7B, 18A and 23A in the Constitution. It added three Schedules in the Constitution: 5th Schedule, 6th Schedule and 7th Schedule. It omitted Articles 58A, Chapter IIA-Non-party caretaker government, Part VIA. It omitted the provisions of 11th Amendment also (Halim, 2015:180).

An Act further to amend certain provisions of the Constitution of the People's Republic of Bangladesh

WHEREAS it is expedient and necessary further to amend certain provisions of the Constitution of the People's Republic of Bangladesh for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement: (1) This Act may be called the Constitution (Fifteenth Amendment) Act, 2011.
(2) It shall come into force at once.

2. Amendment in the beginning of the Constitution, above the Preamble: In the beginning of the Constitution of the People's Republic of Bangladesh (hereinafter referred to as the Constitution), above the preamble, for the words, commas, signs and brackets "BISMILLAH-AR-RAHMAN-AR-RAHIM (In the name of Allah, the Beneficent, the Merciful)", the following words, commas, signs and brackets shall be substituted, namely:

"BISMILLAH-AR-RAHMAN-AR-RAHIM

(In the name of Allah, the Beneficent, and the Merciful)/ In the name of the Creator, the Merciful."

3. Amendment of the Preamble of the Constitution: In the Preamble of the Constitution:
 - (a) in the first paragraph, for the words "a historic war for national independence" the words "a historic struggle for national liberation" shall be substituted, and
 - (b) for the second paragraph, the following paragraph shall be substituted, namely:
"Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution;"
4. Substitution of article 2A of the Constitution: In the Constitution, for article 2A, the following article 2A shall be substituted, namely:
"2A. The State religion: The State religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions."
5. Substitution of article 4A of the Constitution: In the Constitution, for article 4A, the following article 4A shall be substituted, namely:
"4A. Portrait of the Father of the Nation: The portrait of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman shall be preserved and displayed at the offices of the President, the Prime Minister, the Speaker and the Chief Justice and in head and branch offices of all government and semi-government offices, autonomous bodies,

statutory public authorities, government and non-government educational institutions, embassies and missions of Bangladesh abroad.”

6. Substitution of article 6 of the Constitution: In the Constitution, for article 6, the following article 6 shall be substituted, namely:
“6. Citizenship: (1) The citizenship of Bangladesh shall be determined and regulated by law:
(2) The People of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshies”.
7. Insertion of new articles 7A and 7B in the Constitution: In the Constitution, after article 7 the following two new articles 7A and 7B shall be inserted, namely:
“7A. Offence of abrogation, suspension, etc. of the Constitution: (1) If any person, by show of force or use of force or by any other un-constitutional means-
(a) abrogates, repeals or suspends or attempts or conspires to abrogate, repeal or suspend this Constitution or any of its article; or
(b) subverts or attempts or conspires to subvert the confidence, belief or reliance of the citizens to this Constitution or any of its article,
his such act shall be sedition and such person shall be guilty of sedition.

(2) If any person-
(a) abets or instigates any act mentioned in clause (1);
or
(c) approves, condones, supports or ratifies such act,
his such act shall also be the same offence.

(3) Any parson alleged to have committed the offence mentioned in this article shall be sentenced with the highest punishment prescribed for other offences by the existing laws.

7B. Basic provisions of the Constitution are not amendable: Notwithstanding anything contained in article 142 of the Constitution, the preamble, all articles of part I, all articles of Part II, subject to the provisions of Part IXA all articles of Part III, and the provisions of articles relating to the basic structures of the Constitution including article 150 of Part XI shall not be amendable by way of insertion, modification, substitution, repeal or by any other means”.
8. Amendment of article 8 of the Constitution: In the Constitution, in article 8, for clauses (1) and (1A), the following clause (1) shall be substituted, namely:
“(1) The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy.”
9. Substitution of article 9 of the Constitution: In the Constitution, for article 9, the following article 9 shall be substituted, namely:
“9. Nationalism: The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism”.
10. Substitution of article 10 of the Constitution: In the Constitution for article 10, the following article 10 shall be substituted, namely:
“10. Socialism and freedom from exploitation: A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free

- ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man”.
11. Substitution of article 12 of the Constitution: In the Constitution for article 12, the following article 12 shall be substituted, namely:
“12 Secularism and freedom of religion: The principle of secularism shall be realised by the elimination of-
 - (a) communalism in all its forms;
 - (b) the granting by the State of political status in favour of any religion;
 - (c) the abuse of religion for political purposes;
 - (d) any discrimination against, or persecution of, persons practicing a particular religion.”
 12. Insertion of new article 18A: In the Constitution, after article 18, the following new article 18A shall be inserted, namely:
“18A. Protection and improvement of environment and bio-diversity: The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.”
 13. Amendment of article 19 of the Constitution: In the Constitution, in article 19, after clause (2), the following new clause (3) shall be added, namely:
“(3) The State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life”.
 14. Insertion of new article 23A in the Constitution: In the Constitution, after article 23, the following new article 23A shall be inserted, namely:
“23A. The culture of tribes, minor races, ethnic sects and communities: The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities”.
 15. Amendment of article 25 of the Constitution: In the Constitution, in article 25-
 - (i) in clause (1), the figure and brackets “(1)” shall be omitted; and
 - (ii) clause (2) shall be omitted.
 16. Substitution of article 38 of the Constitution: In the Constitution, for article 38, the following article 38 shall be substituted, namely:
“38. Freedom of association: Every citizen shall have the right to form associations, unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order:
Provided that no person shall have the Right to form, or be a member of the said association or union, if-
 - (a) it is formed for the purpose of destroying the religious, social and communal harmony among the citizens;
 - (b) it is formed for the purposes of creating discrimination among the citizens, on the ground of religion, race, caste, sex, place of birth or language;
 - (c) it is formed for the purposes of organizing terrorist acts or militant activities against the State or the citizens or any other country;
 - (d) its formation and objects are inconsistent with the Constitution.”
 17. Amendment of article 42 of the Constitution: In the Constitution, for clauses (2) and (3) of article 42, the following clause (2) shall be substituted, namely:
“(2) A law made under clause (1) of this article shall provide for the acquisition, nationalisation or requisition with compensation and shall fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be

- assessed and paid; but no such law shall be called in question in any court on the ground that any provision of the law in respect of such compensation is not adequate.”
18. Substitution of article 44 of the Constitution: In the Constitution, for article 44, the following article 44 shall be substituted, namely:
“44. Enforcement of fundamental rights: (1) The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.

(2) Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.”
19. Amendment of article 47 of the Constitution: In the Constitution, in article 47,-
(i) in clause (2), for the proviso, the following proviso shall be substituted, namely:
“Provided that nothing in this article shall prevent amendment, modification or repeal of any such law,”; and
(ii) in clause (3), after the words “auxiliary forces” the words and comma “or any individual, group of individuals or organisation” shall be inserted.
20. Omission of article 58A of the Constitution: In the Constitution, article 58A shall be omitted.
21. Omission of CHAPTER IIA-NON-PARTY CARE-TAKER GOVERNMENT of the Constitution: In the Constitution, “CHAPTER IIA-NON-PARTY CARE-TAKER GOVERNMENT” shall be omitted.
22. Substitution of article 61 of the Constitution: In the Constitution, for article 61, the following article 61 shall be substituted, namely:

“61. Supreme command: The supreme command of the defence services of Bangladesh shall vest in the President and the exercise thereof shall be regulated by law”.
23. Amendment of article 65 of the Constitution: In the Constitution in article 65-
(i) in clause (3), for the words “forty five seats” the words “fifty seats” shall be substituted; and
(ii) after clause (3), the following new clause (3A) shall be inserted namely:
“(3A) For the remaining period of the Parliament in existence at the time of the commencement of the Constitution (Fifteenth Amendment) Act, 2011, Parliament shall consist of three hundred members elected by direct election provided for in clause (2) and fifty women members provided for in clause (3)”.
24. Amendment of article 66 of the Constitution: In the Constitution, in article 66-
(i) in clause (2), in sub-clause (3), the word ‘or’ and sub-clause (dd) shall be omitted;
(ii) after the omitted sub-clause (dd), the following new sub-clauses (e) and (f) shall be inserted, namely:
“(e) has been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972;
(e) holds any office of profit in the service of the Republic other than an office which is declared by law not to be disqualified its holder; or”;
(iii) for clause (2A), the following clause (2A) shall be substituted, namely:
“(2A) Notwithstanding anything contained in sub-clause (c) of clause (2) of this article, if any person being a citizen of Bangladesh by birth acquires the citizenship of a foreign State and thereafter such person-
(i) in the case of dual citizenship, gives up the foreign citizenship; or

- (ii) in other cases, again accepts the citizenship of Bangladesh-
for the purposes of this article, he shall not be deemed to acquire the citizenship of
a foreign State.
 - (iv) after clause (2B), the following clause (3) shall be inserted, namely:
“(3) For the purposes of this article, a person shall not be deemed to hold an office
of profit in the service of the Republic by reason only that he is the President, the
Prime Minister, the Speaker, the Deputy Speaker, a Minister, Minister of State or
Deputy Minister.”
25. Substitution of article 70 of the Constitution: In the Constitution, for article 70, the
following article 70 shall be substituted, namely:
“70. Vacation of seat on resignation or voting against political party: A person
elected as a member of Parliament at an election at which he was nominated as a
candidate by a political party shall vacate his seat if he-
(a) resigns from that party; or
(b) votes in Parliament against that party;
but shall not thereby be disqualified for subsequent election as a member of
Parliament.”
26. Amendment of article 72 of the Constitution: In the Constitution in first proviso of clause
(1) of article 72 after the word “provided that” the following words “except the period of
ninety days as mentioned in sub-clause (a) of clause (3) of article 123 for remaining term”
shall be inserted.
27. Amendment of article 80 of the Constitution: In the Constitution, in article 80,
(i) For clause (3) the following clause (3) shall be substituted, namely:
“(3) The President within fifteen days after a Bill is presented to him, shall assent
to the Bill or, in the case of a Bill other than a Money Bill, may return it to
Parliament with a message requesting that the Bill or any particular provisions
thereof be reconsidered, and that any amendments specified by him in the message
be considered; and if he fails so to do he shall be deemed to have assented to the
Bill at the expiration of that period.”
(ii) in clause (4), the words “by the votes of a majority of the total number of members
of Parliament” shall be omitted.
28. Amendment of article 82 of the Constitution: In the Constitution, in article 82, in the
proviso, after the words “provided that” the words “in any Money Bill” shall be inserted.
29. Amendment of article 88 of the Constitution: In the Constitution, in article 88,
(a) in para (b), for sub-para (ii), the following sub-para (ii) shall be substituted, namely:
(iii) the Judges of the Supreme Court;”
(b) for para (c), the following para (c) shall be substituted, namely:
“(c) the administrative expences of, including remuneration payable to, officers and servants
of Parliament, the Supreme Court, the Comptroller and Auditor-General, the Election
Commission and the Public Service Commissions.”
30. Amendment of article 93 of the Constitution: In the Constitution, in article 93, in clause
(1), for the words “Parliament stands dissolved or is not in session” the following words
Parliament stands dissolved or is not in session” shall be substituted.
31. Substitution of CHAPTER I of PART VI of the Constitution: In the Constitution, in Part
VI, for the CHAPTER I, the following CHAPTER I shall be substituted, namely:

“CHAPTER I – THE SUPREME COURT

94. Establishment of Supreme Court:

- (1) There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division.
- (2) The Supreme Court shall consist of the Chief Justice, to be known as the Chief Justice of Bangladesh, and such number of other Judges as the President may deem it necessary to appoint to each division.
- (3) The Chief Justice, and the Judges appointed to the Appellate Division, shall sit only in that division and the other Judges shall sit only in the High Court Division.
- (4) Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.

95. Appointment of Judges:

- (1) The Chief Justice shall be appointed by the President, and the other Judges shall be appointed by the President after consultation with the Chief Justice.
- (2) A person shall not be qualified for appointment as a Judge unless he is a citizen of Bangladesh and-
 - (a) has, for not less than ten years, been an advocate of the Supreme Court; or
 - (b) has, for not less than ten years, held judicial office in the territory of Bangladesh; or
 - (c) has such qualifications as may be prescribed by law for appointment as a Judge of the Supreme Court.
- (3) In this article, “Supreme Court” includes a Court which at any time before the commencement of this Constitution, exercised jurisdiction as a High Court in the territory of Bangladesh.

96. Tenure of officer of Judges:

- (1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-seven years.
- (2) A Judge shall not be removed from his office except in accordance with the following provisions of this article.
- (3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:
Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.
- (4) The function of the Council shall be-
 - (a) to prescribe a Code of Conduct to be observed by the Judges; and
 - (b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.
- (5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge-
 - (a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or
 - (b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.
- (6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.
- (7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court.

- (8) A Judge may resign his office by writing under his hand addressed to the President.
97. Temporary appointment of Chief Justice: If the office of the Chief Justice becomes vacant, or if the President is satisfied that the Chief Justice is, on account of absence, illness, or any other cause, unable to perform the functions of his office, those functions shall, until some other person has entered upon that office, or until the Chief Justice has resumed his duties, as the case may be, be performed by the next most senior Judge of the Appellate Division.
98. Additional Supreme Court Judges: Notwithstanding the provisions of article 94, if the President is satisfied that the number of the Judge of a division of the Supreme Court should be for the time being increased, the President may appoint one or more duly qualified persons to be Additional Judges of that division for such period not exceeding two years as he may specify, or, if he thinks fit, may require a Judge of the High Court Division to sit in the Appellate, Division for any temporary period:
Provided that nothing in this article shall prevent a person appointed as an Additional Judge from being appointed as a Judge under article 95 or as an additional Judge for a further period under this article.
99. Disabilities of Judges after retirement: (1) A person who has held office as a Judge (otherwise than as an Additional Judge pursuant to the provisions of article 98), shall not, after his retirement or removal therefrom, plead or act before any court or authority or hold any office or profit in the service of the Republic not being a judicial or quasi-judicial office.
(2) Notwithstanding anything contained in clause (1), a person who has held office as a Judge of the High Court Division may, after his retirement or removal therefrom, plead or act before the Appellate Division.
100. Seat of Supreme Court: The permanent seat of the Supreme Court shall be in the capital, but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint.
101. Jurisdiction of High Court Division: The High Court Division shall have such original, appellate and other jurisdictions and powers as are conferred on it by this Constitution or any other law.
102. Powers of High Court Division to issue certain orders and directions, etc.: (1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by part III of this Constitution.
(2) The High Court Division may, if satisfied that on other equally efficacious remedy is provided by law-
(a) on the application of any person aggrieved, make an order-
(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or
(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority, has been done or taken without lawful authority and is of no legal effect; or
(b) on the application of any person, make an order-
(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

- (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.
- (3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.
- (4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of-
- (a) prejudicing or interfering with any measure designed to implement any development programme, or any development work; or
- (b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorised by him in that behalf) has been given an opportunity of being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b).
- (5) In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defence service of Bangladesh or any disciplined force or a tribunal to which article 117 applies.
103. Jurisdiction of Appellate Division: (1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.
- (2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division-
- (a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution; or
- (b) has confirmed a sentence of death or sentenced a person to death or to imprisonment for life;
- (c) has imposed punishment on a person for contempt of that division; and in such other cases as may be provided for by Act of Parliament.
- (3) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal.
- (4) Parliament may by law declare that the provisions of this article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.
104. Issue and execution of processes of Appellate Division: The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document.
105. Review of Judgments or orders by Appellate Division: The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made by that division to review any judgment pronounced or order made by it.
106. Advisory jurisdiction of Supreme Court: If at any time it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Appellate Division for consideration and the divisions may, after such hearing as it thinks fit, report its opinion thereon to the President.

107. Rule making power of the Supreme Court: (1) Subject to any law made by Parliament the Supreme Court may, with the approval of the President, make rules for regulating the practice and procedure of each division of the Supreme Court and of any court subordinate to it.
(2) The Supreme Court may delegate any of its functions under clause (1) and article 113 and 116 to a division of that Court or to one or more Judges.
(3) Subject to any rules made under this article the Chief Justice shall determine which judges are to constitute any Bench of a Division of the Supreme Court and which Judges are to sit for any purpose.
(4) The Chief Justice may authorise the next most senior-Judge of either Division of the Supreme Court to exercise in that division any of the powers conferred by clause (3) or by rules made under this article.
108. Supreme Court as court of record: The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make and order for the investigation of or punishment for any contempt of itself.
109. Superintendence and control over courts: The High Court Division shall have superintendence and control over all courts and tribunals subordinate to it.
110. Transfer of cases from subordinate courts to High Court Division: If the High Court Division is satisfied that a Case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, or on a point of general public importance, the determination of which is necessary for the disposal of the case, it shall withdraw the case from that court and may-
(a) either dispose of the case itself; or
(b) determine the question of law and return the case to the court from which it has been so withdrawn (or transfer it to another subordinate court) together with a copy of the judgment of the division on such question, and the court to which the case is so returned or transferred shall, on receipt thereof, proceed to dispose of the case in conformity with such judgment.
111. Binding effect of Supreme Court judgments: The law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.
112. Action in aid of Supreme Court: All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court.
113. Staff of Supreme Court: (1) Appointments of the staff of the Supreme Court shall be made by the Chief Justice or such other judge or officer of that Court as he may direct, and shall be made in accordance with rules made with the previous approval of the President by the Supreme Court.
(2) Subject to the provisions of any Act of Parliament the continuous of service of members of the staff of the Supreme Court shall be such as may be prescribed by rules made by that court.
32. Substitution of article 116 of the Constitution: In the Constitution, for article 116, the following article 116 shall be substituted, namely:
“116. Control and discipline of subordinate courts: The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court.”

33. Amendment of article 117 of the Constitution: In the Constitution, in article 117, in clause (1), for sub-clause (c), the following sub-clause (c) shall be substituted, namely:
“(c) any law to which clause (3) of article 102 applies.”
34. Omission of PART VIA of the Constitution: In the Constitution, Part VIA shall be omitted.
35. Amendment of article 118 of the Constitution: In the Constitution, in article 118,
(a) in clause (1), for the words and commas “a Chief Election Commissioner and such numbers of other Election Commissioners if any, as the President may from time to time direct,” the following words “the Chief Election commissioner and not more than four Election Commissioners” shall be substituted; and
(b) in clause (5), for the words “Supreme Court”, the following words “Supreme Court” Shall be substituted.
36. Amendment of article 122 of the Constitution: In the Constitution, in article 122, in clause (2), for the sub-clauses (c) and (d), the following sub-clauses (c), (d) and (e) shall be substituted, namely:
“(c) does not stand declared by a competent court to be of unsound mind;
(d) is or is deemed by law to be a resident of that constituency; and
(e) has not been convicted of any offence under the Bangladesh Collaborators (Special Tribunals) Order, 1972”.
37. Amendment of article 123 of the Constitution: In the Constitution, in article 123, for clause (3), the following clause (3) shall be substituted, namely:
“(3) A general election of the members of Parliament shall be held-
(a) in the case of a dissolution by reason of the expiration of its term, within the period of ninety days preceding such dissolution; and
(b) in the case of a dissolution otherwise than by reason of such expiration, within ninety days after such dissolution:
Provided that the person elected at a general election under sub-clause (a) shall not assume office as members of Parliament except after the expiration of the term referred to therein.”
38. Amendment of article 125 of the Constitution: In the Constitution, in article 125, at the end of the clause (d) for the full stop, the semi colon shall be substituted, and, after clause (d) the following new clause (e) shall be added, namely:
“(e) A court shall not pass any order or direction, ad interim or otherwise, in relation to an election for which schedule has been announced unless the Election Commission has been given reasonable notice and an opportunity of being heard”.
39. Amendment of article 129 of the Constitution: In the Constitution, in article 129, in clause (2), for the words “the Supreme Court”, the following words “Supreme Court” shall be substituted;
40. Amendment of article 139 of the Constitution: In the Constitution, in article 139, in clause (2), for the words “Supreme Court”, the following words “Supreme Court” shall be substituted.
41. Amendment of article 141A of the Constitution: In the Constitution, in article 141A-
(a) in clause (1), after the word “Emergency” the words “for one hundred twenty days” shall be added;
(b) in clause (2), in sub-clause (c), the words and comma, “, unless before the expiration of that period it has been approved by a resolution of Parliament” shall be omitted;

- (c) in the proviso of clause (2), after the words “passed by Parliament” the words and comma “or at the expiration of one hundred and twenty days, whichever occurs first” shall be added.
42. Substitution of article 142 of the Constitution: In the Constitution, for article 142, the following article 142 shall be substituted, namely:
“142. Power to amend any provision of the Constitution: Notwithstanding anything contained in this Constitution-
- (a) any provision thereof may be amended by way of addition, alteration, substitution or repeal by Act of Parliament:
Provided that-
- (i) no Bill for such amendment shall be allowed to proceed unless the long title thereof expressly states that it will amend a provision of the Constitution;
- (ii) no such Bill shall be presented to the President for assent unless it is passed by the votes of not less than two-thirds of the total number of members of Parliament;
- (b) when a Bill passed as aforesaid is presented to the President for his assent, he shall, within the period of seven days after the Bill is presented to him assent to the Bill, and if he fails so to do he shall be deemed to have assented to it on the expiration of that period.”
43. Substitution of article 145A of the Constitution: In the Constitution, for article 145A, the following article 145A shall be substituted, namely:
“145A. International treaties: All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament:
Provided that any such treaty connected with national security shall be laid in a secret session of Parliament.”
44. Amendment of article 147 of the Constitution: In the Constitution, in article 147, in clause (4),-
- (i) for sub-clause (b), the following sub-clause (b) shall be substituted, namely:
“(b) Prime Minister,”; and
- (ii) for sub-clause (d), the following sub-clause (d) shall be substituted, namely:
“(d) Minister, Minister of State or Deputy Minister.”
45. Substitution of article 150 of the Constitution: In the Constitution, for article 150, the following article 150 shall be substituted, namely:
“150. Transitional and temporary provisions: (1) The provisions set out in the Fourth Schedule of the Constitution at the time of the commencement of this Constitution on the 16th day of December, 1972 shall have effect as transitional and temporary provisions notwithstanding anything contained in any other provisions of this Constitution.
(2) In the period between the 7th day of March, 1971 and the date of commencement of this Constitution on the 16th day of December, 1972, the historical speech delivered by Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation, in the Resource Moidan on the 7th day of March, 199\71, set out in the Fifth Schedule of the Constitution, the telegram of the declaration of independence of Bangladesh made by Sheikh Mujibur Rahman, the Father of the Nation on the 26th day of March, 1971 set out in the Sixth Schedule and the proclamation of independence of the Mujibnagar Government on the 10th day of April, 1971 set out in the Seventh Schedule are the historical speech and instruments of the independence and the struggle of freedom of Bangladesh which shall be deemed to be the transitional and the temporary provision for the said period.”
46. Amendment of article 152 of the Constitution: In this Constitution, in article 152, in clause (1),-
- (a) The expression “Advisor” shall be omitted;

- (b) for the words and expressions ““the Appellate Division” means the Appellate Division of the Supreme Court” and “The Chief Justice” means the Chief Justice of Bangladesh””, the following words and expressions ““The Chief Justice” means the Chief Justice of Bangladesh” and “the Appellate Division” means the Appellate Division of the Supreme Court”” shall be substituted respectively.
- (c) after the expression “clause”, the following new expression shall be inserted, namely: ““court” means any court of law including Supreme Court;” and
- (d) the expression “Chief Advisor” shall be omitted.
47. Amendment of First Schedule of the Constitution: In Constitution, in the First Schedule, after the words, figures, comma, brackets and full stop “The Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (A.P.O No. 1 of 1972) the words, figures, comma, brackets and full stop “The Bangladesh Collaborators (Special Tribunals) Order, 1972 (P.O. No. 8 of 1972).” shall be inserted.
48. Amendment of the Third Schedule of the Constitution: In the Constitution, in the Third Schedule,-
- (a) In Form 1, for the words “Chief Justice” the word “Speaker” shall be substituted;
- (b) For 1A shall be omitted;
- (c) In Form 2, for the words “Prime Minister”, The following words “Prime Minister” shall be substituted;
- (d) Form 2A shall be omitted;
- (e) for Form 6, the following Form 6 shall be substituted, namely:
“6. Chief Justice or Judges: An oath (or affirmation) in the following forms shall be administered, in the case of the Chief Justice by the President, and in the case of a Judge appointed to a division, by the Chief Justice-
“I,, having been appointed Chief Justice of Bangladesh (or Judge of the Appellate/High Court Division of the Supreme Court) do solemnly swear (of affirm) that I will faithfully discharge the duties of my office according to law:
That I will bear true faith and allegiance to Bangladesh:
That I will preserve, protect and defend the Constitution and the laws of Bangladesh:
And that I will do right to all manner of people according to law, without fear of favour, affection or ill-will;” and
- (f) in Form 8, for the words “Chief Justice” the words “Chief Justice” shall be substituted.
49. Amendment of the Fourth Schedule of the Constitution: In the Constitution, in the Fourth Schedule,-
- (a) For the words and figure “Article 150”, the word, figure and brackets “Article 150(1)” shall be substituted; and
- (b) for Articles 12, the following Article 12 shall be substituted namely:
“12. Local government: Until elections are held to constitute the local government bodies referred to in article 59, the administrative arrangements existing in the different administrative units of the Republic immediately before the commencement of this Constitution shall continue; subject to such changes as may be made by law.”; and
- (c) Articles 3A, 6A, 6B, 18, 19, 20, 21, 22 and 23 shall be omitted.
50. Addition of certain new Schedules in the Constitution: In the Constitution, after the Fourth Schedule the following new Schedules respectively Fifth, Sixth and Seventh shall be added.

Source: The Constitution of the People’s Republic of Bangladesh (October, 2011), Printed with latest amendment, Ministry of Law, Justice and Parliamentary Affairs Government of the People’s Republic of Bangladesh, pp. 157-174.